ANALYSIS OF SECURITIES INVESTOR PROTECTION ACT COVERAGE FOR STANFORD GROUP COMPANY

INTRODUCTION

Under the Securities Investor Protection Act of 1970 ("SIPA"), the Securities and Exchange Commission is responsible for exercising plenary authority over the Securities Investor Protection Corporation ("SIPC") to ensure that SIPC properly discharges its statutory responsibilities.[1] This authority includes the power to file an application in federal district court to require SIPC to initiate a liquidation proceeding to protect customers of an insolvent broker-dealer.[2] The Commission has determined, based on the totality of the facts and circumstances of this case, that SIPC member Stanford Group Company ("SGC") has failed to meet its obligations to customers.[3] The Commission, in an exercise of its discretion, therefore is making a formal request to the SIPC Board of Directors to take the necessary steps to institute a SIPA liquidation proceeding of SGC. Should the Board refuse to take such action, the Commission has authorized its Division of Enforcement to bring an action in district court against SIPC to compel the institution of a proceeding to liquidate SGC under SIPA.

FACTUAL BACKGROUND

SGC is a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934 and a member of SIPC. R. Allen Stanford ("Stanford") was the sole owner, directly or indirectly, of more than 130 related entities, including SGC, Stanford International Bank, Ltd. ("SIBL"), and Stanford Trust Company ("STC"). SIBL was a purported private international bank chartered and domiciled in St. Johns, Antigua. SGC operated through 29 offices located throughout the United States, and its principal business was the sale of securities issued by SIBL that were marketed as certificates of deposit (the "CDs" or "SIBL CDs"). As of February 16, 2009, SGC had approximately 32,000 active accounts for which it acted as an introducing broker, and those accounts were cleared and carried by Pershing LLC or J.P. Morgan Clearing Corporation. STC was a Louisiana trust

---

1 *See SIPC v. Barbour*, 421 U.S. 412, 417 (1975); *In re New Times Securities Services, Inc.*, 371 F.3d 68, 77 (2d Cir. 2004).

2 SIPA Section 11(b), 15 U.S.C. 78ggg(b).

3 SIPA Section 5(a)(3), 15 U.S.C. 78eee(a)(3).

company that maintained custody of SIBL CDs in accounts of investors who purchased the CDs through IRAs.

In a civil enforcement action filed in the United States District Court for the Northern District of Texas,[4] the Commission's complaint principally alleges that for at least a decade, Stanford executed a massive Ponzi scheme centered on the sale of SIBL CDs through entities under his control, including SGC (through which U.S. investors purchased the CDs).[5] The complaint further alleges that by year-end 2008, more than $7.2 billion of SIBL CDs had been sold by falsely touting: (i) the bank's safety and security; (ii) consistent, double-digit returns on the bank's investment portfolio; and (iii) high rates of return on the CDs that greatly exceeded those offered by commercial banks in the United States.[6] The Commission has alleged that, contrary to those representations, Stanford misappropriated billions of dollars of investor money and "invested" an undetermined amount of investor funds in speculative, unprofitable private businesses controlled by Stanford.[7]

On February 19, 2009, the district court in the Commission's enforcement action appointed a receiver ("Receiver") for the assets of SIBL, SGC, Stanford, and other defendants. The Receiver has filed periodic reports that have included, among other findings, the results of its investigation of the roles played by various Stanford entities in the sale of the SIBL CDs and what happened to the funds customers invested in those CDs. The Receiver's conclusions include the following:

- The many companies controlled and directly or indirectly owned by Stanford "were operated in a highly interconnected fashion, with a core objective of selling [SIBL CDs]."[8]

---

4 *SEC v. Stanford International Bank, Ltd., et al.*, Case No. 3:09-cv-0298-N.

5 Second Amended Complaint (Attachment 1), ¶ 1.

6 *Id.*, ¶ 2.

7 *Id.*, ¶ 3.

8 Report of the Receiver Dated April 23, 2009 ("Apr. 23 Report") (Attachment 2) at 5.

- The Stanford companies "did not have a typical centralized management hierarchy, nor did they have a typical governance structure for the whole network. In contrast to a conventional multi-tiered corporate structure, the stock of almost half of these entities was owned directly by Allen Stanford, rather than through a central holding company. . . . The structure was seemingly designed to obfuscate holdings and transfers of cash and assets."[9]

- "The Receiver believes . . . based on his investigation to date, that the principal purpose and focus of most of the combined operations [of the Stanford entities] was to attract and funnel outside investor funds into the Stanford companies through the sale of CDs issued by Stanford's offshore entity SIBL."[10]

- "Although all of SIBL's financial operations, including CD sales, were controlled and managed from Stanford's offices in the U.S., [SIBL] was domiciled in the Caribbean island nation of Antigua and Barbuda ('Antigua'). It appears that SIBL may have been established in Antigua in order to take advantage of Antiguan bank secrecy laws and to minimize regulatory inspection. At the same time, Stanford's financial advisors used the apparent legitimacy offered by U.S. regulation of Stanford's U.S. brokerage subsidiary in order to generate sales of SIBL CDs worldwide."[11]

In the context of its opposition to a petition pursuant to Chapter 15 of the Bankruptcy Code seeking recognition of the Antiguan liquidation as the "foreign main proceeding" for the liquidation of SIBL, the Receiver set forth the following additional facts regarding Stanford's Ponzi scheme:

- "SIB[L] was part of a massive Ponzi scheme devised and directed by Allen Stanford and his close confederates. The principal source of funding for the Ponzi scheme was the sale, worldwide, of CDs issued by SIB[L]. . . . The Stanford Ponzi scheme had two main functions: to bring

---

9 *Id.* at 5-6.

10 *Id.* at 6.

11 *Id.*

in investor cash by selling fraudulent CDs and then to utilize that cash to perpetuate the scheme."[12]

- "Current sales proceeds were used to pay interest and principal on previously purchased CDs, to incentivize Stanford-affiliated financial advisors (i.e., salesmen) with above-market commissions, to richly reward Stanford's confederates for their complicity, and generally to maintain the Stanford empire's false appearance of strength. And, of course, money went to Allen Stanford himself. Lots of it. Secret SIB[L] financial records . . . list $1.8B in 'notes receivable' from Allen Stanford. Money was also bled off in other ways to support Stanford's extravagant lifestyle. Funds that were left over after all these diversions were invested, although the value of the investments totaled only a small fraction of the fictitious amount reported to the public and to regulators."[13]

- "Corporate separateness was not respected within the Stanford empire . . . . Money was transferred from entity to entity as needed, irrespective of legitimate business need. Ultimately, all of the fund transfers supported the Ponzi scheme in one way or another, or benefitted Allen Stanford personally."[14]

- "[P]rospectuses stated that the CDs were obligations of SIB[L] and not of the broker-dealer subsidiaries. In other words, the paperwork was made to look reassuringly like the documents of a real financial institution. The problem was, SIB[L] was not a real financial institution. There was no real substance to the inter-company contracts and the verbiage contained in the prospectuses, since all of the Stanford entities, SIB[L] included, were part of the same Ponzi scheme, puppets of the same puppeteer."[15]

---

12 Receiver's Response to the Antiguan Liquidators' December 3 Supplemental Brief (Dec. 17, 2009) (filed in *In re Stanford Int'l Bank Ltd.*, Case No. 3:09-cv-00721-N) ("Dec. 17 Response") (Attachment 3) at 3-4.

13 *Id.* at 5.

14 *Id.* at 7.

15 *Id.* at 21.

The Receiver has also filed declarations by Karyl Van Tassel, an FTI Consulting, Inc. forensic accountant assisting the Receiver, whose analysis of available books and records of SGC and SIBL led her to the following conclusions:

- SIBL "had one principal product line—certificates of deposit—and one principal source of funds—customer deposits from CD purchases."[16]

- "Customer funds intended for the purchase of SIB[L] CDs were deposited into SIB[L] accounts and then disbursed among the many other Stanford Entities and related accounts."[17]

- "[A]nalysis of cash flows for 2008 through February 17, 2009 indicates that funds from sales of SIB[L] CDs were used to make purported interest and redemption payments on pre-existing CDs. Redemptions of principal and payments of interest on CDs should generally be paid from earnings, liquid assets or reserves. In this case, CD sale proceeds were used because sufficient assets, reserves and investments were not available to cover the liabilities for redemptions and interest payments. Although SIB[L] received some returns on investments, these amounts were miniscule in comparison to the obligations."[18]

- "It appears that most CD sale proceeds not used to pay interest, redemptions and current CD operating expenses, including commissions, bonuses, Performance Appreciation Rights Plan ('PAR') payments and up-front forgivable loans to financial advisors who sold the CDs, were either placed in speculative investments (many of them illiquid, such as private equity deals), diverted to other Stanford Entities 'on behalf of shareholder'—*i.e.*, for the benefit of Allen Stanford, or used to finance Allen Stanford's lavish lifestyle (*e.g.*, jet planes, a yacht, other pleasure craft, luxury cars, homes, travel, company credit card, *etc.*)."[19]

---

16 Declaration of Karyl Van Tassel (filed July 28, 2009) ("Van Tassel Decl.") (Attachment 4 (without exhibits)), ¶ 9.

17 *Id.*, ¶ 10.

18 *Id.*, ¶ 14.

19 *Id.*, ¶ 15.

ANALYSIS

A. Basis for Instituting a SIPA Liquidation Proceeding

SIPA was enacted "to facilitate the return of the property of customers of insolvent brokerage firms or, where this cannot be done, to reimburse such customers if their property has been lost or misappropriated."[20] The House Report explained that "[t]he primary purpose of the reported bill is to provide protection for investors [by] . . . . provid[ing] for the establishment of a fund to be used to make it possible for the public customers in the event of the financial insolvency of their broker, to recover that to which they are entitled . . . ."[21]

Under Section 5(a)(3) of SIPA, SIPC may initiate a customer protection liquidation proceeding of a SIPC member where: (1) a member brokerage firm "has failed or is in danger of failing to meet its obligations to customers"; and (2) at least one of certain other specified circumstances set out in Section 5(b)(1) exists (e.g., the member is insolvent or the subject of a receivership).

Although SIPC ordinarily will not need to initiate SIPA liquidation proceedings when an introducing broker-dealer fails, courts have recognized that there are circumstances in which an investor can be *deemed* to have deposited cash with an introducing broker-dealer for the purpose of purchasing securities—and thus be a "customer" under SIPA—even if the cash is initially deposited with a different entity.[22] In so doing, courts have refused to deny investors the protections of the statute by elevating form over substance.

The Commission has determined that the statutory requirements for instituting a SIPA liquidation are met here. SGC is insolvent and the subject of a receivership. And for the reasons discussed below, the Commission has concluded that SGC has failed to meet its obligations to customers. Based on the totality of the facts and circumstances of this case, the Commission has determined (in an

---

20 *SEC v. S. J. Salmon & Co., Inc.*, 375 F. Supp. 867, 871 (S.D.N.Y. 1974).

21 H.R. Rep. No. 91-1613, at 2 (1970).

22 *See In re Old Naples*, 223 F.3d 1296, 1302-04 (11th Cir. 2000); *In re Primeline Securities Corp.*, 295 F.3d 1100, 1107-08 (10th Cir. 2002).

exercise of its discretion) that SIPC should initiate a proceeding under SIPA to liquidate SGC.[23]

B. SGC has failed to meet its obligations to customers.

In concluding that investors who purchased the SIBL CDs through SGC qualify for protected "customer" status, the Commission finds two lines of cases applying SIPA particularly relevant. First, courts have held that, under certain circumstances, an investor may be deemed to have deposited cash with a broker-dealer for the purpose of purchasing securities—and thus be a "customer" under Section 16(2) of SIPA—even if the investor initially deposited those funds with an entity other than the broker-dealer. Second, courts have held that when securities purportedly acquired for customers by a broker-dealer are actually fraudulent vehicles for carrying out a Ponzi scheme, customers' "net equity" claims under SIPA can be measured by the net amount of cash customers invested and not by the purported but unreal value of the fraudulent securities (including fictitious "profits").[24]

1. The SIBL CD investors with accounts at SGC should be deemed to have deposited funds with SGC for the purchase of securities.

SIPA defines "customer" to include any person who has deposited cash with the debtor for the purpose of purchasing securities.[25] The evidence currently available shows that investors with accounts at SGC who purchased SIBL CDs deposited funds with SIBL for the purpose of purchasing securities. They clearly had the purpose of purchasing SIBL CDs, and SIPA defines "security" as including any "certificate of deposit."[26] The remaining question is whether the investors can be deemed to have deposited their cash with SGC.

---

23 Although the Commission has focused on potential customer claims of the type discussed below, it recognizes that claimants in a liquidation of SGC might present other claims that could entitle them to protection under the statute.

24 *See In re Old Naples Securities, Inc.*, 311 B.R. 607, 615-17 (M.D. Fla. 2002); *In re C.J. Wright & Co.*, 162 B.R. 597, 610 (Bankr. M.D. Fla. 1993); *In re Bernard L. Madoff Investment Securities, LLC* ("*BLMIS*"), 424 B.R. 122, 140 n.35 (Bankr. S.D.N.Y. 2010).

25 SIPA Section 16(2), 15 U.S.C. 78lll(2).

26 SIPA Section 16(14), 15 U.S.C. 78lll(14).

In *In re Old Naples*,[27] the Eleventh Circuit addressed whether claimants who had deposited cash with an affiliate of a broker-dealer in order to purchase securities could nonetheless qualify as customers of the failed broker-dealer. The court held that the investors should be deemed to have deposited cash with the broker-dealer based on evidence supporting the bankruptcy court's findings that (1) the investors "had no reason to know that they were not dealing with" the broker-dealer; and (2) the funds investors deposited with the affiliate "were used by, or at least for," the broker-dealer, who "diverted some of the investors' money from [the affiliate] for personal use, and . . . used much of the money to pay [the broker-dealer's] expenses."[28] In so doing, the court focused on the substance of the transactions rather than their form.

