



**Wednesday, October 3, 2012**

**9:00 AM - 10:30 AM**

**1208 – Managing the Fallout from a  
Financial Scandal: Brand Damage, SIPC  
Coverage, Litigation**

**Lowell Haky**

*Associate General Counsel*  
Charles Schwab & Co., Inc.

**Orlan Johnson**

*Former Chair, SIPC*  
Securities Investor Protection Corporation

**Miriam Lefkowitz**

*General Counsel*  
Shufro, Rose & Co., LLC

## Faculty Biographies

### **Lowell Haky**

Lowell Haky is the head of Charles Schwab & Co., Inc.'s civil and complex litigation department. Schwab provides a broad range of financial services to individual investors, investment managers and retirement plans. Schwab is one of the world's largest financial institutions, and currently custodies more than \$1.7 trillion in client assets worldwide.

Mr. Haky has extensive experience managing high profile, complex litigation and regulatory enforcement proceedings, including the auction rate securities, market timing and late trading, and class action waiver matters, as well as large affirmative recovery cases including the residential mortgage backed securities and LIBOR Antitrust litigations.

### **Orlan Johnson**

Orlan Johnson currently the national advisory board chairman for Intelaform Inc., a company that develops clinical informatics systems and provides healthcare product supply chain management services to federal and state government agencies, pharmaceutical and biotech companies and medical device distributors. Mr. Johnson is also a principal with TJC Consulting Group LLC, which offers custom-tailored services to organizations and individuals navigating the challenging realm of international business. He advises on corporate board development, strategic planning, business development and public private partnerships. Mr. Johnson is a former partner and member of the Saul Ewing's business and finance department, where he was co-chair of the securities transactions and regulations practice group and chairman of the firm's Diversity Committee. His practice focused on general corporate matters, complex business transactions and federal and state regulatory issues in business and securities transactions.

Prior to working at Saul Ewing, Mr Johnson was of counsel to the law firm of Milbank, Tweed, Hadley & McCloy, where he was co-head of the regulatory practice in the Washington D.C. office of this 600 attorney Wall Street- based international law firm.

In 2009 Mr. Johnson was appointed by President Obama to be chairman of the Securities Investor Protection Corporation, the lead organization responsible for the investigation and recovery process for account holders of failed brokerage firms such as Lehman, Madoff and MF Global. Mr. Johnson's term expired at the end of 2011.

**Miriam Lefkowitz**


Miriam Lefkowitz is the general counsel of Shufro, Rose & Co., a dual-registered BD/IA that provides discretionary fee- and commission-based asset management in separately managed accounts to retail clients. She advises the firm on all aspects of securities regulation and compliance.

In addition to serving as general counsel to Shufro, she also advises other financial services firms and law firms on compliance, regulatory and legal matters.

Prior to joining Shufro, Ms. Lefkowitz served as general counsel/chief compliance officer, and member of the board of directors of J.B. Hanauer & Co., a full service, retail BD/IA, where she worked closely with all business units in the development and delivery of new financial products, services and client deliverables to ensure regulatory requirements were satisfied and appropriate resources were directed to implementing best practices and training sales force and supervisors.

Prior to going in-house, Ms. Lefkowitz served as senior counsel in the enforcement division of the Securities & Exchange Commission and practiced law at a firm in Miami.

Ms. Lefkowitz graduated from Columbia Law School and Columbia College.



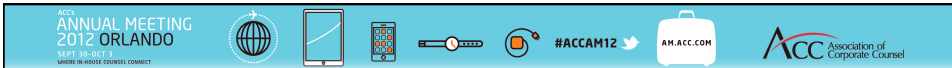
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# Customer Claims Under SIPA

Orlan Johnson  
ACC Presentation 2012



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# Summary of Customer Protection

- 1. All “customer name securities” without limitation as to value.
- 2. A ratable share of the fund of “customer property”.
- 3. Advances from SIPC of up to \$500,000 for each customer, with a maximum of \$250,000 for a cash balance. To the maximum extent practicable, and assuming a fair and orderly market, the trustee will use SIPC advances to purchase securities to replace securities which may be missing.
- 4. To the extent the customer’s “net equity” is still unsatisfied, he participates as an unsecured creditor in the general estate of the debtor.

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## Limits to Customer Protection

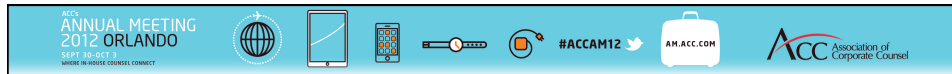
- A. Claims which are not “customer” claims at all.
  - 1. Lenders, Subordinated Lenders, and Contributors to Capital.
  - 2. Participants in Repurchase Agreements.
  - 3. Market Loss Claims Based on Fraud or Improper Broker Conduct.
    - ▶Most frequent examples:
      - –Fraud in the inducement to purchase securities.
      - –Unsuitability
      - –Churning.

