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Howard  
Schiffman  
*Partner*

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## Contact

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**Former co-chair of the Litigation Group. Focuses on investigations and enforcement proceedings brought by various exchanges and government agencies, including the SEC, the DOJ and FINRA, as well as a diverse array of civil litigation, including securities class actions and arbitrations.**

Nationally known in the area of securities litigation and regulatory developments, Howard is a corporate problem solver and is as adept at dispute containment and resolution as he is at arguing to a jury.

He counsels clients, including major financial institutions and investment banks, leading Nasdaq market-makers, institutional and retail brokerage firms and their registered representatives, trade execution and clearing firms, prime brokers, national accounting firms, hedge funds, and public and private companies and their senior officers in risk analysis and litigation avoidance.

Still, with his extensive trial experience and solid record of success in numerous SEC enforcement actions, SRO proceedings and FINRA arbitrations, Howard has the confidence to take a case to trial when necessary.

He recently successfully represented the former CEO of Hanger Inc. in securing the dismissal of a securities fraud class action in which he was named as a defendant. He also represented the former CEO of the largest Nasdaq market-making firm, Knight Securities, in a federal court action brought by the SEC. After a 14-day bench trial, all parties were completely cleared of wrongdoing.

Howard began his career as a trial attorney with the SEC Division of Enforcement. In private practice for almost 30 years, he has long been at the forefront of securities litigation and regulatory developments, including his current representation of hedge funds, and the leading prime brokers and clearance firms, in regulatory and civil litigation.

Howard was included in *Washingtonian's* "Washington's Top Lawyers" list and has been recognized by *Chambers USA*, *The Legal 500 US* and *Benchmark Litigation* as a leading individual in the securities regulation area.

He is a member of American Bar Association Sections on Litigation, Corporation, Finance and Securities Law and a fellow of the Litigation Counsel of America. He is also a director and former president of the Association of Securities and Exchange Commission Alumni Inc.

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## Practices

**BLOCKCHAIN TECHNOLOGY AND DIGITAL ASSETS**

**BROKER-DEALER REGULATORY AND ENFORCEMENT**

**COMPLEX COMMERCIAL LITIGATION**

**LITIGATION**

**REGULATORY AND COMPLIANCE**

**SECURITIES LITIGATION AND CLASS ACTION**

**SEC ENFORCEMENT AND WHITE COLLAR DEFENSE**

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## Bar Admissions

District of Columbia

New York

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## Court Admissions

US Court of Appeals, District of Columbia

US Court of Appeals, Second Circuit

US Court of Appeals, Ninth Circuit

US Court of Appeals, Eleventh Circuit

US District Court, Southern District of New York

US District Court, Eastern District of New York

US District Court, District of Columbia

US Supreme Court

US District Court, District of Colorado

US District Court, District of Connecticut (pro hoc vice)

US District Court, District of Maryland

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## Education

Fordham University School of Law, J.D.

- *cum laude*

- *Fordham Law Review*

Colgate University, B.A.

- *cum laude*

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# Representations

## Overview

- Clients have included many of the leading financial institutions and investment banks, largest Nasdaq market-makers, institutional and retail brokerage firms and their registered representatives, trade execution and clearing firms, prime brokers, national accounting firms, hedge funds, and numerous public and private companies and their senior officers.
- Has advised and/or represented clients in connection with securities litigation and regulatory developments in wide variety of areas, including alleged insider trading, market manipulation, improper short selling, accounting fraud, unregistered broker dealers and unregistered securities offerings, legal exposure arising out of prime brokerage services and securities registration.
- Extensive trial experience includes impressive record of successfully litigating to conclusion numerous SEC enforcement actions, SRO proceedings and FINRA arbitrations.

## SEC and DOJ Enforcement Proceedings

- Has successfully represented numerous clients in complex securities matters before the SEC and the DOJ, as well as the Commodity Futures Trading Commission and England's Financial Conduct Authority. The investigations and enforcement proceedings have focused on, among other things, accounting and financial disclosure issues, stock option grant backdating issues, PIPE offerings, sales of unregistered securities, executive compensation and perks, sales practices, soft dollars, money laundering compliance, and alleged late trading and market timing, insider trading, Foreign Corrupt Practices Act violations, antitrust violations, market manipulation and alleged manipulation of Libor.
- Has successfully represented numerous hedge funds and their managers in SEC investigations, including alleged violations of insider trading, Rule 105 and self-dealing.