The totality of facts and circumstances in this case supports a similar conclusion about the status of the investors with accounts at SGC who purchased SIBL CDs, i.e., that by depositing money with SIBL, investors were effectively depositing money with SGC. Based on the findings of the Receiver and his expert investigators, the separate existence of SIBL, SGC, STC, and their ultimate, sole owner, Stanford should be disregarded. [29] Credible evidence shows that Stanford structured the various entities in his financial empire, including SGC and SIBL, for the principal, if not sole, purpose of carrying out a single fraudulent Ponzi scheme. These many entities (controlled and directly or indirectly owned by Stanford) were operated in a highly interconnected fashion, with a core objective of selling fraudulent SIBL CDs.[30] The entities did not have a typical management hierarchy or governance structure, and the actual structure appears to have been designed to obfuscate holdings and transfers of cash and assets.[31] As the Receiver stated, "[t]here was no real substance to the inter-company contracts and the verbiage

---

27 223 F.3d 1296 (11th Cir. 2000).

28 *Id.* at 1303.

29 *See* Dec. 17 Response at 13-15 (urging that the purported separate corporate existences of the Stanford entities —including SIBL and SGC—should be disregarded because the corporate forms were used to perpetrate the Ponzi scheme) (citing *Castleberry v. Branscum*, 721 S.W.2d 270, 271-72 (Tex. 1986); *SEC v. Resource Development International, LLC*, 487 F.3d 295, 302 (5th Cir. 2007)).

30 Apr. 23 Report at 5-6.

31 *Id.* at 5-6.

contained in the prospectuses, since all of the Stanford entities, SIB[L] included, were part of the same Ponzi scheme, puppets of the same puppeteer."[32] And courts have held that entities through which a Ponzi scheme is perpetrated are, as a matter of law, insolvent from the scheme's inception and become increasingly so as the scheme approaches its inevitable demise.[33] Consequently, all of the Stanford entities were dramatically undercapitalized—a situation that led Stanford to transfer money "from entity to entity as needed, irrespective of legitimate business need," in an ultimately futile effort to perpetuate the scheme.[34] Because the foregoing facts support disregarding the separate corporate form of the Stanford entities involved in his Ponzi scheme, they are also consistent with a finding that depositing money with SIBL was, for SGC accountholders, in reality no different than depositing it with SGC.

Additionally, as in *Old Naples*, there are facts that could have led SGC account holders who purchased SIBL CDs through SGC to believe they were depositing cash with SGC for the purpose of purchasing the CDs. Defrauded CD investors have submitted affidavits stating that they were told by their SGC financial advisors that SGC and SIBL were both members of the "Stanford Financial Group," and that Stanford financial advisers frequently referred simply to "Stanford" without clearly distinguishing between SGC and SIBL.[35] Both SGC

---

32 Dec. 17 Response at 21.

33 *See Cunningham v. Brown*, 265 U.S. 1, 8 (1924) (Charles Ponzi "was always insolvent, and became daily more so, the more his business succeeded."); *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006); *Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995). *See also Emerson v. Maples* (*In re Mark Benskin & Co.*), 161 B.R. 644, 650 (Bankr. W.D. Tenn. 1993) (where debtor operated primarily on fraudulently obtained funds, it would be "axiomatic that the debtor was operating its business with unreasonably small capital").

34 Dec. 17 Response at 12; *see id.* at 19-20 ("The kind of fraud or illegal purpose that justifies disregarding the corporate veil 'is present where incoming revenues are directed away from an undercapitalized corporation and into the hands of the controlling party.'") (quoting *Bridas S.A.P.I.C. v. Government of Turkmenistan*, 447 F.3d 411, 420 (5th Cir. 2006) (internal quotation omitted)).

35 *See, e.g.*, Affidavit of Sally Matthews (dated May 24, 2010) (Attachment 5) at ¶¶ 4, 5, 6 (provided along with numerous other investor affidavits to the Commission's Division of Trading and Markets as part of a submission of the Stanford Victims Coalition dated December 31, 2010).

and SIBL had the word "Stanford" in their names and used the same logo, and SGC provided at least some customers with "advisory statements" bearing that logo that listed their SIBL CD positions.[36] Purchasers also paid for the CDs in accordance with SGC's payment instructions.[37] As the Receiver found, "[m]ost CD purchasers never saw [a] SIB[L] employee, and instead dealt only with their financial advisor, who, to them, was the face of the Stanford companies, including SIB[L]."[38] One indication of investor confusion regarding the entity with which they were depositing money to purchase the SIBL CDs is that at least some customers made checks for the purchase of the CDs payable to "Stanford."[39]

There is also credible evidence that, as in *Old Naples*, the funds deposited with SIBL were diverted for Stanford's personal use and used to pay the expenses of SGC. The primary source of funding for the empire was SIBL CD proceeds. Once in Stanford's control, he used those funds indiscriminately to support the various Stanford entities and his lavish lifestyle.[40] In particular, he used those funds for the benefit of SGC, by making capital contributions, paying SGC's operational expenses, and paying concessions and bonuses to SGC representatives for selling the CDs. Indeed, SGC could not have remained operational without the inflow from CD proceeds.[41]

Based on the totality of the facts and circumstances, the Commission has concluded that investors with brokerage accounts at SGC who purchased SIBL CDs through SGC should be deemed to have deposited cash *with SGC* for purposes of SIPA coverage. Doing otherwise on the facts of this case would elevate form

---

36 *See* Matthews Affidavit at ¶ 6; Letter to Chairman Schapiro from Matthew B. Comstock, counsel for the Stanford Victims Coalition, dated Nov. 12, 2009 ("Comstock Nov. 12 Letter") (Attachment 6), at 9-10.

37 Comstock Nov. 12 Letter at 10.

38 Dec. 17 Response at 11; *see also* Matthews Affidavit at ¶ 5 ("My only point of contact with any [of] the Stanford Financial Group of Companies was [SGC financial advisor] Doug Shaw. I never spoke to anyone at [SIBL].").

39 *See* Attachment 7.

40 *See* Dec. 17 Response at 12; Van Tassel Decl., ¶ 15.

41 *See* Apr. 23 Report at 6-7.

over substance by honoring a corporate structure designed by Stanford in order to perpetrate an egregious fraud.

In an August 14, 2009 letter to the Receiver, SIPC President Stephen P. Harbeck stated that "if SGC and SIBL are consolidated . . . the CDs are, in effect, debts of SGC, and are part of the capital of SGC. Such a relationship negates 'customer' status under 15 U.S.C. § 78lll(2)(B) [as amended, § 78lll(2)(C)(ii)]."[42] The Commission disagrees for the reasons the courts in *C.J. Wright*, *Old Naples*, and *Primeline* rejected similar arguments advanced by the SIPA Trustee as grounds for denying customer status. In *C.J. Wright*, the court found that claimants "believed they were depositing funds for the purchase of securities and were not told and were not aware that their investment was to become part of debtor's capital."[43] "Because claimants did not intend to loan money to debtor and were unaware that this may have been debtor's intention," the court rejected "the Trustee's determination that the deposit account transactions were loans" that negated customer status.[44] Applying the same reasoning, the Eleventh Circuit in *Old Naples* rejected the Trustee's argument that, even if the claimants could be deemed to have deposited money with the broker-dealer, they were not "customers" because they were effectively lending money to the broker-dealer: "There is ample evidence that the claimants believed Zimmerman would buy the bonds in their names and for their individual accounts. It is true that a fixed rate of return is often associated with loans, but the bankruptcy court noted that it is often characteristic of bonds as well."[45] In *Primeline*, the Tenth Circuit likewise focused on the intent of the claimants in rejecting the argument of the Trustee and SIPC that the claimants were excluded from the definition of "customer" because they were "lenders" of the broker-dealer who had claims to the capital of the debtor: "The bankruptcy court found Claimants intended to invest, not loan, the funds each entrusted to [the broker-dealer's registered representative]. This finding is fully supported by the record."[46] Here, too, deeming investors with accounts at SGC to have deposited cash with SGC for the purpose of purchasing the SIBL CDs does

42 *See* Attachment 8.

43 162 B.R. at 606.

44 *Id.*

45 223 F.3d at 1304 (citations omitted).

46 295 F.3d at 1109.

not convert those CD investments into debts of SGC that are excluded from SIPA's protections. There is no evidence that the SIBL CD purchasers *intended* to loan money to (or otherwise invest in) SGC, and the purchasers had no reason to know that, in fact, their money was being funneled into a common fund that Stanford used to keep SGC (and the Ponzi scheme of which it was an integral part) afloat.

2. <u>Customers' claims should be based on their net investment in the fraudulent CDs that were used to carry out the Ponzi scheme.</u>

In a SIPA liquidation, customers are entitled to payments based on their "net equity." As relevant here, SIPA defines a customer's net equity as "the sum which would have been owed by the debtor to such customer if the debtor had liquidated . . . on the filing date . . . all securities positions of such customer."[47] Typically, where a customer authorizes a broker-dealer to purchase securities and the broker-dealer confirms the purchase, a customer's net equity in a SIPA liquidation of the broker-dealer is limited to the securities or their market value on the date the liquidation proceeding was filed. But in SIPA cases involving Ponzi schemes perpetrated by inducing customers to acquire fraudulent securities or securities positions, courts have concluded that a defrauded customer's net equity should be based on the net amount the customer invested and *not* the value of the securities positions shown on the customer's account statement.[48] The rationale for disregarding the fraudulent securities positions in those cases is that, in a Ponzi scheme, the fund of customer property that would be used to satisfy net equity claims consists only of the money invested by defrauded investors that has not been distributed as redemptions and fictitious "profits" or otherwise misappropriated by the fraudster. As such, valuing customers' net equity based on the purported securities positions and profits used to perpetrate the scheme—rather than customers' net investment in the fraudulent scheme—would give effect to the fraudulent scheme and lead to inequitable results not consistent with SIPA's purpose:

> [P]ermitting claimants to recover not only their initial capital investment but also the phony "interest" payments they received and rolled into another transaction is illogical. No one disputes that the interest payments were not in fact interest at all, but were merely portions of other victims' capital

---

47 SIPA Section 16(11), 15 U.S.C. 78lll(11).

48 *Old Naples*, 311 B.R. at 615-17; *C.J. Wright*, 162 B.R. at 610; *BLMIS*, 424 B.R. at 140 n.35.

> investments. If the Court were to agree with the Athens claimants, the fund would likely end up paying out more money than was invested in Zimmerman's Ponzi scheme. This result is not consistent with the goals of SIPA, which does not purport to make all victimized investors whole but only to partially ameliorate the losses of certain classes of investors.[49]

In its net equity decision in the Bernard L. Madoff Investment Services liquidation under SIPA, the bankruptcy court agreed with (and quoted) the foregoing reasoning in support of its decision that the net equity of customers who were victims of Madoff's Ponzi scheme should be based on their net investment with Madoff and not the securities positions reflected in their account statements.[50] Counsel for the SIPC Trustee made the same point during the recent oral argument in the Second Circuit in defending the decision to calculate customers' net equity based on the money they invested rather than the securities positions Madoff confirmed he had purchased for them: "This is a Ponzi scheme. It's a zero-sum game. The customer fund is the money that went in. We can't talk about anything else. Can't talk about profits. Can't talk about stocks."[51]

The Commission has concluded that the facts of this case support a similar approach to calculating the SIBL CD customers' net equity. Credible evidence shows that SGC, among other Stanford entities, was used to carry out a massive, long-running Ponzi scheme.[52] SGC's sole owner, Stanford, ultimately controlled all investor funds and used them to make redemption and purported interest payments to earlier investors, to support the entities that were perpetrating the scheme, and to fund his own lavish lifestyle.[53] The Receiver's forensic accountant concluded that the returns on investments that Stanford made with the proceeds of CD sales were "miniscule" in comparison with SIBL's liabilities for redemptions and interest payments related to those CDs.[54] SIBL's assets were, in effect, a mere

---

49 *Old Naples*, 311 B.R. at 617.

50 *BLMIS*, 424 B.R. at 140 n.35.

51 Excerpt of Transcript of Oral Argument at 51, *In re Bernard L. Madoff Investment Securities, LLC*, No. 10-2378 (2d Cir. Mar. 3, 2011) (Attachment 8).

52 April 23 Report at 5-6; December 17 Response at 8-12, 26.

53 December 17 Response at 10.

54 Van Tassel Decl., ¶ 14; *see also id.*, ¶ 27 ("The SIB[L] CDs were SIB[L]'s only product line. Although SIB[L] provided a limited number of other financial

collection of the money Stanford obtained from investors through his Ponzi scheme. As the Receiver's investigators have found, it was ultimately impossible for Stanford to make the promised redemption and interest payments without using other investors' funds, and if all of the investor funds (and assets acquired with those funds) had been swept away, there would have been virtually nothing left.[55] In the Commission's view, the same logic that has led courts to disregard fictitious interest and profits for purposes of calculating net equity also supports disregarding the issuance of instruments—like the SIBL CDs—that in actuality are nothing more than participatory interests in a Ponzi scheme. Thus, as in the C.J. Wright, Old Naples and Madoff Ponzi schemes, the customers' net equity should be calculated based on their net investment in the SIBL CDs and not based on the value of the fraudulent CDs that Stanford used to carry out his scheme.

Conclusion

For the reasons set forth above, the Commission has concluded that SIPC should initiate a SIPA liquidation of SGC. In choosing to exercise its discretion in this instance, the Commission has considered relevant facts and circumstances, including the potential costs and benefits of initiating a SIPA liquidation proceeding in this case. In a further exercise of its discretion, the Commission has authorized its staff to file in district court an application under Section 11(b) of SIPA to compel SIPC to initiate a liquidation proceeding in the event SIPC refuses to do so.

---

products (*e.g.*, credit card services and loans), these were offered only to CD holders and acted as incentives for the purchase of CDs.").

55 *Id.*, ¶ 24 ("The substantial majority of funds used to pay purported CD interest and redemption payments to investors on pre-existing CDs was proceeds from sales of new SIB[L] CDs[.]").

Attachment 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, **v.** **STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, LAURA PENDERGEST-HOLT, GILBERTO LOPEZ, MARK KUHRT AND LEROY KING** Defendants, **and** **STANFORD FINANCIAL GROUP COMPANY and THE STANFORD FINANCIAL GROUP BLDG INC.,** Relief Defendants.	§ §	**SECOND AMENDED COMPLAINT** Case No.: 3:09-cv-0298-N

Plaintiff Securities and Exchange Commission alleges:

SUMMARY

1. For at least a decade, R. Allen Stanford and James M. Davis executed a massive Ponzi scheme through entities under their control, including Stanford International Bank, Ltd. ("SIB") and its affiliated Houston-based broker-dealers and investment advisers, Stanford Group Company ("SGC") and Stanford Capital Management ("SCM"). Stanford and Davis, acting in concert with the other defendants, misappropriated billions of dollars of investor funds and falsified SIB's financial statements in an effort to conceal their fraudulent conduct.

