OPENING STATEMENT OF
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SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

THE SEC'S PROPOSALS ON MARKET STRUCTURE: HOW WILL INVESTORS FARE?

TUESDAY, MAY 18, 2004

Mr. Chairman, we meet for the fourth time in the 108th Congress to review the organization of our capital markets and evaluate the need for further reforms in light of technological advances and competitive developments. This hearing seeks to examine how the market structure changes recently proposed by the Securities and Exchange Commission will affect investors.

As I have regularly observed at our previous hearings, a variety of agents in our equities markets have questioned one or more aspects of the regulatory system during the last several years. We have also, in my view, come to a crossroads in the securities industry, confronting a number of decisions that could fundamentally alter its organization for many years to come.

We have elaborately interconnected systems and relationships in our equities markets. I therefore believe that we should heed the philosophy of Edmund Burke and refrain from pursuing change for change's sake. We should only modify the structure of our securities markets if it will result in improvements for investors. The Chairman of the Securities and Exchange Commission has also recently observed that in pursuing any change to fix those portions of our markets experiencing genuine strain, we must ensure that we do not disrupt those elements of our markets that are working well.

In February, the Commission put forward for discussion four interrelated proposals that would reshape the structure and operations of our equities markets. Because these proposals have generated considerable debate, the Commission announced last week that it would extend the public comment period until the end of June.

In adopting the Securities Acts Amendments of 1975, the Congress wisely decided to provide the Commission with a broad set of goals and significant flexibility to respond to market-structure issues. From my perspective, this legal framework has worked generally well over the last three decades. It is also appropriate for the Commission at this time to review its rules governing market structure and for our panel to conduct oversight on these matters.

Mr. Chairman, as you already know, I have made investor protection one of my highest priorities for my work on this Committee. Although many of the agents in our securities markets have called for adopting market-structure reforms and some of them may benefit from these changes, the Commission must thoroughly examine the effects of its reform proposals on average retail investors before approving any change.

Today, I suspect that many of our witnesses will discuss the Commission's proposal to alter the trade-through rule. Retail investors are guaranteed the best price that our securities markets have to offer regardless of the location of a trading transaction under our present regulatory system. By ensuring fair treatment, this best-price guarantee has significantly increased confidence in our securities markets. I also believe that this directive has served most investors generally well.

The Commission, however, has issued a proposal to permit participants in our capital markets to opt out under certain circumstances of this best-price guarantee. Some have suggested that this proposal could potentially produce unintended consequences like fragmenting our securities markets, decreasing liquidity, and limiting price discovery. Because such results could prove deleterious for small investors, I will be monitoring this issue very closely in the weeks and months ahead.

A recent survey of older American investors also found that 86 percent of the respondents agreed that they should be alerted before the completion of a transaction in which the best available price is not the top priority. I would consequently like to learn from our witnesses how unsophisticated investors should be notified if their mutual fund manager, stock broker, or pension fund adviser decides to opt out of the present best-price mandate. For example, it would be helpful to debate whether such opt outs should be completed via a blanket disclosure or on a per trade basis.

In sum, Mr. Chairman, we should continue to conduct vigorous oversight of our equities markets to determine whether or not the present regulatory structure is working as intended and to study how we could make it stronger. The observations of today's witnesses about these complex matters will further help me to discern how we can maintain the efficiency, effectiveness and competitiveness of our Nation's capital markets into the foreseeable future.