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## Limits to Customer Protection

- A. Claims which are not “customer” claims at all.
  - 4. Breach of Contract Claims.
    - ▶Most frequent example:
      - –Failure or refusal to carry out a customer’s order to sell securities
  - 5. Claims based upon unprotected investments.
    - ▶Most frequent examples:
      - –Commodities Futures
      - –Foreign Currency
      - –Unregistered investment contracts



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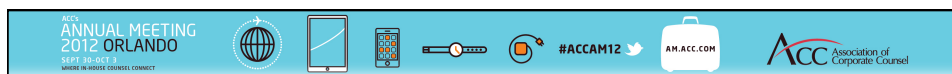
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## Limits to Customer Protection

A. Claims which are not “customer” claims at all.

- 6. Claims For Funds Given To Entities Other Than The SIPC Member Firm. (Stanford)
- 7. Securities Issuers Using the Debtor as an Underwriter.
- Note: SIPC advances may be, and as a practical matter usually are, made prior to a determination of each customer’s ratable share of customer property.



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## Limits to Customer Protection

B. Customers who are ineligible for advances from SIPC.

- 1. Brokers and Banks.
- 2. Directors, Officers, 5% Owners of A Debtor Firm, or a Partner.
- 3. Persons who, regardless of title, exercise control over the Debtor.
- 4. Persons who violate securities laws: e.g. free riders and insider traders.

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## Limits to Customer Protection

C. Limitations On Otherwise Valid Customer Claims; Problem Areas.

- 1. Multiple Accounts.
- ▶Series 100 Rules
- 2. Standardized Options.
- ▶Series 400 Rules
- 3. Claims for Cash vs. Claims for Securities.
- ▶Series 500 Rules
- 4. Cash in Lieu of Securities.
- 5. Money Market Funds.
- 6. Unauthorized Trades.
- 7. Untimely Filed Claims.


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## Comparative Results

	Customer A	Customer B	Customer C	Customer D	Customer E
Opening Balance:	\$100	\$100	\$100	\$100	\$100
Stock Activity:	No Activity through filing date.	Authorized purchase of \$100 worth of XYZ (100 shares at \$1 per share), a manipulated stock [or purchase induced by fraud].	Authorized purchase of \$100 worth of XYZ (100 shares at \$1 per share), a manipulated stock [or purchase induced by fraud].	Authorized purchase of \$100 worth of XYZ (100 shares at \$1 per share), a manipulated stock [or purchase induced by fraud].	Unauthorized purchase of \$100 worth of XYZ (100 shares at \$1 per share), a manipulated stock.
Other Activity:	None.	None.	Customer gives an order to sell the stock, broker fails or refuses to do so.	Prior to filing date, customer seeks to rescind but has not obtained rescission by filing date.	Customer proves by contemporaneous documentation or other evidence purchase was unauthorized.
Net Equity as a "Customer":	\$100	\$30 (100 shares at \$.30 per share) (stock price had declined to \$.30 per share on filing date).	\$30 (100 shares at \$.30 per share) (stock price had declined to \$.30 per share on filing date).	\$30 (100 shares at \$.30 per share) (stock price had declined to \$.30 per share on filing date).	\$100 (original purchase price).
Other Claim:		May have claim for \$70 against debtor's general estate.	May have claim for \$70 against debtor's general estate.	May have claim for \$70 against debtor's general estate.	None.



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## Recent Cases


- Second Circuit Opinion regarding “Net Equity” definition (Madoff ruling). Court upheld SIPC view of net equity to determine payments as opposed to information of statements.
- SEC v. SIPC - Case of First Impression, court held that SIPC did not have comply with SEC’s order to pay claims to Stanford victims because they did not satisfy definition of being a “Customer” under SIPA.




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# Managing the Fallout of a Financial Scandal


## A Practitioner's Guide

Presented by Lowell Haky  
Vice President, Associate General Counsel  
Charles Schwab

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# First Things First

- Retain Counsel
- Litigation Hold
- Notice to Insurance Carriers
- Draft Talking Points




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## Communications

- Public Disclosures
- Reports to Senior Management
- PR Strategy
- Internal Communication




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## Assessing Exposure

- Determine the Scope and Extent of the Problem
- Remediate Ongoing Problematic Conduct
- Quantify the Exposure


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## Develop a Coordinated Dispute Resolution Strategy

- Regulatory Enforcement
- Litigation
- Arbitration
- Informal Disputes






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## Managing the Project

- Assemble a Team
- Establish a Meeting Schedule
- Delegate and Track Deliverables
- Prioritize Activities
- Stay Organized
- Exhibit – To Do List


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## Issues for Public Companies

- Pending tender offers
- Proxy rights


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## Issues for Introducing Firms if SIPC event at Clearing Firm

- Net Capital
- Discretion in separately managed accounts, for dual registrants

## Case - To Do List

*Attorney Client Privileged  
Attorney Work Product*

Project	Priority (1 to 5)	Notes / Status	Due Date	Responsible Party

### List of Witnesses / Contacts

Witness / Contact	Role	Phone Number	Email Address	Comment
<b>Witness/Claim</b>				
<b>Experts/Potential Experts</b>				
<b>Legal / Corporate</b>				
<b>Vendors</b>				
<b>Opposing Counsel</b>				