2. By year-end 2008, SIB had sold more than $7.2 billion of self-styled "certificates of deposits" (the "CD") by touting: (i) the bank's safety and security; (ii) consistent, double-digit

returns on the bank's investment portfolio; and (iii) high return rates on the CD that greatly exceeded those offered by commercial banks in the United States.

3. Contrary to SIB's public statements, Stanford and Davis, by February 2009, had misappropriated billions of dollars of investor money and "invested" an undetermined amount of investor funds in speculative, unprofitable private businesses controlled by Stanford.

4. In an effort to conceal their fraudulent conduct and maintain the flow of investor money into SIB's coffers, Stanford and Davis fabricated the performance of the bank's investment portfolio and lied to investors about the nature and performance of the portfolio. Gilberto Lopez and Mark Kuhrt, accountants for Stanford-affiliated companies, fabricated the financial statements. Using a pre-determined return on investment number, typically provided by Stanford or Davis, Lopez and Kuhrt reverse-engineered the bank's financial statements to report investment income that the bank did not actually earn. Information in SIB's financial statements and annual reports to investors about the bank's investment portfolio bore no relationship to the actual performance of the bank investments. SIB's financial statements and annual reports to investors were prepared, drafted and approved by Stanford, Davis, Lopez and Kuhrt. Stanford and Davis signed these falsified financial statements.

5. Laura Pendergest-Holt, the chief investment officer of Stanford Financial Group ("SFG") and a member of SIB's investment committee, facilitated the fraudulent scheme by misrepresenting to investors that she managed SIB's multi-billion investment portfolio of assets and supervised a sizeable team of analysts to monitor the portfolio.

6. Leroy King, the administrator and chief executive officer of Antigua's Financial Services Regulatory Commission (the "FSRC"), facilitated the Ponzi scheme by ensuring that the FSRC "looked the other way" and conducted sham audits and examinations of SIB's books

and records. In exchange for bribes paid to him over a period of several years, King made sure that the FSRC did not examine SIB's investment portfolio. King also provided Stanford with access to the FSRC's confidential regulatory files, including requests by the Commission for assistance in investigating SIB as a possible Ponzi scheme. King further obstructed the Commission's investigation by allowing Stanford to dictate the substance, and even content, of the FSRC's responses to the Commission that relayed false assurances that there was no cause for concern as to SIB and by withholding information requested by the Commission that would have revealed Stanford's fraud.

7. In addition to sales of the CD, SGC and SCM advisers, since 2004, have sold more than $1 billion of a proprietary mutual fund wrap program, called Stanford Allocation Strategy ("SAS"), using materially false and misleading historical performance data. The false data enabled SGC/SCM to grow the SAS program from less than $10 million in 2004 to over $1.2 billion in 2009 and generate fees for SGC/SCM (and ultimately Stanford) in excess of $25 million. The fraudulent SAS performance results were also used to recruit registered financial advisers with significant books of business, who were then heavily incentivized to re-allocate their clients' assets to SIB's CD program.

8. By engaging in the conduct described in this Complaint, SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt directly or indirectly, singly or in concert, engaged, and unless enjoined and restrained, will again engage in transactions acts, practices, and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5] or, in the alternative, aided and abetted such violations. Likewise, through his

actions, King aided and abetted, and unless enjoined and restrained, will continue to aid and abet violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]. In addition, through conduct described herein, Stanford, SGC, and SCM violated Section 206(1) and (2) of the Investment Advisers Act of 1940 ("Adviser's Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)], and Stanford, Davis, Pendergest-Holt, Lopez, Kuhrt, and King aided and abetted such violations. Finally, through their actions, SIB and SGC violated Section 7(d) of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. § 80a-7(d)].

JURISDICTION AND VENUE

9. The investments offered and sold by the Defendants are "securities" under Section 2(1) of the Securities Act [15 U.S.C. § 77b(1)], Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c(a)(10)], Section 2(36) of the Investment Company Act [15 U.S.C. § 80a-2(36)], and Section 202(18) of the Advisers Act [15 U.S.C. § 80b-2(18)].

10. Plaintiff Commission brings this action under the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], Section 41(d) of the Investment Company Act [15 U.S.C. § 80a-41(d)], and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)] to temporarily, preliminarily and permanently enjoin Defendants from future violations of the federal securities laws.

11. This Court has jurisdiction over this action, and venue is proper, under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], Section 43 of the Investment Company Act [15 U.S.C. § 80a-43] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

12. Defendants have, directly or indirectly, made use of the means or instruments of

transportation and communication, and the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein. Certain of the transactions, acts, practices and courses of business occurred in the Northern District of Texas.

DEFENDANTS

13. Stanford International Bank, Ltd. purports to be a private international bank domiciled in St. John's, Antigua, West Indies. SIB claims to serve 50,000 clients in over 100 countries, with assets of more than $7.2 billion. Unlike a commercial bank, SIB claims that it does not loan money. SIB sells the CD to U.S. investors through SGC, its affiliated investment adviser.

14. Stanford Group Company, a Houston-based corporation, is registered with the Commission as a broker-dealer and investment adviser. It has 29 offices located throughout the United States. SGC's principal business consists of sales of SIB-issued securities, marketed as certificates of deposit. SGC is a wholly owned subsidiary of Stanford Group Holdings, Inc., which in turn is owned by R. Allen Stanford.

15. Stanford Capital Management, a registered investment adviser, took over the management of the SAS program (formerly Mutual Fund Partners) from SGC in early 2007. SCM markets the SAS program through SGC.

16. R. Allen Stanford, a citizen of the U.S. and Antigua and Barbuda, West Indies, is the chairman of the board and sole shareholder of SIB and the sole director of SGC's parent company. During the Commission's investigation, Stanford refused to produce documents and information accounting for the bank's multi-billion dollar investment portfolio.

17. James M. Davis, a U.S. citizen and resident of Baldwyn, Mississippi, is a director and the chief financial officer of SFG and SIB. Davis maintains offices in Memphis, Tennessee, and Tupelo, Mississippi. During the Commission's investigation, Davis refused to provide documents and information accounting for the bank's multi-billion dollar investment portfolio.

18. Laura Pendergest-Holt, is the chief investment officer of SFG and a resident of Baldwyn, Mississippi. She was appointed to SIB's investment committee on December 7, 2005. She supervises a group of analysts who "monitor" the performance of a small portion of SIB's portfolio.

19. Gilberto Lopez, a U.S. citizen and resident of Spring, Texas, worked in SFG's Houston, Texas, office, as the chief accounting officer of SFG and its affiliate, Stanford Financial Group Global Management, LLC ("SFGGM"). In this capacity, he provided accounting services to many entities under Stanford's control, including SIB, SFG and SFGGM. Lopez is not a CPA.

20. Mark Kuhrt, a U.S. citizen and resident of Christiansted, St. Croix, U.S. Virgin Islands, is the global controller for SFGGM. In this capacity, he provided accounting services to many entities under Stanford's control, including SIB, SFG, and SFGGM. Kuhrt reported at various times to Lopez and Davis, but also directly to Stanford. Kuhrt is not a CPA.

21. Leroy King, a citizen of the U.S. and of Antigua and Barbuda, West Indies, is the administrator and chief executive officer of Antigua's FSRC. Educated in the United States, he maintains residences in Antigua and in Atlanta, Georgia, where his wife lives. King has over 20 years of experience in the United States banking industry. King also serves on the board of directors of a U.S. registered broker-dealer and investment adviser based in Miami, Florida.

RELIEF DEFENDANTS

22. Stanford Financial Group Company, a Florida company owned and controlled by Stanford, holds certain assets, including real estate, on behalf of Stanford and his affiliated entities. SFG employees also provide accounting, legal, marketing and other services to many entities under Stanford's control, including SIB, SGC and SFGGM.

23. The Stanford Financial Group Building Inc., a Texas corporation owned and controlled by Stanford, holds certain assets, including real estate, on behalf of Stanford and his affiliated entities.

STATEMENT OF FACTS

Stanford International Bank

24. Stanford controls dozens of companies that operate under the name Stanford Financial Group. Stanford is the sole owner of SFG, SIB, SFGGM and dozens of other affiliated companies.

25. SIB, one of SFG's affiliates, is a private, offshore bank located in Antigua.

26. The primary product offered by SIB is a self-styled certificate of deposit. SIB sold more than $1 billion of the CD per year between 2005 and 2008, including sales to U.S. investors.

27. SIB marketed the CD to investors in the United States exclusively through SGC advisers pursuant to a Regulation D private placement. In connection with the private placement, SIB filed several Forms D with the Commission.

28. SIB paid disproportionately large commissions to SGC as compensation for the sale of the CD. SGC received a 3% trailing fee from SIB on sales of the CD by SGC advisers.

SGC advisers received a 1% commission upon the sale of the CD, and were eligible to receive as much as a 1% trailing commission throughout the term of the CD.

29. SGC used this generous commission structure to recruit established financial advisers. The commission structure also provided a powerful incentive for SGC financial advisers to aggressively sell CDs to investors.

30. In 2007, SIB paid SGC and its affiliates more than $291 million in management fees and CD commissions, up from $211 million in 2006.

31. SIB aggregated customer deposits, and then purportedly reinvested those funds in a "globally diversified portfolio" of assets. As of November 28, 2008, SIB reported approximately $8.6 billion in total assets and an investment portfolio in excess of $8.4 billion.

32. In selling the CD, SIB told investors that: (i) their assets were safe and secure because the bank invested in a "globally diversified portfolio" of "marketable securities;" (ii) the bank had averaged double-digits returns on its investments for over 15 years; (iii) Stanford had solidified SIB's capital position in late 2008 by infusing $541 million in capital into the bank; (iv) the bank's multi-billion dollar portfolio was managed by a "global network of portfolio managers" and "monitored" by a team of SFG analysts in Memphis, Tennessee; (v) the bank, in early 2009, was stronger than at any time in its history; and (vi) the bank did not have exposure to losses from investments in the Madoff fraud scheme. These representations were false.

<u>SIB's Fraudulent Sale of CDs</u>

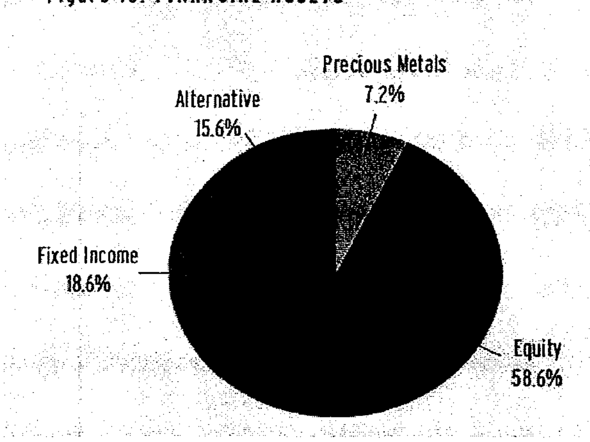
Misappropriation of Investor Funds and Undisclosed Private-Equity Investments

33. In selling the CD to investors, SIB touted, among other things, the CD's safety, security and liquidity.

34. In its CD marketing brochure, SIB told investors, under the heading "Depositor Security," that its investment philosophy is "anchored in time-proven conservative criteria, promoting stability in [the bank's] certificate of deposit." SIB also emphasized that its "prudent approach and methodology translate into deposit security for our customers" and the importance of investing in "marketable" securities, saying that "maintaining the highest degree of liquidity" was a "protective factor for our depositors."

35. In its 2006 and 2007 Annual Reports, SIB told investors that the bank's assets were invested in a "well-balanced global portfolio of marketable financial instruments, namely U.S. and international securities and fiduciary placements." More specifically, as seen below, SIB represented that its year-end 2007 portfolio allocation was 58.6% equity, 18.6% fixed income, 7.2% precious metals and 15.6% alternative investments:

Figure 13. FINANCIAL ASSETS



36. Consistent with its Annual Reports and brochures, SIB trained SGC financial advisers, in February 2008, that the "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients."

37. SIB's annual reports also represented that "SIB does not expose its clients to the risks associated with commercial loans . . . the Bank's only lending is on a cash secured basis."

38. Stanford and Davis approved and/or signed the Annual Reports, brochure and training materials.

39. Contrary to SIB's representations regarding the liquidity and safety of its portfolio, investors' funds were not invested in a "well-diversified portfolio of highly marketable securities." Instead, Stanford misappropriated a significant portion of the bank's investment portfolio. And SIB internal records reflect that more than half of the bank's investment portfolio was comprised of undisclosed "Private Equity Real Estate."

40. By year-end 2008, Stanford had misappropriated more than $1.6 billion from SIB. To conceal the theft, some of the transfers of CD investor money to Stanford were documented, after the fact, as personal "loans." Stanford's signature appears on at least $720 million in promissory notes to SIB that were recovered from his personal accountant's office, including promissory notes dated December 31, 1999, December 31, 2000, December 31, 2001, December 31, 2002 and December 31, 2003. Other "loans," particularly those in more recent years, were tracked in internal accounting records.

41. These promissory notes were typically created after Davis had, at Stanford's direction, wired out billions dollars of SIB investor funds to Stanford or his designees. Stanford used the money to, among other things, fund his "personal playground," including more than $400 million to fund personal real estate deals (*e.g.*, The Sticky Wicket Restaurant) and more than $36 million to subsidize Stanford 20/20, an annual cricket tournament boasting a $20 million purse.

42. Lopez and Kuhrt (in addition to Stanford and Davis) were well aware of the more than $1.6 billion in "loans" to Stanford, tracking many of the transfers in a spreadsheet entitled "Shareholder Funding, Assumption of Debt and Notes Payable." Stanford made few, if any,

payments required by the terms of the promissory notes. Instead, Stanford and Davis frequently rolled the outstanding loan balances and interest owed by Stanford to SIB into new, larger promissory notes.

43. Between February 2 and February 8, 2009, Stanford and Davis participated in meetings with a core group of senior executives in Miami, Florida for the purpose of preparing Pendergest-Holt and SIB's president for sworn testimony before the Commission staff. During these meetings, Stanford and Davis admitted that they had misappropriated investor funds by making these putative loans to Stanford.