- Has represented the largest New York State Stock Exchange (NYSE) specialist and leading Nasdaq market-making firms, national retail brokerage firms and their management and representatives, and public companies and their officers and directors. For example, before the SEC and in private litigation, represented the Special Committee of the Board of Directors of a Fortune 100 technology company in connection with a worldwide investigation of allegations of stock option backdating and earnings manipulation. Before the SEC, he has represented hedge funds in insider trading inquiries, fund administrators in alleged improper NAV calculations, the CEO of one of the world's largest food processing companies in an SEC proceeding involving proxy disclosure, and the CEO of a leading market-maker in connection with allegations of fraud and inadequate supervision.
- Has been involved in many complex accounting cases. While at the SEC, he served as trial counsel in the SEC's first successful fully-litigated accounting case, which involved a shifting of quarterly earnings based on improper recognition of sales and an improper accounting of inventory (*SEC v. Aydin Corp.*). Involvement in complex accounting matters before the SEC and the DOJ has included representation of one of the largest energy companies in connection with allegations of improper revenue recognition of wash trades.

### **SRO Investigations and Proceedings**

- Has represented numerous securities professionals in regulatory investigations conducted by NASD (now FINRA) and the NYSE, American Stock Exchange (AMEX), Chicago Board Options Exchange (CBOE), and various other exchanges. Has represented many of the largest securities firms, including Goldman Sachs & Co., Knight Securities, Spear, Leeds & Kellogg, First Options of Chicago, BTIG, Lek Securities Corporation and CRT. Has represented market professionals in connection with allegations that include failure to supervise, violation of option trading rules, improper clearing, trading irregularities, and reporting violations. Also has successfully assisted numerous issuers in connection with Nasdaq delisting proceedings.

### **NYSE and FINRA Investigations**

- Represents a major clearing firm in a joint NYSE and FINRA investigation dealing with the supervision of direct access order flow, appropriate surveillance for various types of potentially violative trading practices, including “spoofing,” wash sales and marking the close, portfolio margin issues, and anti-money laundering compliance.

### **Lek Securities Corporation**

- Represented Lek Securities Corporation, a clearing member of the NYSE, in connection with two enforcement trials commenced by the FINRA Department of Market Regulation. One trial involved 13 separate counts of alleged violations of NYSE Rules and the other action involved failure of the broker-dealer to have adequate supervising procedures in violation of AML regulations.

### **Appellate Experience**

- Represented Goldman Sachs and The Royal Bank of Scotland in security matters before the 2d Circuit. Has appeared before the federal circuit courts of appeal to argue cutting-edge issues related to securities and corporate litigation and has represented the Securities Industry and Financial Markets Association (fka Securities Industry Association) (collectively, SIFMA) in appearances as *amicus curiae* in cases of industry-wide significance.
- Appellate success requires innovation, experience, and careful investment of resources. Has received many significant favorable appellate decisions, including matters on behalf of Duke Energy (2d Circuit), First Options of Chicago, Inc. and Spear, Leeds & Kellogg, L.P. (11th Circuit), the State of Hawaii Insurance Commissioner (9th Circuit) and Herbalife (9th Circuit).

### **The Royal Bank of Scotland Group/NatWest**

- Won dismissal on statute of limitations grounds in 2d Circuit for The Royal Bank of Scotland Group, as successor to National Westminster Bank PLC, of a suit brought by investors alleging fraud in connection with loans related to tax shelter scheme known as Bond Linked Issue Premium Structure, or BLIPS.

### **Securities Civil Litigation and Arbitration Cases**

- Has successfully represented a wide range of clients, including the largest broker-dealers (Goldman Sachs, Knight Securities and BTIG), clearing firms (Spear, Leeds & Kellogg, Pershing), investment companies (Vanguard, Federated), investment banks (Royal Bank of Scotland, Lehman Brothers), fixed-income trading firms (Greenwich Capital), and Fortune 500 public companies (Duke Energy, Comverse Technology) in class action, derivative, and other types of cases in federal and state courts, and before FINRA, NYSE, CBOE and American Arbitration Association (AAA) arbitration forums involving, among other things, claims of securities fraud, breach of fiduciary duty, trading improprieties, RICO violations, antitrust violations, inadequate compliance and supervision, fraud in connection with private and public offerings, market structure issues, and accounting irregularities. The following are some of the significant cases in which he has participated:

#### **Goldman Sachs – Walrus Master Fund Limited Litigation**

- Represented Goldman Sachs in a FINRA Dispute Resolution arbitration brought by hedge fund Walrus Master Fund Limited and Adam D. Sender in 2011. The statement of claim requested more than \$60 million in damages and alleged that claimants suffered losses resulting from liquidating securities positions to meet risk calls during the October 2008 financial crisis. The arbitration award denied all of the claimant's claims and assessed forum fees against the claimant, handing Goldman Sachs a resounding victory.

