

# Is Your Account Safe? What Changes At Lehman Brothers & Merrill Lynch Mean For Investors

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## SUMMARY OF ARTICLE

The ramifications from the bankruptcy filing of the once-venerable Lehman Brothers and Bank of America's takeover of investment powerhouse Merrill Lynch has left investors scrambling to find answers about the safety and future of their own financial holdings with the two companies.

A Sept. 16 article by Eleanor Laise and Shefali Anand in the Wall Street Journal highlights the many questions facing clients of Lehman Brothers and Merrill Lynch as news of bankruptcy filings, takeovers and financial turbulence dominate the headlines these days.

When a brokerage firm declares bankruptcy or otherwise fails, there are multiple layers of protection to safeguard investors' assets. By law, registered brokers must keep funds and securities of clients separate from their own accounts. In instances where a brokerage closes its doors, clients' claims for funds take first priority over other claims on the brokerage.

The Securities Investor Protection Corporation (SIPC) offers an added layer of protection for investors with holdings at a failed brokerage firm. In the event the firm shuts down due to bankruptcy or other financial reasons and clients only receive a partial distribution of their assets, the SIPC becomes their first line of defense. Serving as a form of insurance policy, SIPC either acts as trustee or works with an independent court-appointed trustee to recover the funds in question.

Specifically, the statute that created SIPC in 1970 ensures customers of a failed brokerage firm receive all non-negotiable securities - stocks or bonds - that are registered in their names or in the process of being registered. Moreover, funds can be used from the SIPC reserve fund to satisfy the remaining claims, providing an amount up to \$500,000 for each customer, which includes a maximum of \$100,000 on claims for cash.

What clients of Lehman Brothers and Merrill Lynch do need to consider in the coming weeks and months is the status of their broker. Brokers at both firms will be making tough choices, with many heading to new firms or going out on their own. Clients must decide whether to follow them, keep their business as is or move their investments to a different brokerage altogether.

For Merrill Lynch clients, the company's acquisition by Bank of America means they will now be doing business in an entirely new investing culture. The merging of Bank of America and Merrill creates the largest financial services company in the nation - an investing giant with more than 20,000 financial advisers and \$2.5 trillion in client assets. It's these cultural differences - the conservativeness of Bank of America versus the more aggressive, risk-oriented atmosphere at Merrill Lynch - that could cause brokers to switch firms and clients to follow, according to the Wall Street Journal article.

## Lehman Brothers

In the case of Lehman Brothers' clients, they need to keep in mind that the company's investment-management unit is not part of the bankruptcy filing, only the parent company is. For the time being, the broker-dealer component of Lehman is functioning as normal, and will close only after the orderly transfer of customer accounts to another registered and SIPC-insured broker-dealer.

**However, as noted in the Wall Street Journal article, clients holding more complex investments at Lehman - derivatives holdings or limited-partnerships, for example – may indeed face complications in the weeks ahead. “The more complicated the security, the more difficult it’s going to be to liquidate those securities or have those positions transferred out to another brokerage firm,” said Steven Caruso, partner at New York law firm Maddox Hargett & Caruso, in the story.**

Margin loans are another potential issue for Lehman clients. According to Caruso, clients with margin loans could be forced to immediately inject more money into their accounts if they hold hard-to-value assets with the firm, as the valuations of those holdings could decline substantially.

Perhaps the biggest question mark regarding Lehman and its investors concerns auction-rate securities. In recent weeks, at least nine investment banks agreed to buy back billions of dollars worth of the securities from retail investors. Lehman, however, had not reached any such agreement with state regulators, leaving many investors with the illiquid securities wondering if or when they will get their money back.

Another question mark for Lehman investors surrounds Lehman's exchange-traded notes. According to the Wall Street Journal story, these notes - which act as a type of debt instrument that trades like a stock - are considered unsecured debt instruments. This means owners will have to wait in line to get their money just like any other creditor.

The bottom line: For Lehman clients, “the safest course is to get all the assets away from the firm so they’re not subjected to uncertainties as things develop,” concludes Caruso in the Wall Street article.

To learn more about the protections provided to investors by the Securities Investor Protection Corporation, go to <http://www.sipc.org/>.

Our affiliation of securities lawyers is actively involved in advising individual and institutional investors in evaluating their legal options when confronted with subprime and other mortgage-related investment losses.