44. During the Miami meetings, Davis and Pendergest-Holt collaborated on a presentation that included a pie chart detailing the allocation of assets in SIB's investment portfolio. The pie chart reflected, among other things, that SIB's investment portfolio was primarily comprised of (grossly over-valued) real estate (50.7%) and promissory notes payable by Stanford (29.47%).

45. Four days after the Miami meetings, Pendergest-Holt made a two-hour presentation to the Commission's staff – and subsequently testified under oath – regarding the whereabouts of SIB's multi-billion dollar investment portfolio. During her presentation and testimony, Pendergest-Holt denied any knowledge concerning the allocation of the vast majority of the bank's assets, despite knowing that more than 80% of SIB's investment portfolio was comprised of undisclosed personal "loans" to Stanford, undisclosed private equity and real estate deals.

46. The personal "loans" to Stanford were inconsistent with representations that had been made to investors. SIB's annual reports included a section entitled "Related-Party Transactions" that purported to disclose all related party transactions entered into by SIB. But

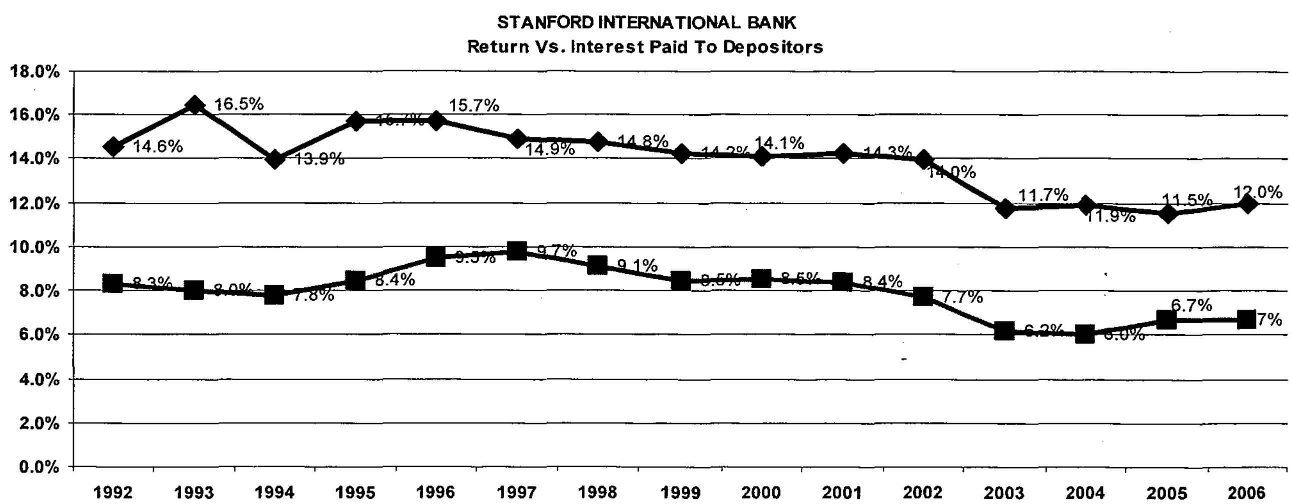
SIB's "loans" to Stanford were not disclosed in that section of SIB's annual reports from 2004 through 2008, in its quarterly reports to the FSRC or anywhere else. Stanford, Davis, Lopez and Kuhrt, with full knowledge of the "loans" to Stanford, prepared, reviewed and authorized the filing and dissemination of these false and misleading annual reports.

47. Contrary to the representations in the bank's annual reports that its "only form of lending is done on a cash-secured basis solely to existing clients," SIB exposed investors to the risks associated with more than $1.6 billion in unsecured personal "loans" to Stanford.

Falsification of Financial Statements

48. Stanford's misappropriation of investors' assets (and the poor performance of SIB's investment portfolio) created a giant hole in SIB's balance sheet. To conceal their fraudulent conduct and thereby ensure that investors continued to purchase CDs, Davis and Stanford, in concert with Lopez and Kuhrt, fabricated the growth, composition and performance of SIB's investment portfolio to give the appearance that the bank's investments were highly profitable.

49. In its training materials for the SGC advisers, SIB represented that it earned consistent double-digit annual returns on its investment of deposits (ranging from 11.5% in 2005 to 16.5% in 1993) for almost fifteen years:



50. SIB marketed the CD using these purported returns on investment.

51. SIB claimed that its high returns on investment allowed it to offer significantly higher rates on the CD than those offered by U.S. banks. For example, SIB offered 7.45% as of June 1, 2005, and 7.878% as of March 20, 2006, for a fixed rate CD based on an investment of $100,000. On November 28, 2008, SIB quoted 5.375% on a 3-year flex CD, while U.S. bank CDs paid under 3.2%.

52. In SIB's Annual Reports, SIB told investors that the bank earned from its "diversified" investments approximately $642 million in 2007 (11%), and $479 million in 2006 (12%).

53. SIB's investment income included in its annual reports was fictional. In calculating SIB's investment income, Stanford and Davis typically provided to SIB's internal accountants, including Lopez and Kuhrt, a predetermined return on investment for the bank's portfolio. Using this predetermined return, SIB's accountants, including Lopez and Kuhrt, reverse-engineered the bank's financial statements. After they calculated the fictional investment income and asset growth and received Stanford and Davis' approval, Kuhrt and Lopez created and booked false accounting entries.

54. Through their actions, Stanford, Davis, Lopez and Kuhrt caused SIB to report investment income that the bank did not actually earn and, thereby, greatly inflated the value of its investment portfolio. Specifically, Stanford, Davis, Lopez and Kuhrt prepared and reviewed SIB's financial statements, including the annual reports that were provided to investors and posted on the bank's website.

55. To hide the fabrication of SIB's double-digit annual returns on investment, Davis, Lopez and Kuhrt developed and implemented an elaborate and complex set of protocols for handling SIB financial information in which: (i) all SIB-related financial and other information was transferred to thumb drives and then deleted from servers located in the United States; (ii) back-up files were kept on a portable hard drive referred to as "the football;" (iii) paper SIB-related files were regularly flown to Antigua via Stanford's private jets, where they were burned; and (iv) electronic spreadsheets used to prepare the fraudulent financials were protected with passwords that were distributed via text message (to avoid detection on email servers).

56. Between February 2 and February 6, 2009, Stanford and Davis admitted, following a meeting with a core group of senior executives (including Pendergest-Holt) in Miami, Florida, that they had falsified SIB's financial statements.

Misrepresentation of Capital Infusions and Bogus Real Estate Transactions

57. As world financial markets experienced substantial declines in 2008, it became apparent to Stanford and Davis that SIB could not credibly report investment profits in the 11% to 15% range (as it had done in previous years). Stanford and Davis agreed that SIB would for the first time show a "modest" loss to avoid raising too many red flags. In other words, they wanted to tell a "more believable lie."

58. Stanford and Davis knew that reporting a loss would cause SIB to fall below minimum regulatory capital requirements. Accordingly, Stanford informed Davis and other employees that he, in an effort to assure investors that SIB was financially sound, would contribute capital to the bank in two infusions of $200 million and $541 million. SIB touted the $541 million capital infusion to investors in a December 2008 report:

> Although our earnings will not meet expectations in 2008, Stanford International Bank Ltd. is strong, safe and fiscally sound. We have always believed that

> depositor safety was our number one priority. To further support the Bank's growth and provide a strong cushion for any further market volatility, the Bank's Board of Directors made a decision to increase the Bank's capital by $541 million on November 28, 2008. This contribution brings total shareholder equity to $1,020,029,802 with a capital to assets ratio of 11.87% and a capital to deposits ratio of 13.48%.

59. Stanford, Davis and Pendergest-Holt approved the December 2008 Monthly Report.

60. The purported capital infusions by Stanford were backdated, fictitious and engineered to give the appearance that SIB had achieved "desired" levels of capital.

61. Stanford, Davis, Lopez and Kuhrt considered two alternatives for disguising the fictitious capital contributions. First, Kuhrt and his subordinates proposed a massive restructuring project in which Stanford would contribute personal holdings, including most of his real estate and global banking interests, to SIB as "capital." When one of Kuhrt's subordinates complained that the task could not be completed on the required timeline, and that the value of the companies to be contributed to SIB would have to be impaired first because "none of them had ever turned a profit," Stanford, Davis, Kuhrt and Lopez turned to another strategy.

62. In December 2008, well after Stanford had purportedly infused the $200 million and $541 million in additional capital into SIB, Stanford, Davis, Lopez and Kuhrt concocted another scheme. Stanford, Davis, Lopez and Kuhrt approved and implemented a scheme whereby they "papered" a series of fraudulent round-trip real estate transactions utilizing undeveloped Antiguan real estate acquired by SIB in 2008 for approximately $63.5 million (or roughly $40,000 per acre).

63. To give the appearance that the above-referenced capital infusions actually occurred, Stanford, Davis, Kuhrt and Lopez falsified accounting records to give the appearance that:

- SIB sold the Antiguan real estate to several newly-created Stanford-controlled entities at the original cost of $63.5 million (although there is no evidence that Stanford paid SIB the $63.5 million);
- the Stanford-controlled entities, at Stanford and Davis's instruction, immediately wrote-up the value of the real estate to approximately $3.2 billion dollars (or $2 million per acre), thereby exponentially increasing the value of the entities' stock;
- in an effort to satisfy a portion of Stanford's personal debt to SIB, Stanford contributed to SIB $1.7 billion of the fraudulently-inflated stock (using the inflated $2 million per acre valuation);
- Stanford then contributed to SIB additional stock in the real estate holding companies valued at $200 million and $541 million (again using the inflated $2 million per acre valuation) to fund the backdated capital contributions.

64. These transactions did not infuse real capital into SIB. In fact, the entire process was fabricated *after* the reported capital contributions allegedly occurred. Moreover, the purported transactions do not validate the capital infusion claims because the inflation in value of the real estate from $40,000 to $2 million per acre was not justifiable under applicable U.S. or international accounting principles. SIB did not secure an appraisal and had no other reasonable support for such a drastic increase in value. And the transactions among Stanford-controlled entities were not the kind of arm's-length transactions required to justify a 5000% increase in value. Nevertheless, on a mere promise from Stanford that the land would appraise for over $3 billion, Stanford, Davis, Kuhrt and Lopez used $63.5 million of real estate to plug a multi-billion dollar hole in SIB's balance sheet and wipe-out a portion of Stanford's billions in debt owed to SIB.

65. Stanford, Davis, Kuhrt and Lopez, by virtue of their participation in the purported real estate transactions, knew that: (i) Stanford did not make a $541 million capital infusion into SIB; and (ii) the value of the real estate used to support the purported cash infusion was approximately $63.5 million, not $3.2 billion.

66. Following Stanford, Davis, Lopez and Kuhrt's creation of the fraudulent capital infusions, the largest segment of the bank's investment portfolio would have been $3.2 billion in over-valued real estate. Yet, SIB did not disclose the transactions in its December 2008 newsletter, which touted Stanford's purported capital infusion. Moreover, Stanford's real estate investments were wholly inconsistent with SIB's representations to investors regarding SIB's investment portfolio (*i.e.*, marketable securities and no real estate).

Misrepresentations Regarding Management of SIB's Investment Portfolio

67. Prior to making investment decisions, prospective investors routinely asked how SIB safeguarded and monitored its assets. Investors frequently inquired whether Stanford could "run off with the money."

68. In response to this question, at least during 2006 and much of 2007, Pendergest-Holt trained SIB's senior investment officer ("SIO") to tell investors that the bank's multi-billion dollar portfolio was managed by a "global network of portfolio managers" and "monitored" by a team of SFG analysts in Memphis, Tennessee. In communicating with investors, the SIO followed Pendergest-Holt's instructions, telling investors that SIB's entire investment portfolio was managed by a global network of money managers and monitored by a team of 20-plus analysts.

69. Neither Pendergest-Holt nor the SIO disclosed to investors that SIB segregated its investment portfolio into three tiers: (i) cash and cash equivalents ("Tier 1"); (ii) investments

with "outside portfolio managers (25+)" that were monitored by the SFG analysts ("Tier 2"); and (iii) undisclosed assets managed by Stanford and Davis ("Tier 3"). As of December 2008, Tier 1 represented approximately 9% ($800 million) of SIB's portfolio. Tier 2, prior to the bank's decision to liquidate $250 million of investments in late 2008, represented approximately 10% of the portfolio. And Tier 3 represented approximately 80% of SIB's investment portfolio.

70. Neither Pendergest-Holt nor the SIO disclosed that the bank's Tier 3 assets were managed and/or monitored exclusively by Stanford and Davis. Likewise, they did not disclose that Stanford and Davis surrounded themselves with a close-knit circle of family, friends and confidants, thereby eliminating any independent oversight of SIB's assets.

71. Neither Pendergest-Holt nor the SIO disclosed to investors that the "global network" of money managers and the team of analysts did not manage any of SIB's Tier 3 investments and, in reality, only monitored approximately 10% of SIB's portfolio. In fact, Pendergest-Holt trained the SIO "not to divulge too much" about the oversight of SIB's portfolio because that information "wouldn't leave an investor with a lot of confidence." Likewise, Davis instructed the SIO to "steer" potential CD investors away from information about SIB's portfolio.

Misrepresentation That SIB Was "Stronger" Than Ever Before

72. On January 10, 2009, Stanford, Davis and Pendergest-Holt spoke to SGC's Top Performer's Club (a collection of high performing Stanford financial advisers) in Miami, Florida.

73. During the meeting, Davis stated that SIB was "stronger" than at any time in its history. Stanford, Davis and Pendergest-Holt represented that SIB was secure and built on a strong foundation, and that its financial condition was shored up by Stanford's capital infusions.

74. But Davis failed to disclose that he had been informed only days earlier by the head of SIB's treasury that, despite SIB's best efforts to liquidate Tier 2 assets, SIB's cash position had fallen from the June 30, 2008 reported balance of $779 million to less than $28 million.

75. Stanford and Davis failed to disclose to the SGC sales force that: (i) Stanford had misappropriated more than $1.6 billion of investor funds; (ii) SIB's annual reports, financial statements and quarterly reports to the FSRC were false; (iii) hundreds of millions of dollars of SIB investors' funds had been invested in a manner inconsistent with the bank's offering documents (*i.e.*, private equity and real estate); and (iv) the purported 2008 capital infusions by Stanford were a fiction.