#### **LaSalle Bank**

- Won a very significant award from a panel of nationally recognized, independent accountants. The arbitration arose out of a top-tier domestic bank's purchase of LaSalle Bank, the U.S. banking subsidiary of ABN AMRO, whose books included approximately \$4 billion in commercial real estate loans. After the sale, the purchasing bank triggered a purchase price adjustment provision, asserting that it was entitled to an approximately \$300 million purchase price reduction and, as a result, withheld approximately \$100 million of the purchase price from ABN AMRO. The parties contested several areas of valuation and accounting practices before the arbitration panel, including the \$4 billion valuation of commercial real estate loans, accounting and tax treatment for bad debt reserves, and the appropriateness of certain insurance

coverage policies. The arbitration panel rejected the purchasing bank's arguments for a \$300 million purchase price reduction and instead rendered a verdict in ABN AMRO's favor on virtually all issues.

#### **Gonzales v. National Westminster Bank plc; Abrams v. National Westminster Bank plc**

- Secured the dismissal of two federal fraud actions against National Westminster Bank plc on statute of limitations grounds. The cases arose from loans that had been provided in 2000 by National Westminster in connection with a tax shelter strategy invested in by two wealthy individuals who claimed to have lost more than \$17 million and \$7 million, respectively. In granting the motions to dismiss, the court agreed that the tax shelter strategy and the associated alleged fraud had been widely covered in the media, in government investigations and in other litigations as of 2003, if not earlier. Accordingly, the Court concluded that the plaintiffs were on notice of the alleged fraud more than two years before the filing of the amended complaints, and thus the actions were time-barred under the New York statute of limitations for fraud claims, which must be brought within six years of the occurrence or two years from when plaintiff has notice of the claim. Both cases have been appealed to the Second Circuit.

#### ***Vynerib v. BTIG***

- Represented BTIG in an action filed in the Supreme Court of New York County by a former Senior Vice President of Axiom Capital Management, Inc. ("Axiom"). Plaintiff alleges that BTIG breached a client referral agreement between BTIG and Axiom. Plaintiff seeks declaratory relief as a third party beneficiary of the agreement, an accounting, and a constructive trust, as well as damages for breach of contract, quantum meruit/unjust enrichment, and promissory estoppel/reliance.

#### **Last Atlantis Litigation**

- SRZ secured the dismissal of all federal securities claims against Goldman Sachs Execution & Clearing, L.P. and SLK-Hull Derivatives LLC (collectively, the "Goldman Defendants") in a case brought by "direct access" brokerage customers who used arbitrage trading



strategies in an attempt to take advantage of price discrepancies in the options markets. The plaintiffs alleged the Goldman Defendants and the other options specialists also named as defendants violated their duty of “best execution” by refusing to execute orders promptly and executing proprietary trades for the specialists’ own accounts ahead or instead of the plaintiffs’ orders. The Goldman Defendants moved for summary judgment on the plaintiffs’ federal securities fraud claims on the ground that they had made no misrepresentations concerning the duty of “best execution,” and the court held that the asserted misrepresentations the plaintiffs had culled from the defendants’ web site either did not apply to options specialists at the Goldman Defendants or were mere inactionable puffery. The court declined to dismiss similar federal claims against three other specialist defendants.

#### **Knight - Libertas Litigation**

- Represented Knight Capital Group's broker-dealer subsidiary and Knight's former head of fixed income in complex litigation in various venues stemming from our clients' prior association with a \$500 million hedge fund. Secured favorable settlement for our clients in a \$60 million federal court suit alleging misappropriations by the former CEO of the hedge fund. Previously obtained a \$6 million award related to client's sale of his partial ownership of the hedge fund business in multi-day arbitration evidentiary hearing. Successfully confirmed arbitration award and obtained orders restraining judgment debtors' ability to use or deplete assets. Following a multi-day state court hearing, obtained prejudgment remedy requiring adversary to deposit more than \$4 million with court as security for our client's claim for redemption of his hedge fund investment. Successfully prosecuted multi-day state court bench trial to hold adversary in contempt for violating temporary restraining orders. Successfully moved to dismiss related federal securities law claims brought by hedge fund investors.