76. During her speech, Pendergest-Holt, after being introduced as SFG's chief investment officer and a "member of the investment committee of the bank," answered questions about SIB's investment portfolio. In so doing, she failed to disclose to attendees that she and her team of analysts did not manage SIB's entire investment portfolio and only monitored approximately 10% of the bank's investments. She also failed to disclose that SIB had invested investors' funds in a manner inconsistent with the bank's offering documents (*i.e.*, private equity and real estate).

77. Stanford, Davis and Pendergest-Holt also failed to disclose that on or about December 12, 2008, Pershing, LLC, SGC's clearing broker-dealer, informed SGC that it would no longer process wire transfers from SGC to SIB for the purchase of the CD, citing suspicions about SIB's investment returns and its inability to get from the bank "a reasonable level of transparency" into its investment portfolio.

78. Stanford, Davis and Pendergest knew that SGC advisers would use the information provided to them during the Top Performer's Club meeting to sell CDs.

Exposure to Losses From Madoff-related Investments

79. In the December 2008 Monthly Report, SIB told CD investors that the bank "had no direct or indirect exposure to any of [Bernard] Madoff's investments."

80. Contrary to this statement, Stanford, Davis and Pendergest-Holt knew, prior to the release of the Monthly Report, that SIB had exposure to losses from investments with Madoff.

81. On December 12, 2008, and again on December 18, 2008, Pendergest-Holt received e-mails from Meridian Capital Partners, a hedge fund with which SIB had invested, detailing SIB's exposure to Madoff-related losses.

82. On December 15, 2008, an SFG-affiliated employee notified Pendergest-Holt and Davis that SIB had exposure to Madoff-related losses in two additional funds through which SIB had invested. That same day, Davis, Pendergest-Holt and others consulted with Stanford regarding the bank's exposure to Madoff-related losses.

83. Stanford, Davis and Pendergest-Holt never corrected this misrepresentation in the December 2008 monthly report.

Leroy King's Role in the Fraudulent Scheme

84. Leroy King was the administrator and chief executive officer of the FSRC, which is charged with the regulation and supervision of all offshore banks licensed in Antigua, including SIB.

85. From at least February 2005, and continuing over a multi-year period, Stanford paid to King thousands of dollars in bribes, using money transferred from SIB to a Stanford-

controlled account at the Bank of Antigua, an onshore Antiguan bank owned and controlled by Stanford. King caused certain of these bribes to be deposited into U.S. bank accounts.

86. In addition to the cash payments, Stanford gave to King and his wife significant non-cash benefits, including: (i) use of Stanford's fleet of private jets to travel throughout the United States and the Caribbean; (ii) use of an SIB corporate car; and (iii) 2004 Super Bowl tickets for King and a companion. Stanford subsequently hired King's Super Bowl companion as a human resources project manager in Houston.

87. In exchange for the bribes, King facilitated SIB's fraud by obstructing the SEC's investigation into SIB and abdicating the FSRC's oversight responsibilities.

88. On June 21, 2005, King, in response to an inquiry from the SEC, represented to the SEC staff that the FSRC had examined SIB and based on its examinations had concluded that "any further investigation of 'possible' fraudulent activities of [SIB] was unwarranted." King continued by saying that "it is the opinion of the FSRC that [SIB] has conducted its banking business to date in a manner the FSRC considers to be fully compliant." King had no basis for these representations. In exchange for the bribes from Stanford, King promised that the FSRC would not audit SIB's investment portfolio. In fact, on at least one occasion in or about May 2003, King removed from an examination of an SIB affiliate an inquisitive FSRC employee that "got too close to the fire."

89. King also provided Stanford access to the FSRC's confidential regulatory files, including written requests by the Commission's staff for information regarding SIB. For example, on September 25, 2006, the Commission's staff faxed a letter to King requesting the FSRC's assistance with its investigation of SIB. That same day, Stanford, Davis, and SFG's

general counsel discussed the Commission letter and outlined for King precisely how they wanted him to respond to the Commission staff's request.

90. On October 10, 2006, King did as Stanford instructed, sending a letter to the Commission's staff that tracked the response dictated by Stanford, Davis and SFG's general counsel. King's letter falsely stated: "We wish to assure the SEC that the FSRC's most recent onsite examination conducted just five months ago confirmed [SIB's] compliance with all areas of depositor safety and solvency, as well as all other applicable laws and regulations. The FSRC has further confirmed through its continuous visits and supervision of [SIB] that there are no other issues or matters of concern with [SIB.]" In fact, King knew there was no basis for this assurance.

91. At or around the same time King was responding to the above-referenced inquires, Stanford and King, in concert with others, withheld information from the SEC, citing reliance on inapplicable bank secrecy laws in Antigua.

92. During the same time period that King was accepting bribes from Stanford, the FSRC's website assured potential investors that the regulator conducted annual on-site examinations of all Antiguan offshore banks (like SIB) to determine their solvency, to review the quality of their investments and to verify the accuracy of their returns. The FSRC's website also told investors that it performed "continuous off-site supervision in the form of an analysis of quarterly returns and annual audited financial statements, with follow-up on prescribed corrective actions." King knew that these representations were false with regard to the FSRC's "oversight" of SIB.

93. King, by virtue of the FSRC's review of SIB's market materials and annual reports, was also aware that SIB touted that the bank was subject to the FSRC's audits,

regulatory inspections, and licensing requirements. He knew that these representations were false. Moreover, SIB, SGC and SFG employees regularly told investors that their CDs were safe because of the FSRC's audits, misrepresentations that would have been publicly debunked but for King's misconduct.

<u>SGC and SCM's Fraudulent Mutual Fund Sales</u>

94. From 2004 through 2009, SGC and SCM induced clients, including non-accredited, retail investors, to invest in SAS, a proprietary mutual fund wrap program, by touting a fraudulent track record of "historical performance."

95. SGC/SCM highlighted the purported SAS track record in thousands of client presentation books ("pitch books"). For example, the following chart from a 2006 pitch book presented clients with the false impression that SAS accounts, from 2000 through 2005, outperformed the S&P 500 by an average of approximately 13 percentage points:

Calendar Year Return As of July 2006						
	2005	2004	2003	2002	2001	2000
SAS Growth	12.09%	16.15%	32.84%	-3.33%	4.32%	18.04%
S&P 500	4.91%	10.88%	28.68%	-22.10%	-11.88%	-9.11%

96. SGC/SCM used these performance results to grow the SAS program to over $1 billion in 2008.

97. SGC/SCM also used the SAS track record to recruit financial advisers with significant books of business away from competitors. After arriving at Stanford, the newly-hired financial advisers were incentivized to put their clients' assets in the CD.

98. Other than the fees paid by SIB to SGC/SCM for CD sales, SAS was the most significant source of revenue for SGC/SCM. In 2007 and 2008, SGC/SCM received approximately $25 million in fees from the marketing of SAS.

99. The SAS performance results used in the 2005 through 2009 pitch books were fictional and/or inflated. SGC/SCM misrepresented that SAS performance results, for 1999 through 2004, reflected "historical performance" when, in fact, those results were fictional, or "back-tested," numbers that did not reflect the results of actual trading.

100. SGC/SCM, with the benefit of hindsight, picked mutual funds that performed extremely well from 1999 through 2004, and presented the performance of those top-performing funds to potential clients as if they were actual returns earned by the SAS program.

101. SGC/SCM also used "actual" model SAS performance results for 2005 and 2006 that were inflated by as much as 4 percentage points.

102. SGC/SCM told investors that SAS had positive returns for periods in which actual SAS clients lost substantial amounts. In 2000, actual SAS client returns ranged from negative 7.5% to positive 1.1%. In 2001, actual SAS client returns ranged from negative 10.7% to negative 2.1%. And, in 2002, actual SAS client returns ranged from negative 26.6% to negative 8.7%.

103. SGC/SCM's management knew that the advertised SAS performance results were misleading and inflated. And they also knew that the pre-2005 track record was purely hypothetical.

104. As early as November 2006, SGC/SCM investment advisers began to question why their clients were not receiving the returns advertised in the pitch books. In response to

these questions, SGC/SCM hired an outside performance reporting expert to review the SAS performance results.

105. In late 2006 and early 2007, the expert informed SGC/SCM that its performance results for the twelve months ended September 30, 2006 were inflated by as much as 3.4 percentage points. Moreover, the expert informed SGC/SCM managers that the inflated performance results included unexplained "bad math" that consistently inflated the purported SAS performance results over actual client performance. Finally, in March 2008, the expert informed SGC/SCM managers that the SAS performance results for 2005 were also inflated by as much as 3.25 percentage points.

106. Despite its knowledge of the inflated SAS returns, SGC/SCM management continued using the pre-2005 track record and never asked the performance expert to audit the pre-2005 performance. In fact, in 2008 pitch books, SGC/SCM presented the back-tested pre-2005 performance data under the heading "Historical Performance" and "Manager Performance" alongside the audited 2005 through 2008 figures. SGC/SCM's outside consultant testified that it was "misleading" to present audited performance figures alongside back-tested figures.

107. Finally, as indicated the chart below, SGC/SCM blended the back-tested performance with audited composite performance to create annualized 5 and 7 year performance figures that bore no relation to actual SAS client performance:

Calendar Year Return
As of March 2008

	YTD	2007	2006	2005	2004	2003	2002	2001	2000	1999
SAS Growth	-7.44%	12.40%	14.68%	8.82%	16.15%	32.84%	-3.33%	4.32%	18.04%	22.59%
S&P 500	-9.44%	5.49%	15.79%	4.91%	10.88%	28.68%	-22.10%	-11.88%	-9.11%	21.04%

Annualized Returns
(not annualized if less than 1 year)

	YTD	1 year	3 years	5 years	7 years	Since inception
SAS Growth	-7.44%	0.80%	9.36%	15.31%	11.03%	12.30%
S&P 500	-9.44%	-5.08%	5.85%	11.32%	3.70%	2.45%

108. As evidence by its use of fictional and/or inflated performance results in the pitch books, SGC/SCM knowingly misled investors in connection with the sale of SAS.

CAUSES OF ACTION

FIRST CLAIM
AS TO
SIB, SGC, SCM, STANFORD, DAVIS, PENDERGEST-HOLT, LOPEZ AND KUHRT
Violations of Section 10(b) of the Exchange Act and Rule 10b-5

109. Plaintiff Commission repeats and realleges paragraphs 1 through 108 above.

110. SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (i) employed devices, schemes and artifices to defraud; (ii) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

111. As a part of and in furtherance of their scheme, SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt, directly and indirectly, prepared, disseminated or used contracts, written offering documents, financial statements, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

112. SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt made the referenced misrepresentations and omissions knowingly or with severe and gross recklessness.

113. For these reasons, SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM
AS TO STANFORD, DAVIS, PENDERGEST-HOLT, LOPEZ, KUHRT AND KING
Aiding and Abetting Violations of Exchange Act Section 10(b) and Rule 10b-5

114. Plaintiff Commission repeats and realleges paragraphs 1 through 108 above.

115. If Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt did not violate Exchange Act Section 10(b) and Rule 10b-5, in the alternative, each in the manner set forth above, knowingly or with severe recklessness provided substantial assistance in connection with the violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] alleged herein. Likewise, King, in the manner set forth above, knowingly or with severe recklessness, provided substantial assistance in connection with the violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] alleged herein.

116. For these reasons, Stanford, Davis, Pendergest-Holt, Lopez, Kuhrt and King aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

THIRD CLAIM
AS TO
SIB, SGC, SCM, STANFORD, DAVIS, PENDERGEST-HOLT, LOPEZ AND KUHRT
Violations of Section 17(a) of the Securities Act

117. Plaintiff Commission repeats and realleges paragraphs 1 through 108 above.

118. SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt, directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have: (i) employed devices, schemes or artifices to defraud; (ii) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

119. As part of and in furtherance of this scheme, SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material fact and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

120. SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt made the referenced misrepresentations and omissions knowingly or grossly recklessly disregarding the truth.

121. For these reasons, SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt have violated, and unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

FOURTH CLAIM
AS TO STANFORD, SGC, AND STANFORD CAPITAL
Violations of Sections 206(1) and 206(2) of the Advisers Act

122. Plaintiff Commission repeats and realleges paragraphs 1 through 108 above.

123. Stanford, SGC and SCM, directly or indirectly, singly or in concert with others, knowingly or recklessly, through the use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)]: (i) have employed, are employing, or are about to employ devices, schemes, and artifices to defraud any client or prospective client; or (ii) have engaged, are engaging, or are about to engage in acts, practices, or courses of business which operates as a fraud or deceit upon any client or prospective client.

124. For these reasons, Stanford, SGC and SCM have violated, and unless enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FIFTH CLAIM
AS TO STANFORD, DAVIS, PENDERGEST-HOLT, LOPEZ, KUHRT AND KING
Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act

125. Plaintiff Commission repeats and realleges paragraphs 1 through 108 above.

126. Based on the conduct alleged herein, Stanford, Davis, Pendergest-Holt, Lopez, Kuhrt, and King, in the manner set forth above, knowingly or with severe recklessness provided substantial assistance in connection with the violations of Advisers Act Sections 206(1) and 206(2) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)] alleged herein.

127. For these reasons, Stanford, Davis, Pendergest-Holt, Lopez, Kuhrt, and King aided and abetted and, unless enjoined, will continue to aid and abet violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

SIXTH CLAIM
AS TO SIB AND SGC
<u>Violations of Section 7(d) of the Investment Company Act</u>

128. Plaintiff Commission repeats and realleges paragraphs1 through 108 above.

129. SIB, an investment company not organized or otherwise created under the laws of the United States or of a State, directly or indirectly, singly or in concert with others, made use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, securities of which SIB was the issuer, without obtaining an order from the Commission permitting it to register as an investment company organized or otherwise created under the laws of a foreign country and to make a public offering of its securities by use of the mails and means or instrumentalities of interstate commerce.

130. SGC, directly or indirectly, singly or in concert with others, acted as an underwriter for SIB, an investment company not organized or otherwise created under the laws of the United States or of a State that made use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, securities of which SIB was the issuer, without obtaining an order from the Commission permitting it to register as an investment company organized or otherwise created under the laws of a foreign country and to make a public offering of its securities by use of the mails and means or instrumentalities of interstate commerce.

131. For these reasons, SIB and SGC have violated, and unless enjoined, will continue to violate Section 7(d) of the Investment Company Act [15 U.S.C. § 80a-7(d)].

SEVENTH CLAIM
AS TO RELIEF DEFENDANTS

132. Plaintiff Commission repeats and realleges paragraphs1 through 108 above.

133. Relief Defendants each were recipients, without consideration, of proceeds of the fraudulent and illegal CD sales alleged herein. Each of these Relief Defendants profited from the fraud by obtaining illegal proceeds under circumstances in which it is not just, equitable, or conscionable for them to retain the illegal proceeds. Consequently, each of them has been named as a Relief Defendant.

134. Relief Defendants should disgorge their ill-gotten gains and any other property or assets purchased with such gains.

RELIEF REQUESTED

Plaintiff Commission respectfully requests that the Court:

I.

Temporarily, preliminarily and permanently enjoin: (i) SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez, Kuhrt, and King from violating, or aiding and abetting violations of, Section 10(b) and Rule 10b-5 of the Exchange Act; (ii) SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt from violating Section 17(a) of the Securities Act; (iii) SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez, Kuhrt and King from violating, or aiding and abetting violations of, Sections 206(1) and 206(2) of the Advisers Act; and (iv) SIB and SCG from violating Section 7(d) of the Investment Company Act.

II.

Order Defendants and Relief Defendants to disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount.

III.

Order civil penalties against Defendants pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], Section 41(e) of the Investment Company Act [15 U.S.C. § 80a-41(e)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] for their securities law violations.

IV.

Order such further relief as this Court may deem just and proper.

Dated June 19, 2009

Respectfully submitted,

s/ David B. Reece
STEPHEN J. KOROTASH
Oklahoma Bar No. 5102
J. KEVIN EDMUNDSON
Texas Bar No. 24044020
DAVID B. REECE
Texas Bar No. 24002810
MICHAEL D. KING
Texas Bar No. 24032634
D. THOMAS KELTNER
Texas Bar No. 24007474
JASON ROSE
Texas Bar No. 24007946

U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
(817) 978-6476 (dbr)
(817) 978-4927 (fax)

Attachment 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3-09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
Defendants.	§	

REPORT OF THE RECEIVER DATED APRIL 23, 2009

BAKER BOTTS L.L.P.
One Shell Plaza
910 Louisiana
Houston, Texas 77002-4995
(713) 229-1234
(713) 229-1522 (Facsimile)

THOMPSON & KNIGHT LLP
1722 Routh Street
Suite 1500
Dallas, Texas 75201
(214) 969-1700
(214) 969-1751 (Facsimile)

ATTORNEYS FOR RECEIVER RALPH S. JANVEY

TABLE OF CONTENTS

PAGE

PAGE

REPORT OF THE RECEIVER DATED APRIL 23, 2009

By order dated February 16, 2009, as amended March 12, 2009 (as so amended, the "Receivership Order"), this Court appointed Ralph S. Janvey as Receiver for the assets and records of the Defendants in the above-referenced case and all entities they own or control. The Receivership Order directs the Receiver to prepare and submit periodic reports to the Court and to the parties.

Overview of the Stanford Companies and the Estate

The Stanford companies ("Stanford") were a complex, sprawling web of more than 100 companies, all of which were controlled and directly or indirectly owned by Allen Stanford.[1] The companies were operated in a highly interconnected fashion, with a core objective of selling certificates of deposit ("CDs") issued by Stanford International Bank Limited ("SIBL"). Stanford had operations in more than 100 discrete locations spanning 15 states in the United States and 13 countries in Europe, the Caribbean, Canada and Latin America. The operations of all the major companies, including SIBL, were controlled and managed in the United States. Stanford claimed to have more than 30,000 clients located in 133 countries.

These companies were not arranged in a traditional corporate structure. They did not have a typical centralized management hierarchy, nor did they have a typical governance structure for the whole network. In contrast to a conventional multi-tiered corporate structure, the stock of almost half of these entities was owned directly by Allen Stanford, rather than through a central holding company. It appears that very few people were privy to sufficient

---

1 A few non-U.S. entities had a nominal percentage of equity owned by persons other than Allen Stanford, presumably to meet legal requirements.

To date, the Receiver has identified approximately 140 entities that are or appear to be included in this network and as to which the Receiver's team has found appropriate ownership or corporate records. That number does not include more than 100 other potential Stanford entities the names of which are referenced in various documents as having a Stanford relationship but as to which the Receiver's team has not yet found ownership or corporate records.

information to understand the totality of the operations. The structure was seemingly designed to obfuscate holdings and transfers of cash and assets.

The principal businesses in the Stanford network all involved providing financial products and services. The major financial businesses were:

- Banking, principally through Stanford International Bank Ltd., whose operations were controlled and managed from the United States, though it was domiciled in Antigua.[2]
- Broker dealer operations, principally through Stanford Group Company, which is headquartered in Houston, Texas and had operations in 31 cities in 15 states and the District of Columbia, as well as through Latin American entities.
- Financial products managed under the auspices of Stanford Capital Management, LLC, based in Houston.
- Trust companies and similar operations, principally through Stanford Trust Company, which was based in Louisiana, as well as through Stanford Trust Company Limited of Antigua.
- Coins and bullion, principally through Stanford Coins & Bullion, Inc., based in Houston.
- Merchant banking and private equity investments, principally through Stanford Venture Capital Holdings, Inc. based in Houston.

To the outside world, before commencement of the Receivership, these financial businesses appeared to be independently viable. The Receiver believes, however, based on his investigation to date, that the principal purpose and focus of most of the combined operations was to attract and funnel outside investor funds into the Stanford companies through the sale of CDs issued by Stanford's offshore entity SIBL. Stanford's financial statements show that the low third party revenue and high cost structures of the U.S. broker dealer and related financial operations were not capable of sustaining freestanding operations without the revenue they received upon their sale of SIBL CDs, as well as the infusion of investment capital, all or most

2 SIBL was not a bank in the conventional sense. It did not generally make loans to unaffiliated partners, and its operations were required by Antiguan law to avoid the provision of banking services and products to Antiguans.

substantially all of which was derived from CD sales. The compensation structure highly incentivized Stanford's financial advisors to sell CDs and to discourage their customers from redeeming the CDs. Once CD funds entered the Stanford companies, they were disbursed to Allen Stanford or to other Stanford-owned entities or used to purchase private equity and other investments, to pay CD redemptions and interest or to pay other expenses and obligations.

Although all of SIBL's financial operations, including CD sales, were controlled and managed from Stanford's offices in the U.S., it was domiciled in the Caribbean island nation of Antigua and Barbuda ("Antigua"). It appears that SIBL may have been established in Antigua in order to take advantage of Antiguan bank secrecy laws and to minimize regulatory inspection. At the same time, Stanford's financial advisors used the apparent legitimacy offered by U.S. regulation of Stanford's U.S. brokerage subsidiary in order to generate sales of SIBL CDs worldwide.

The Stanford companies also include a number of non-financial businesses, though none of these businesses were material to the operations compared to the financial businesses. The principal non-financial business was real estate development (including hotels, clubs and golf courses) which was conducted by Stanford Development Corporation and by Stanford Development Corporation Limited. Other non-financial businesses included restaurants, a newspaper and a printing company, all in Antigua, and at one time Caribbean airlines.

As described in further detail below, since his February appointment the Receiver and his team of professionals have made significant progress in identifying and securing Defendants' assets for the benefit of the Estate. The Receiver has begun recovering cash and other assets. In addition, the Receiver has made significant progress in reducing ongoing liabilities.

It is important to emphasize that the Receiver's efforts, especially in the first several weeks of the Receivership, have been hampered by lack of information. Because the Stanford companies were not publicly held, the available public information was quite limited and not always accurate. Much of the critical information about Stanford's operations within its own systems and records has been difficult to locate and is incomplete or inaccurate. The Stanford companies appear to have approximately 200 different accounting systems, most of which do not centrally report. In addition, the Stanford operations appear to have been designed to prevent any one employee (outside of a small handful) from gaining knowledge of the full scope of Stanford's assets and operations and the flow of funds among the Stanford entities.

Initial Conclusions Regarding Viability of Stanford Businesses

One of the first tasks confronting the Receiver was to determine whether any of the Stanford companies were financially viable – and thus could continue to be operated and perhaps sold as going businesses. Analysis of Stanford's financial records and operational data revealed that all the major Stanford U.S. financial businesses depended upon continued CD sales and/or other allegedly fraudulent activities. For example, Stanford's records reflect that from at least 2005 forward, SIBL generally paid Stanford Group Company a commission or fee of approximately 3% of the face amount of each CD sold by Stanford Group Company. Of this amount, the financial advisor who made the sale generally received 1% (plus more in bonuses if certain sales targets were met), 1/2 of 1% was allocated to the branch office where the financial advisor worked and the remaining 1.5 % was allocated to Stanford Group Company overall.[3] In 2008, these commissions to Stanford Group Company (including the portion it then paid to financial advisors) totaled approximately $95 million. These commissions were instrumental to

[3] In 2008, the 3% was reduced to 2.75%, with the reduction being applied to Stanford Group Company overall.

the maintenance and viability of Stanford Group Company's operations, constituting 39% of its total revenues of $246 million in 2008. Even with that infusion of funds, growth of the business required additional investment capital, which was generally obtained from the sale of CDs by SIBL.

Therefore, the Receiver determined that almost all U.S. business operations should be ceased to reduce the ongoing costs of unprofitable operations. This necessitated, among other things:

- The termination of employment of more than 1,000 U.S. employees on March 6, 2009.
- The permanent closure of 36 offices in leased locations in 33 U.S. cities. Before physically closing each office, the representatives of the Receiver have:
    - allowed local employees to collect personal belongings;
    - packed all documentary and electronic evidence and shipped it to a single warehouse in Houston; and
    - liquidated or otherwise disposed of furniture and other fixed assets in a manner that maximizes value to the Estate.
- Termination or rejection of each such lease. A lease is "terminated" if the landlord agrees to termination without further liability on the part of the Estate other than as documented in a termination agreement. The Receiver is unilaterally "rejecting" the remainder of the leases. The Receiver has sent notice of such rejections so that the Estate's ongoing obligation to pay rent for these leases will cease no later than April 30, 2009.

The lack of financial viability is further explained by what appears to have been manipulation of financial records of the Stanford companies, in an apparent attempt to hide the true financial condition of the businesses from regulators and other outsiders.

For example, upon analyzing the financial statements and other financial data for SIBL, FTI Consulting Inc., the forensic accounting firm retained by the Receiver, discovered a series of transactions from April 2008 through December 2008 relating to 1,587 acres of undeveloped and partially developed real estate in Antigua that SIBL acquired in April 2008 and September 2008. The land was purchased at a cost of $63.5 million, yet its value was written up to approximately $3.2 billion prior to year end 2008. Other than the initial purchases of the land, all the transactions appear to have taken place entirely between Mr. Stanford, SIBL and other companies owned by Allen Stanford. Company records indicate that holding companies wholly-owned by Mr. Stanford purchased the real estate from SIBL at the same cost that SIBL originally paid to purchase the acreage. The purchasing companies then immediately wrote up the value of the assets to $3.2 billion. The write-up would suggest that the value of the property increased fifty-fold in just a few months, during a period that was generally characterized by falling real estate values. The records do not appear to contain any appropriate basis for this extraordinary write-up in value, as would be required by applicable U.S. or international accounting principles. (One sheet has a brief notation that the land should be valued at $2 million per acre, with a reference to a sale related to Jumby Bay, a highly exclusive resort on a small island off Antigua. The average cost paid by SIBL to acquire the property was about $40,000 per acre.)

According to Stanford records, in July 2008, Mr. Stanford transferred to SIBL a portion of the shares of his companies that held the real estate, which appears to have been their only asset. For purposes of the transfer, the shares were valued at $1.7 billion (reflecting the write-up in value), and this purported value was used to settle a debt of the same amount that Mr. Stanford owed to SIBL. In September 2008, he contributed additional shares in the same companies to SIBL, valuing the transferred shares for purposes of the transaction at $200 million (again reflecting the same write-up in value). In November 2008, Mr. Stanford contributed to SIBL additional shares in those same companies, valuing these shares for purposes of the transaction at $541 million (reflecting the same write-up in value).

Based on the write-up in value of the real estate, the September and November transactions resulted in increases in SIBL's 2008 shareholder's equity of $200 million and $541 million, respectively. Notations in the records indicate that the purpose of the write-up and related transactions was in part to exceed a "desired level" of $1 billion of shareholder's equity in SIBL to avoid violating an equity-to-assets ratio required by Antiguan regulators and in part to use as a basis to replace the $1.7 billion debt owed by Mr. Stanford.[4]

FTI also discovered similarly structured transactions in 2004 and 2008 relating to private equity investments. In these transactions, certain private equity investments were transferred to Mr. Stanford from a Stanford entity owned by him. The investments were valued at cost. Within a matter of a few months, the value of those investments was written up substantially and Mr. Stanford contributed them to SIBL to pay off debts he owed to SIBL. The Receiver has not found any documentation supporting these write-ups in value. In the case of the 2004 transaction, the write-up was almost 200% of the original value and was used as the purported basis to increase SIBL's capital by $75 million.

<u>Major Groups Principally Affected by What has Happened to the Stanford Companies</u>

Broadly speaking, there are four major categories of people and entities affected by what has happened to the Stanford companies:

- Those who purchased and continue to hold CDs.
- Those who own securities and other assets that are held on their behalf in brokerage, trust and similar accounts at Stanford entities.

[4] On at least one occasion, Mr. Stanford used the write-ups to reassure employees that all was well. A newspaper story reported that at an Arizona gathering of Stanford financial advisors in November 2008, a Stanford financial advisor who was in attendance said that Mr. Stanford explained "how he'd just replenished his company's rainy-day reserves no less [sic] with an extra $540 million, which pushed it past a billion dollars." "SEC Says Texas Financier Sir Allen Stanford Swindled Investors Out of Billions," *The Dallas Observer*, April 9, 2009. As noted above, the purported November 2008 equity increase was in the amount of $541 million.

- Those who do or have done business with the Stanford companies as landlords, vendors, service providers or creditors.
- Employees.

Some of these people and entities were and are in more than one category. There may also be people and entities affected by the Receivership who do not fit in any of these four categories.