#### **Lancelot Funds/Tom Petters Litigation**

- Represented RBS Citizens, N.A. bank and various other entities affiliated with the Royal Bank of Scotland in actions filed in the United States District Court for the District of Colorado, in Colorado state court, and in Illinois state court by various hedge funds managed by Agile Group, LLC and Sky Bell Asset Management,

LLC for approximately \$65 million of losses those funds claim to have suffered on investments in the Lancelot Investors Fund hedge funds. The Lancelot funds provided financing to a purported consumer electronics brokerage operation run by Minnesota businessman Thomas Petters, who was later convicted of running a \$3 billion Ponzi scheme. The plaintiffs alleged statutory and common law claims based on their alleged reliance on assertedly false statements that the plaintiffs claim the bank made to them concerning the due diligence the bank conducted on the Lancelot funds, to which the bank was a lender. The matter was resolved amicably.

***Complex Systems, Inc. v. The Royal Bank of Scotland***

- Represented The Royal Bank of Scotland N.V. (formerly known as ABN AMRO Bank N.V.) (“RBS”) in an action filed in the U.S. District Court for the Southern District of New York by its former software vendor. The vendor alleges that RBS lost all previously licensed rights in and to the vendor’s software after RBS divested certain US-based businesses to a third party. Plaintiff has asserted multiple claims, including copyright infringement, breach of contract and trade secret misappropriation, and is seeking significant monetary damages and an injunction.

***Medical Assets, LLC v. Emmet A. Larkin Co., Inc.***

- Successfully represented a West Coast-based clearing firm in an NASD (now FINRA) arbitration brought by a bio-venture capital firm from which \$15 million worth of securities, on deposit with the clearing firm, had allegedly been converted by a foreign business partner. The case raised novel issues regarding the application of the “safe harbor” under UCC § 8-115 for transfers by securities intermediaries such as clearing firms. Following more than 40 hearing sessions, the panel of arbitrators unanimously dismissed all claims against the clearing firm.

***Weiss, Peck & Greer, L.L.C. v. National Discount Brokers***

- Represented National Discount Brokers, a former division of Deutsche Bank, in an NASD (now FINRA) arbitration proceeding against it involving more than \$12 million in losses resulting from a correspondent firm’s failure to cover a large short position in a highly

volatile stock. The case raised significant issues regarding the responsibility of clearing firms and Nasdaq market-makers with respect to monitoring the risk exposure of correspondent firms. At the conclusion of several weeks of hearing sessions during which the clearing firm, represented by a major Wall Street law firm, called the former director of the SEC's Division of Enforcement as an expert witness, the panel unanimously dismissed all claims against National Discount Brokers.

### **Options Industry Antitrust/Securities Litigation**

- Represented Goldman Sachs & Co. affiliate, First Options of Chicago, Inc., the largest equity options trading specialist firm, in class action litigation alleging that the national options exchanges and their members conspired to restrict the listing of options to a single exchange. Served as liaison counsel for the specialist firm and market-maker defendants and for certain settling market-makers.

### **Cambridge Partners Litigation**

- Represented Goldman Sachs Execution & Clearing, L.P. in a lawsuit and arbitration brought by a court-appointed receiver and investors who lost more than \$40 million in Cambridge Partners, a hedge fund clearing client. The New Jersey state court granted the client's motion to compel arbitration. The arbitration was resolved favorably.

### **Duke Energy Securities Litigation**

- Represented Duke Energy and its officers and directors in an internal investigation relating to the recognition of revenues on "wash" trades in electrical power and gas derivative securities and related SEC and DOJ investigations and securities class action lawsuits filed in New York and North Carolina. Secured an early victory for Duke Energy in the New York action by successfully moving the federal court to dismiss the class action in its entirety on the pleadings. Also successfully defended the dismissal on appeal to the Second Circuit Court of Appeals.

### **NatWest Securities Litigation**

- Represented National Westminster Bank Plc and its investment banking subsidiaries in connection with eight lawsuits filed in both state and federal courts by the purchasers of \$450 million of high-yield bonds that financed a steel mill in Thailand. Plaintiffs have alleged fraud and misrepresentation in connection with a Rule 144A offering.

#### ***Brandon v. Taylor Financial Group, Inc.***

- Represented Pershing, a division of Donaldson, Lufkin & Jenrette Securities Corporation, in an NASD (now FINRA) arbitration proceeding brought by an investor who claimed that his broker, to whom Pershing provided securities clearing services, committed fraud and made unsuitable trades that caused millions of dollars of losses in the investor's accounts. The arbitration panel granted pre-hearing motion to dismiss all claims against Pershing.

#### **Nasdaq Market-Makers Antitrust Litigation**

- Represented a leading broker-dealer (Goldman Sachs Execution & Clearing, L.P., formerly Spear Leeds & Kellogg, L.P.) in the Nasdaq market-makers securities litigation involving allegations of collusion relating to quote activity in the over-the-counter market. Served as one of three liaison counsel for the 35 largest over-the-counter market-makers in connection with the SEC and DOJ investigations and 20 class actions. This case was resolved favorably on behalf of the client.

#### **Performance Specialist Group, LLC Class Action**

- Represents Performance Specialist Group, an NYSE specialist, in a class action against the NYSE and all the NYSE specialists filed in Manhattan federal court. The plaintiffs allege that the NYSE and the specialist firms violated the securities laws through such practices as "front-running," "trading ahead," "inter-positioning," and "freezing" the specialists' books, causing millions of dollars of losses to those people who traded on the NYSE.

#### **Allegheny International Litigation**

- Represented Goldman Sachs Execution & Clearing, L.P. and Mario Gabelli and his funds, in separate suits against the officers and directors of the multinational conglomerate Allegheny International,

Inc. (Allegheny); its accountants, KPMG Peat Marwick; and its investment banker, Dillon Read & Co. The plaintiffs alleged that, in reliance on fraudulent financial statements and income projections, they were induced to make a significant investment in Allegheny, which entered bankruptcy soon thereafter. Numerous accounting and auditing issues were raised in the case, focusing primarily on whether Allegheny's assets (including real estate) and liabilities were properly reflected on its financial statements under generally accepted accounting principles, and on whether Peat Marwick's audit procedures were sufficient and appropriate under generally accepted auditing standards. These matters were successfully resolved for the clients.

### ***Greenwich Capital v. Citibank Mortgage***

- Successfully represented Greenwich Capital, one of the largest fixed-income securities dealers, in connection with a disputed trade involving the sale of a \$250 million pool of home loan mortgages.

### **Herbalife Securities Litigation**

- Represented Herbalife International, Inc., a California-based corporation that markets weight-control products, food and dietary supplements, and personal care products worldwide, as well as Herbalife's CEO and CFO, in connection with a class action lawsuit filed in the U.S. District Court for the Central District of California alleging violations of federal securities laws. Plaintiffs alleged that the company issued overly optimistic earnings projections and that its financial statements overstated earnings. The action was dismissed for failure to allege sufficient facts in the complaint. The decision was affirmed by the U.S. Court of Appeals for the 9th Circuit.

### **Oxford Tender Offer Litigation**

- Represented Oxford Residential Properties I Limited Partnership and several of its affiliates in connection with litigation brought in the U.S. District Court for the Central District of California arising from a management tender offer. The case involved a derivative action brought by a unit holder of one of the partnerships who, among other things, challenged the adequacy of the tender offer materials and sought to enjoin the tender offer and obtain from the

partnership the list of unit holders. The court did not require the partnership to disclose the list, and the tender offer was successfully completed.

### ***Haft v. Haft***

- Represented the international accounting firm of Arthur Andersen & Co. in connection with a myriad of lawsuits arising over the control of Dart Group and other corporations and partnerships owned by members of the Haft family. Arthur Andersen was the accounting firm for the Hafts and the related companies.

### **Farmers Group Litigation**

- Represented defendant PaineWebber in a class action, arbitration proceeding and PHLX proceeding arising out of alleged violations of the PHLX and OCC options exercise rules. The class action was dismissed based on defendants' motion, the arbitration panel rendered judgment for defendants after a full hearing, and the PHLX proceeding was amicably resolved.

### **Geodyne Securities Litigation**

- Represented defendant PaineWebber in a class action brought by investors of hundreds of millions of dollars in oil and gas drilling programs. The investors claimed they purchased the securities based on misleading disclosures and false financial information. The action was dismissed with prejudice.

### **Oxford Securities Litigation**

- Represented Oxford Corporation and its affiliates in an action brought by investors in real estate limited partnerships that developed and built garden apartments. Plaintiffs filed actions in New York and Michigan, alleging false and misleading disclosures in the offering materials and improper financial statements. The matter was successfully resolved after defendants' motion to dismiss was granted.