Each category has presented issues that have required the Receiver's attention. The following sections discuss each of these four groups and what the Receiver has done to date that affects them.

<u>CD Holders</u>

Based on initial review of the incomplete and inconsistent records of the Stanford companies that the Receiver has assembled to date, it appears that approximately $7.2 billion of CDs were outstanding and held by public investors as of February 22, 2009. These CDs are held by approximately 21,500 holders, located in the U.S. and in scores of other countries around the world. Holders of CDs have a claim against the Estate for the value of their CDs.

Emails received by the Receiver from some CD holders have indicated that those holders — and perhaps many others — think that the money they paid to buy a CD is currently held in a specific account at SIBL for their benefit, and that the reason they cannot access that money is that the Receiver has frozen the CD account. Some stories in the media have used language to describe the CDs that may have inadvertently contributed to this misunderstanding.

The assumption that a CD represents identifiable funds held in a separate account for the benefit of the individual CD investor is not correct. The CD represents an obligation on the part of SIBL to pay the investor an amount of money. In other words, it is a debt owed by SIBL to the investor. Unlike a brokerage account, it does not represent identifiable funds that are held by

SIBL in a specific segregated account for the holder's benefit. This is true whether the CD is held directly by the holder, by a Stanford company on the holder's behalf, or by someone else.

The money the holders paid to buy CDs from SIBL was used by SIBL and other Stanford companies to buy other assets and/or for other purposes. The Receiver is working to identify assets purchased with proceeds of CD sales and to determine the value of those assets. He is also tracing proceeds into other uses and investments. Although the Receiver has made substantial progress to date, the size and complexity of the task are such that it will likely take considerable time to complete. Based on what the Receiver has learned so far, as further discussed below, it appears that the total value of the assets of the Estate is likely to be only a fraction of the total amount that would be needed to pay all outstanding CDs and other anticipated claims against the Estate. It appears that during the last year, and probably for longer than that, SIBL assets were inadequate to cover the amount of SIBL's liabilities on its issued and outstanding CDs as those liabilities came due. The SEC has alleged in its lawsuit against the Defendants that the CDs were sold in a Ponzi scheme, in which money from sales of new CDs was used to make payments on older CDs instead of invested on the new purchaser's behalf.

Holders of Brokerage and Similar Accounts

These people own securities and other assets that are held in separately identifiable accounts in their names or for their benefit that they established with the Stanford companies. In the U.S., the companies at which these accounts were established include Stanford Group Company and Stanford Trust Company (a Louisiana trust company). Although the assets in these accounts belong to the account owners, the accounts were frozen at the outset of the Receivership pursuant to the Court's order.

As accounts held under the control of Stanford, the accounts were frozen because of the possibility that assets might be misappropriated during the time the Receiver was securing control and the possibility that the accounts or their owners might be associated with fraudulent products or activities. For example, some accounts are owned by the Defendants or by board members, officers or employees who may ultimately be determined to have participated in fraudulent activities.

In addition, it was clear there would be other customer accounts that were associated with fraudulent products, such as CDs issued by SIBL, even though their owners did not engage in fraudulent activities themselves. For example, customer accounts at Stanford Group Company or Stanford Trust Company may have received amounts from redemption of SIBL CDs or from interest on SIBL CDs, the accounts may have received other amounts directly or indirectly from SIBL or in some way related to SIBL CDs, or the owners of these accounts may have received amounts related to SIBL or SIBL CDs outside of their brokerage accounts, such as in non-brokerage accounts at other Stanford companies. The Receivership Estate may have a claim against these amounts related to SIBL or SIBL CDs for the benefit of the Estate, so that they may be shared equitably with other claimants against the Estate. These other claimants would include people who purchased SIBL CDs but were not able to redeem them before the Stanford companies were placed in receivership.

As of February 16, 2009, Stanford Group Company had approximately 50,000 separate brokerage accounts and the Louisiana-based Stanford Trust Company had an additional 1,438 accounts. Initially, the Receiver could not determine which of these accounts might be associated with fraudulent activities or products.

An initial priority of the Receiver was to determine which of these accounts could be released and which should continue to be frozen, to reduce the difficulty of ultimately recovering amounts the Estate is entitled to recover. Had all the accounts been released, the task of recovering this value would be far more difficult, which is why the accounts were frozen by the Court's order at the outset.

Working with a multi-disciplinary team of lawyers, broker dealer experts, forensic accountants, and information technology experts, the Receiver collected and analyzed the available data to determine which accounts could be released, using electronic search protocols.[5] He then filed motions with the Court seeking approval to make releases. This was done in stages. First, Stanford Group Company accounts under $250,000 were released, subject to exceptions for certain types of accounts and certain types of owners. This resulted in the release of approximately 12,600 accounts, pursuant to transfer procedures posted on the Receiver's website. One week later, an additional 16,000 accounts were made eligible for transfer, constituting all remaining active accounts[6] other than approximately 4,000 accounts that either reflect certain SIBL or CD related activity or are owned by certain Stanford related persons. Third, the Receiver developed and obtained court approval for an account review process that permits the owners of the remaining 4,000 accounts to provide information to the Receiver that may lead to the release of their accounts.

As of April 22, 2009, a total of 20,840 of the approximately 28,600 accounts that are eligible for transfer have been transferred by their owners to a new firm, and holders of 1,521 of the remaining approximately 4,000 accounts have initiated the account review process.

The Receiver has also conducted a similar analysis of the customer accounts at the Louisiana-based Stanford Trust Company and has filed a motion with the Court seeking Court approval to release accounts in certain categories. Of the remaining Stanford Trust Company

---

5 The task was complicated by the lack of interconnection among relevant electronic data systems at Stanford and by difficulties in accessing and using the data.

6 Approximately 18,000 of the initial 50,000 accounts were determined to be inactive.

accounts not covered by the request for release, more than 80% hold virtually no assets other than SIBL CDs.

The brokerage accounts operated by the Stanford Fondos in Mexico were seized by government regulators and distributed to investors by the regulators. All other Latin American brokerage accounts are currently frozen as a result of the actions of the various foreign government officials and regulators involved in the respective countries.

Landlords, Vendors, Service Providers and Other Creditors

As a large enterprise, the Stanford companies did business with a large number of landlords, vendors and service providers. Many of these will have claims against the Estate for compensation for goods or services that they provided to the individual Defendants and the Stanford companies prior to the commencement of the Receivership. In addition, many of these will have claims for payment for provision of goods or services or, in the case of landlords, the continued use by the Estate of leased space after the commencement of the Receivership and prior to any rejection or termination of their lease by the Estate.

With respect to creditors that loaned money to the individual Defendants or the Stanford entities prior to the commencement of the Receivership, the records of the Stanford companies reflect approximately $95 million of debt for money borrowed from unrelated sources that was outstanding at December 31, 2008.[7] About 97% of this debt appears to be secured by land or other assets.

Employees

At the outset of the Receivership, the Stanford companies had more than 3,000 employees, of whom approximately 1,200 were in the U.S. and the balance in 12 other countries. While it could be anticipated, and in fact is true, that many of those employees were honest and

[7] The records also reflect outstanding loans to Mr. Stanford of at least $1.7 billion.

were victims of the fraud themselves, the Receiver had no way of knowing initially which were participants in the fraud and which were not. There was a risk of misappropriation of assets owned by customers or by the Estate and removal or alteration of documents and records. Thus, the Receiver was hampered in his ability to take control of the Estate and manage its operations by uncertainty as to which employees he could rely on. After numerous interviews, the Receiver determined to retain the services of certain employees, principally at the Houston headquarters, in departments such as accounting, information technology, treasury, legal, human resources, brokerage operations and risk management, to assist in winddown of operations. Most employees, though, were asked to await decisions as to which businesses were viable and could continue in operation.

After decisions were made that none of the U.S. financial businesses should be continued, as discussed above, more than 1,000 U.S. employees were laid off. These decisions necessitated a comprehensive review of Stanford's compensation and employee benefits structure, policies and practices and decisions on amendments to employee welfare and benefit plans and other actions required in connection with the reduction in the workforce, as well as restructuring of the compensation and benefits for the retained employees.

Adding to the hardship suffered by employees, including both some that continue to have jobs and some that were laid off, was the fact that many of them were themselves holders of SIBL CDs and had accounts at Stanford Group Company that were frozen. However, other employees, such as many financial advisors, received significant compensation from selling CDs.

Issues Related to Antigua

The Receiver, with the assistance of U.S. and foreign counsel, has been actively analyzing the applicable laws of each of the jurisdictions outside the U.S. in which significant

Estate assets are located and has been devising and implementing appropriate strategies for addressing these assets. In addition, the Receiver has been required to respond to certain legal proceedings in some of these jurisdictions. The jurisdiction in which the most significant issues have been raised is Antigua. These issues, together with related issues in Canada, are discussed below.

Stanford International Bank Limited and Stanford Trust Company Limited (Antigua)

SIBL and Stanford Trust Company Limited ("STCL") (a different entity from the separate Stanford Trust Company formed under Louisiana law) were chartered by Antigua, under that country's International Business Corporation Act. SIBL was an offshore bank. STC was a trust company specializing in the administration of trusts established under the trust laws of the British Virgin Islands. Because both entities were owned by Allen Stanford on February 16, 2009, when the U.S. Receivership was instituted, they are among the assets of the Receivership Estate.

On February 19, 2009, the Financial Services Regulatory Commission of Antigua and Barbuda (the "FSRC") appointed Nigel Hamilton-Smith and Peter Wastell, employees of Vantis plc, as Receivers-Managers over SIBL and STCL. The FSRC is the Antiguan governmental agency that licenses and regulates international banks that operate in Antigua. Vantis is an accounting, tax and business advisory and recovery firm based in the United Kingdom. On February 26, 2009, the Eastern Caribbean Supreme Court, High Court of Justice, Antigua and Barbuda, on the application of the FSRC, appointed Messrs. Hamilton-Smith and Wastell as Receivers-Managers over SIBL and STCL. At the time of both appointments, SIBL and STCL were already subject to the U.S. Receivership Order.

On March 9, 2009, a purported creditor of SIBL filed an application in the Antiguan court, seeking to have SIBL placed into an Antiguan liquidation proceeding. The FSRC then filed its own application for liquidation, seeking to have Messrs. Hamilton-Smith and Wastell appointed the liquidators. The Receiver sought to intervene in those proceedings in order to request either that the applications be struck or, alternatively, should a liquidation be ordered, that he and an Ernst & Young insolvency practitioner be appointed the liquidators for an Antiguan liquidation proceeding that would be designated as "non-main" or ancillary to the U.S. Receivership. On April 7, 2009, the Antiguan court denied the Receiver's intervention based on its ruling that the U.S. Receivership Order did not have effect in Antigua and that therefore the U.S. Receiver lacked standing as an "interested person." On April 17, 2009, the Antiguan court entered an order placing SIBL into liquidation and appointing Messrs. Hamilton-Smith and Wastell as its liquidators. The liquidation order will have effect in Antigua unless and until stayed or reversed, but does not have effect in any other country unless and until recognized by the judicial system of such country.

Notwithstanding the Antiguan receivership and liquidation orders, the U.S. Receiver maintains in the various jurisdictions in which SIBL and STCL assets exist that the U.S. Receivership should be recognized as the "main" or primary proceeding in relation to SIBL and STCL. The Receiver bases his position on several factors supporting the conclusion that the U.S. is the center of main interests for the various Stanford entities, including SIBL and STCL. For example:

- SIBL's operations were controlled and managed in the U.S. by U.S. citizens, who are subject to the jurisdiction of U.S. courts.
- SIBL was just one company in an integrated network of more than 100 companies based in the U.S. and created for the purpose of attracting and funneling investor funds into the Stanford companies, principally through the sale of SIBL-issued CDs.
- Stanford brokers based in the U.S. generated more SIBL CD sales, by dollar amount, than brokers in any other country.

- SIBL filed forms with securities regulators in the U.S. relating to its CD sales in which it consented to jurisdiction in the U.S.
- Brokers used the apparent legitimacy offered by U.S. regulation of Stanford's U.S. brokerage subsidiary in order to generate CD sales worldwide.
- A significant percentage of the CDs were sold to U.S. citizens. By contrast, few CDs were purchased by Antiguans. Indeed, Antigua's International Business Corporation Act, under which SIBL and STCL were formed, restricted those entities from serving Antiguans. Further, the Receiver believes that most of the CD sales purportedly attributable to Antiguans are related to STCL-administered trusts that have non-Antiguans as beneficiaries.
- Most SIBL loan receivables, by dollar amount, are owed by U.S. citizens.
- Virtually all activity to invest proceeds from sale of CDs was directed from the U.S. and involved institutions located in the United States and other countries outside of Antigua.
- The assets of SIBL are located principally in jurisdictions other than Antigua, and primarily in the United States, Canada, the United Kingdom, Switzerland, Panama, Venezuela and Mexico.
- Most, if not all, of the funds received from the sale of SIBL CDs were transmitted for deposit, not to Antigua, but to Canada and/or England and, from there, primarily to accounts in the United States, England and Switzerland, where they were disbursed among other Stanford entities worldwide, pursuant to the directions of U.S. persons.
- Administrative and other support for the operations of SIBL was located in and managed from the U.S.

In early March 2009, the Receiver suggested a meeting with the Antiguan receivers. A meeting did occur on April 1, 2009. While the tone of the meeting was generally positive, no concrete cooperation agreement resulted. Since the meeting, the Antiguan receivers have sought and obtained, without prior notice to the Receiver, a registrar's order in Montreal, Quebec recognizing them as "foreign representatives" of SIBL and STCL within the meaning of Canada's insolvency laws. The Canadian proceedings are further discussed below. In addition, the Antiguan FSRC moved forward with its application to place SIBL into liquidation and to have the Antiguan receivers appointed its liquidators, which application resulted in the liquidation order discussed above.

On April 20, 2009, the Antiguan receivers-liquidators filed in this Court a petition for recognition under Chapter 15 of the U.S. Bankruptcy Code with respect to SIBL, as well as a motion in the present case seeking, in effect, a retroactive lifting of the injunction against the filing of bankruptcy petitions contained in the Court's Receivership Order. The objective of the two motions appears to be to transfer control, away from this Court's jurisdiction to the Antiguan court system, of the winding up of SIBL and the distribution of its asset value to claimants. The Receiver intends to oppose both filings and any impingement on this Court's jurisdiction over the totality of the Stanford group of companies. This Court was the first to place SIBL and the other entities owned by Allen Stanford into receivership. Further, as described above, the contacts between the Stanford entities and the U.S. are far more extensive than those between the Stanford entities (including SIBL) and Antigua.