### **Brantley Capital Corporation Investigation**

- Represented closed-end mutual fund Brantley Capital Corporation and certain of its current and former directors in connection with an SEC investigation into portfolio valuation and other issues involving

the fund and its former management. Also represented the fund in a federal class action filed by fund shareholders in Manhattan federal court, and represented the fund in an earlier derivative action that was filed in the same court but was later voluntarily dismissed.

***Securities and Exchange Commission v. Kenneth D. Pasternak and John P. Leighton***

- Successfully represented Kenneth Pasternak, the former CEO of Knight Securities, L.P., the largest Nasdaq market-making firm, in connection with an action brought by the SEC in New Jersey federal court. The SEC alleged in its complaint, filed on Aug. 8, 2005, that Joseph Leighton, one of Knight's institutional sales traders, overcharged the firm's institutional customers in executing their orders to purchase or sell Nasdaq securities during 1999 and 2000. The SEC claimed that Mr. Pasternak, as CEO, and John Leighton, Joseph's brother and supervisor, participated in and aided and abetted Joseph's alleged violations of the securities laws. After a 14-day bench trial, the court concluded that the SEC failed to prove that Joseph committed any fraud and completely cleared Mr. Pasternak of any wrongdoing.

**Comverse Technology, Inc. Investigations and Litigation**

- Represented the Special Committee of the Board of Directors of Comverse Technology, Inc. in connection with allegations of stock option backdating and earnings manipulation. Conducted worldwide internal investigations on behalf of the Comverse Special Committee, dealing with both the SEC and the Office of the U.S. Attorney for the Eastern District of New York. After criminal charges were filed against former senior executives of the company, the DOJ singled out the thoroughness and speed with which the internal investigation was conducted. Also represented the Special Committee in related derivative litigation brought in federal and state courts against current and former officers and directors of the company.

**Strategic Income Fund Litigation**

- Represented Goldman Sachs Execution & Clearing, L.P. and certain of its predecessors (collectively, GSEC) in a federal court lawsuit brought by Strategic Income Fund and its investors in federal

district court and in related state court and CBOE arbitration proceedings—all arising out of GSEC's liquidation of assets that had been transferred to the fund manager's account as collateral for its options trading program. Successfully moved to dismiss the federal court complaint alleging \$22 million in compensatory damages and obtained an affirmance of the dismissal from the 11th Circuit. Also successfully defended a four-day CBOE arbitration hearing that had been commenced by two plaintiffs who did not pursue the 11th Circuit appeal. Finally, successfully moved to dismiss the state court claims subsequently brought by the remaining federal plaintiffs and obtained an affirmance of that dismissal on appeal.

#### **Bear, Stearns Securities Corp. Prime Brokerage Litigation**

- Utilizing his experience in the areas of securities clearing and prime brokerage, represented SIFMA, as *amicus curiae*, in the appeal of a bankruptcy court ruling that held a prime broker liable for alleged fraudulent transfers made by one of its hedge fund clients in the form of margin payments and other deposits into its prime brokerage account.



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## Publications

- Securities Enforcement Quarterly, *Schulte Publication*, Aug. 2022
- Securities Enforcement Quarterly, *Schulte Publication*, May 2022
- Securities Enforcement Quarterly, *Schulte Publication*, January 2022
- Securities Enforcement Quarterly, *Schulte Publication*, October 2021; republished in the *Harvard Law School Forum on Corporate Governance*, November 2021
- Securities Enforcement Quarterly, *Schulte Publication*, July 2021
- Securities Enforcement Quarterly, *Schulte Publication*, April 2021
- “Supreme Court Limits Disgorgement in SEC Enforcement Actions,” *Schulte Alert*, June 23, 2020
- “Tipper and Tippee Liability,” *Insider Trading Law and Compliance Answer Book* (Practising Law Institute), 2011-2020
- “SEC Publishes First-Ever No-Action Letter for a Cryptocurrency Enterprise and a Framework for when a Cryptocurrency is a Security,” *Schulte Alert*, April 10, 2019, co-author
- “Advocates Call Out Institutionalization Cycle in Washington,” *Courthouse News*, August 2018 (quoted)
- “Recent SEC Settlement Evidences Agency’s Continued Aggressive Enforcement of Conflicts of Interest,” *The Hedge Fund Law Report*, Sept. 21, 2017 (quoted)
- “‘No Fish Too Small’ in SEC’s Focus on Individual Cases, Say Former Prosecutors,” *Bloomberg Briefs: Financial Regulation & Risk*, November 2016 (featured)
- “Regulatory Change: 2015 Diagnosis, 2016 Prognosis — Schulte Roth & Zabel’s Leading Securities Litigation Practice,” *The Hedge Fund Journal*, November 2015 (profile)

- “*Newman’s Aftermath: District Court Vacates Four Insider Trading Guilty Pleas; Government Seeks Rehearing in Second Circuit,*” *Schulte Client Alert*, Jan. 27, 2015 (co-author); republished in *The Hedge Fund Journal*, February/March 2015
- “*Second Circuit Clarifies Insider Trading Liability of Tippees,*” *Schulte Client Alert*, Dec. 15, 2014 (co-author); republished in *The Hedge Fund Journal*, January 2015
- “*Focus on Insider Trading,*” *HFMWeek*, August 2014 (interview)
- *Schulte Insider Trading Developments Newsletter*, Summer 2014 (contributor)
- “*Rainmaker Q&A: Schulte Roth’s Howard Schiffman,*” *Law360*, Aug. 7, 2013 (featured)
- “*SEC Enforcement Division Increases the Pace of Rule 105 Investigations,*” *Schulte Client Alert*, June 28, 2013 (co-author)
- “*Insider Trading Developments — Summer 2012,*” *The Harvard Law School Forum on Corporate Governance and Financial Regulation*, Oct. 8, 2012 (co-author)
- *Schulte Insider Trading Developments Newsletter*, Summer 2012 (co-author)
- “*Understanding the Class Action Lawsuit Against Career Education Corporation from the Defendants’ Perspective,*” *Career Education Review*, April 2004 (co-author)
- *Survey of Securities Class Actions and Derivative Suits*, 1998, 1999, and 2000 (contributor)
- “*Overview of Current Derivatives Litigation,*” American Conference Institute, 1995 (co-author)
- “*Current Developments in SEC Settlements of Securities Cases*” (Practicing Law Institute), 1989-1990 (co-author)
- “*The Use of the Fifth Amendment in SEC Investigations,*” 41 *Wash. & Lee L. Rev.* 895 (1984) (co-author)
- “*Settlement of Securities Litigation Through the Issuance of Securities Without Registration,*” 50 *Fordham L. Rev.* 533 (1982) (co-

author)

- “The Relationship Between the Investment Advisor and the Mutual Fund,” 45 *Fordham L. Rev.* 183 (1976)

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## Speaking Engagements

- “State of the Law and Practice: Insider Trading,” Schulte 26th Annual Private Investment Funds Seminar, New York, January 2017
- “Trading Compliance: Managing Regulatory Risk,” Schulte 25th Annual Private Investment Funds Seminar, New York, January 2016
- “GC and CCO Risks and Safeguards: Ethics in Practice,” Schulte 24th Annual Private Investment Funds Seminar, New York, January 2015
- “Insider Trading and Dealing with Reputational and Operational Risk,” *HFMWeek* US Operational Leaders Summit, White Plains, N.Y., June 2014
- “Regulatory Examinations and Enforcement,” Schulte 23rd Annual Private Investment Funds Seminar, New York, January 2014
- “Regulatory Examinations and Enforcement,” Schulte 22nd Annual Private Investment Funds Seminar, New York, January 2013
- “Insider Trading: Latest Insights,” Schulte 21st Annual Private Investment Funds Seminar, New York, January 2012
- Moderator, “Hedge Your Bets: Why Are Hedge Funds the Object of the Feds’ Desires?” ABA Sixth Annual National Institute on Securities Fraud, New Orleans, November 2011
- “Managing Regulatory Exposure,” Schulte 20th Annual Private Investment Funds Seminar, New York, January 2011
- “Risk Management in a Changing Environment,” Schulte 19th Annual Private Investment Funds Seminar, New York, January 2010
- “Conducting the Investigation,” PLI Internal Investigations: How to Protect Your Clients or Company Seminar, New York, June 2009
- “The State of the Industry – The New Regulatory Environment,” GAIM 2009, Grand Cayman, Cayman Islands, January 2009
- “Current SEC Investigations and Enforcement Actions,” Schulte’s 18th Annual Private Investment Funds Seminar, New York, January

2009

- “Prime Brokerage,” 40th SIFMA-CL Annual Seminar, Orlando, FL, March 2008
- “Disciplinary Hearing Process,” FINRA Fall Securities Conference, Scottsdale, Ariz., October 2007
- “Market Manipulation in Energy Markets – Enforcement Risks and Compliance Protections,” API Risk Control Committee Meeting, Chicago, May 2007
- “Regulatory and Civil Liability of Clearing Firms and Prime Brokers,” SIFMA Annual Seminar, Phoenix, March 2007
- “Prime Brokerage & Correspondent Clearing,” Securities Industries Association (SIA) Compliance & Legal Division Seminar, Palm Desert, Calif, April 2005
- “Outside Directors,” PLI D&O Liability & Insurance Seminar: Directors & Officers Under Fire, New York, June 2004
- “Clearing Firm and Prime Broker Liability,” Future Industry Association Law & Compliance Workshop, Baltimore, May 2004
- Securities Industries Association (SIA) Compliance & Legal Division Seminar, Phoenix, March 2004
- “Sarbanes Oxley Act (New SEC and NYSE Rules),” NY-ACC Ethics Marathon, September 2004
- “Professional Conduct of Attorneys and Corporate Code of Ethics After Sarbanes Oxley,” NY-ACC Ethics Marathon, December 2004
- “Corporate Governance & Liability Insurance: Drafting Disclosures and Advising the Board on Corporate Governance Under the Sarbanes Oxley Regime,” LexisNexis Corporate Governance Symposium, September 2003
- “Increased Responsibilities for Outside Directors,” PLI Seminar, October 2003
- “Mini-MBA for the Corporate Practitioner: Recent Accounting Issues,” American Corporate Counsel Association, May 2002

- “Retail Surveillance Techniques,” SIA Compliance & Legal Division Seminar, Orlando, FL, March 2001
- “SEC Order Handling Issues,” SIA Compliance Legal Division Seminar, Palm Desert, Calif, March 2000
- “Equity Trading Desk Activities and Best Execution Obligations,” National Society of Compliance Professionals (NSCP) Annual Meeting, Washington, DC, October 1999
- “SEC Order Handling Issues,” SIA Compliance & Legal Division Seminar, Boca Raton, FL, April 1999
- “Prosecuting and Defending Class Actions,” Insight Conference, New York, February 1999
- “Compliance After Caremark: Avoiding and Mitigating Potential Civil and Criminal Liability,” ABA Section of Business Law Spring Meeting, St. Louis, April 1998
- Recent Media Appearances
- Frequently interviewed by the media, including BBC World Service, *Bank and Lender Liability Reporter*, *Business Week*, CNBC, *Corporate Officers and Directors Liability Reporter*, CNN Financial, CNN Moneyline, FindLaw Legal News and Commentary, *Financial Times*, *Houston Chronicle*, *Los Angeles Times*, MoneySense.ca, Moneycnn.com, MSN Money, *National Post*, *Northwest Herald*, *Newsday*, PBS – Nightly Business Report, *Securities Litigation & Regulation Reporter*, Smartmoney.com, *Wall Street Journal*, *Washington Post*

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## Memberships

- Member, Litigation, Corporation, Finance and Securities Law Sections, American Bar Association
- President, 1998-2000; Director, 1995-present, Association of Securities and Exchange Commission Alumni, Inc. (ASECA)
- Fellow, Litigation Counsel of America, 2015

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## Distinctions

- *Chambers USA* – Leading Individual in Securities Regulation for the District of Columbia, and described as a “committed and effective advocate” who is “aggressive in a calm, thoughtful way” and executes “killer attacks in an easygoing style.” Was also ranked nationally.
- *The Legal 500 US*
- *Benchmark Litigation* – “Local Litigation Star,” Washington, DC, metro area
- *The Best Lawyers in America* – Commercial Litigation and Securities Law
- *Washington, DC, Super Lawyers*
- *Washingtonian* magazine – one of Washington’s “Top Lawyers” in the securities area
- *Washingtonian* magazine’s listing of the 800 Top Lawyers, described by the publication as “Washington’s best – the top one percent”
- *Lawdragon* – named one of the “500 Leading Lawyers in America”
- *Lawdragon* – named a “Leading Lawyer” in a list that represents less than one percent of the legal profession and is determined based on a combination of independent research and peer reviews

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## Prior Experience

- Head of Securities Litigation, Regulatory and Compliance Practice, Partner, Dickstein Shapiro, 1980–2008
- Trial Attorney, US Securities and Exchange Commission Division of Enforcement, Washington, DC
- Taught classes on white collar crime, College of Law, American University, 1987–1992