The Antiguan liquidators essentially request that the U.S. Court cede to the Antiguan court system control over the marshalling, liquidation, claims adjudication and distribution process. That, in the Receiver's view, would be unwise and detrimental to claimants, as the Antiguan court system lacks experience in the administration and winding up of a business of the size and scope of the Stanford family of companies. Further, the Antiguan liquidators have liquidation authority over only SIBL, which is just one of the more than 100 Stanford companies involved in what was an integral – and allegedly fraudulent – operation.

In sum, the Receiver has found it necessary to oppose the Antiguan receivers in court in multiple jurisdictions. The Receiver will continue, though, to look for opportunities in which cooperation with the Antiguan receivers is possible and reasonably likely to benefit the Receivership Estate.

The issues identified in Antigua have begun to emerge in proceedings and activities in England. According to statements made by the Antiguan-appointed receivers, these issues also may come into play in Panama, Israel and Switzerland.

Bank of Antigua

Bank of Antigua is a domestic bank of Antigua. Because it was owned by Allen Stanford on February 16, 2009, when the U.S. Receivership Order was instituted, it was among the assets of the Receivership Estate.

Subsequent to entry of the U.S. Receivership Order, there was a "run" on Bank of Antigua by persons seeking to withdraw deposits. This resulted, on February 20, 2009, in the Eastern Caribbean Central Bank ("ECCB"), the central banking authority for Antigua and seven other Caribbean island nations, taking control of the Bank of Antigua.[8] The Receiver is of the view that property of the Bank of Antigua that existed on February 16, 2009, falls within the scope of the U.S. Receivership Order and is therefore within the Receivership Estate. To avoid confusion, however, the Receiver has been in contact with the ECCB concerning the amounts in accounts of Bank of Antigua, and has agreed to release to Bank of Antigua the following:

- securities and funds sent to Bank of Antigua accounts after the ECCB intervention with the Bank of Antigua;
- securities that were in Bank of Antigua accounts prior to the ECCB intervention, but that are owned beneficially or of record by someone other than the Bank of Antigua (or, if relevant, any other Stanford entity); and
- funds that were in accounts maintained in the name of the Bank of Antigua prior to the ECCB intervention, but that are owned by a person other than the Bank of Antigua (or, if relevant, any other Stanford entity).

[8] The Receiver notes that the description of the ECCB set out above corrects an error in the description of the ECCB contained in the Receiver's filing with this Court dated March 2, 2009.

Action by Antiguan Parliament Authorizing Expropriation of Real Estate

The Antiguan Parliament has authorized the expropriation by the Antiguan government of most of the real estate owned by Stanford entities in Antigua. The expropriation has not yet been finalized. If it is completed, the Receiver cannot predict what amount, if any, will be paid in compensation as required by the Antiguan constitution.

The Receiver has also learned of a lawsuit pending in Antigua challenging the constitutionality of the proposed government expropriation of real estate. The lawsuit was purportedly filed by former employees of certain Stanford entities, on the purported authority of a former director of SIBL. The Receiver is currently monitoring the lawsuit and assessing appropriate actions with respect to both the suit and the threatened expropriation.

Canadian Matters

As indicated above, the Receiver recently learned that the Antiguan receivers had obtained an ex parte registrar's order in Montreal recognizing them as "foreign representatives" of SIBL and STCL under Canada's insolvency laws. The Antiguan Receivers did so without notice to the Receiver and apparently without adequately disclosing to the Quebec registrar (whose jurisdiction, absent consent of affected parties, extends only to uncontested matters) the existence of the U.S. Receivership or the U.S. Receiver's claim to SIBL and other Stanford assets located in Canada. The Receiver also obtained information suggesting that, before issuance of the ex parte recognition order, representatives of the Antiguan receivers entered SIBL's Montreal offices and purposely "wiped" SIBL's servers there, after first imaging the servers and sending the copy images to Antigua, and out of the jurisdiction of Canadian courts.

In response, the Receiver filed a motion in Montreal Superior Court requesting that:

- the previous recognition of the Antiguan receivers be revoked, and the Antiguan Receivers be found not to be suitable persons to serve as receivers for SIBL under

Canadian laws, as they did not meet the requirements to be receivers in that country;

- the Receiver be recognized as the "foreign representative" for all Stanford entities; and
- a Canadian receivership be instituted for assets located in Canada and that it be made ancillary to the U.S. Receivership, with Ernst & Young appointed the Canadian receiver and instructed to cooperate with the U.S. Receiver.

This motion was only recently filed and remains pending.

The Receiver had previously been in contact with Toronto Dominion Bank to assure that funds it holds for SIBL, STCL and the Bank of Antigua are not transferred to unauthorized persons.

In addition, on April 17, 2009, several Canadian CD investors filed two suits in Calgary, Alberta – one against SIBL and other Stanford entities seeking actual and punitive damages and another against Toronto Dominion Bank seeking, among other forms of relief, imposition of a constructive trust on SIBL and other Stanford entity funds held by Toronto Dominion Bank. The Receiver, with the help of Canadian counsel, is assessing how best to respond.

Latin America Matters

The Stanford companies include various and significant operations in Latin America, including Colombia, Ecuador, Mexico, Panama, Peru and Venezuela. Stanford owned banks in Panama and Venezuela, and banking and/or brokerage businesses in each of those other Latin American countries. The Panama bank is now under the control of government regulators, with whom the Receiver has agreed to work closely. The Panamanian regulators have currently decided not to liquidate the business in its entirety, and the Receiver is taking steps to enhance the possibilities for sale of the business units. The Venezuelan bank was also seized and put under the control of Venezuelan interveners on February 18, 2009. The government-appointed interveners in Venezuela have thus far refused to work jointly with the Receiver, and the

Receiver has been told that his interests in the Venezuelan bank will be subordinated to any and all claims by Venezuelan clients, employees, and the Venezuelan government.

The Receiver is investigating and preparing for sale of the local business units in Columbia, Ecuador and Peru. At this time, the Colombian entity is essentially under the control of the Antiguan receiver. Nonetheless, the Receiver is exploring all avenues for recovery related to the Colombian assets. In Ecuador, the Receiver is investigating the possibilities of sale of the unit. The Receiver is also working with the Peruvian regulators in order to permit the sale of the Peruvian business assets.

The anticipated potential recovery from the sale of the above-mentioned Latin American units is currently estimated to be in the range of $30 million. The various Stanford offices in Mexico have been closed. Operations and customer accounts in Mexico have been handled in a manner similar to the process used in the U.S.

The Receiver is reviewing information to determine whether proceeds from CD sales exist in Latin America that may be recoverable by the Estate, and is taking steps to protect assets in each Latin American location with attention to the unique scenarios posed by the government regulators and representatives in each nation.

Assistance to and Communication with Governmental and Regulatory Agencies

The Receivership Order directed the Receiver to promptly provide the SEC and other governmental agencies with all information and documentation they may seek in connection with their regulatory or investigatory activities. The Receiver and his team have spent substantial amounts of time on these activities. The principal such activities have been coordination with the SEC, the FBI and the Department of Justice in identifying and gathering large amounts of documents and information relevant to their ongoing investigations and responding to numerous and extensive requests from the SEC, the FBI and the Department of Justice to analyze and provide information and documents. In addition, the Receiver and his team have responded to numerous information requests and investigations by many other governmental or regulatory agencies, in both the U.S. and other countries, and many of these matters are ongoing. As further detailed below, these additional authorities in the U.S. have included at the federal level the Department of Justice, the Internal Revenue Service, the Drug Enforcement Administration, the Postal Inspector, the Department of Labor, the Financial Industry Regulatory Authority, the Department of the Treasury and the Board of Governors of the Federal Reserve System. At the state level, they have included at least 24 different state securities and banking regulators in at least 19 states. As noted above, the Receiver has also dealt extensively with regulatory authorities in foreign jurisdictions.

Asset Recovery

The balance sheets, in the aggregate, of the 62 Stanford companies for which balance sheets were maintained listed total assets of approximately $10.6 billion as of December 31, 2008. Because of significant doubt about the accuracy of these balance sheets, the Receiver has directed Ernst & Young to compile balance sheets as of the outset of the Receivership. This work is ongoing, but the work to date suggests that the value of virtually all non-cash assets listed on the December 31, 2008 Stanford balance sheets is substantially overstated.

There are three categories of value and potential value that could be used to satisfy claims against the Estate:

Cash and Other AssetsThe first source is cash and other assets owned by the Estate and identified to date, as follows:

- Approximately $66.5 million of cash on hand in the Estate's bank account as of April 22, 2009 (net of operating expenditures since February 17, 2009 of approximately $15.8 million for expenses such as employee salaries and benefits, utilities, insurance and expenses for office closures).

- More than $300 million of cash held in non-U.S. bank accounts that are also claimed by the Antiguan receivers.

- Cash in the range of $30 million that may be realized from sale or liquidation of Stanford Latin American entities.

- Private equity investments; although the value (based on cost) of the private equity investments shown on Stanford's balance sheet at December 31, 2008 was $652.5 million, the realizable value of the portfolio appears to be only a fraction of that amount.

- Real estate, the value of which is uncertain; the book value, as noted above may not be indicative of fair market value, and in addition much of the real estate is mortgaged to secure debt.

- Aircraft estimated to be worth several million dollars (net of associated debt).

- Coin and bullion inventory, estimated to be worth several million dollars.

Claims Against Third PartiesThe Receiver recently filed claims against former Stanford financial advisors seeking disgorgement of more than $40 million in compensation they received related to the sale of SIBL CDs. The Receiver is considering filing other claims to recover substantial amounts of cash, including claims to "claw back" proceeds received by a number of customer account holders from redemption of SIBL CDs, or interest paid on SIBL CDs. If the clawbacks were to extend back to monies received within a year prior to the commencement of the Receivership, current estimates of amounts that could be sought would be in the range of $300 million, or possibly more, but this analysis is ongoing and the estimate may change. If the time period were longer than that, the amount would be larger.

Cash Unaccounted ForExtensive but still preliminary analysis of Stanford's available financial records indicates that a very substantial amount of cash received upon sale of SIBL CDs over the last few years (assuming the accuracy of available financial records regarding the amount of CDs sold and redeemed) cannot be accounted for by the amount of cash that the records reflect was invested in other assets or spent on operations of the Stanford companies.

Some of this cash may have been spent in ways that are not reflected in any of the available financial records and/or that did not result in the acquisition of assets, such as cash that may have been loaned to Allen Stanford or distributed to him as sole shareholder and then spent on personal consumption by him. Some of this cash may have been transferred to Mr. Stanford and then used by him to purchase personal assets or invested in personal bank accounts that are not reflected in available financial records. This value may be recoverable once identified. This preliminary analysis suggests that the aggregate amount of such unaccounted for cash may be in the range of $1 billion. For that reason, the Receiver intends to continue searching for cash accounts and assets under Mr. Stanford's direct or indirect control.

Personal Investments of Allen Stanford and James Davis

The SEC has alleged that two of the principal perpetrators of fraudulent activities by the Stanford companies were Allen Stanford and James Davis. Although neither of them has filed with the Court the accounting of his own investment accounts and other assets that the Court ordered them to provide and neither has been available to be interviewed by the Receiver, it does not appear from available records of the Stanford companies that either of them invested his own money in SIBL CDs or in Stanford customer accounts. The records of SIBL do not reflect any ownership of CDs by Mr. Stanford or Mr. Davis, either at the time the Receivership commenced or at any time during the period January 2003 to the present, the time period for which CD ownership records are available. The records of Stanford Group Company and Stanford Capital Management do not reflect any ownership of accounts at either such company by Mr. Stanford or Mr. Davis, either currently or during the period September 2007 to the present, the time period for which account ownership records for those companies are available. The available records of Stanford Trust Company are limited to records regarding ownership when the Receivership commenced, and such records do not reflect any ownership of accounts by either Mr. Stanford or Mr. Davis.

Claims

The Receiver has posted on the Receivership website a procedure that permits persons who believe they have a claim against the Estate to file a notification of their claim, to provide the Receiver a source of information about claims in addition to Stanford's internal records. The procedure asks claimants to indicate which of the following categories applies to their claim:

- Certificate of deposit claims.
- Secured creditor claims.
- Coin and bullion claims.
- Employee claims.
- Vendor claims.
- Landlord claims.
- Other claims.

This procedure is voluntary, not mandatory, for purposes of establishing a claim. To identify claims, the Receiver is also reviewing the records of the Stanford companies. Using data from all available sources, including both internal records and notifications of claims filed by claimants, the Receiver will propose and file with the Court a list of proposed recognized claims at a later stage of the case. This list will be subject to comment and objection by affected parties.

Major Activities and Priorities for the Near Term

The Receiver anticipates that his major activities and priorities for the near term will include the following:

- Continuing to search for and secure cash for the Estate from a variety of potential sources, and determining how CD funds were dispersed.
- Continuing to reduce costs of administering the Estate.
- Continued participation in litigation or appeals in Antigua, Canada and England to the extent assets in those locations are subject to risk of loss to adverse claims.
- Securing and centralizing hard copy files, documents and electronic records.
- Developing and implementing plans to sell or monetize Estate assets, including real estate, private equity investments and other assets.
- Recovering Receivership assets from foreign entities, including opposing competing claims to those assets.
- Releasing additional frozen Stanford Group Company and Stanford Trust Company customer accounts, where appropriate, through processes approved by the Court.
- Analyzing and cataloging potential claims against the Estate, including by collecting and processing claims through the Receiver's online procedure.
- Developing and implementing plans to initiate litigation to recover value for the Estate as appropriate.
- Responding to claims and litigation initiated by others.
- Assisting, reporting to and responding to governmental and regulatory agencies as appropriate. including responses to:
    - inquiries from the SEC, Department of Justice and FBI in connection with their investigations;
    - discovery requests from the IRS with respect to tax audits of Mr. Stanford;
    - audits and criminal investigations by various divisions of the U.S. Department of Labor regarding employee benefit plan issues and federal wage and hour laws compliance; and
    - an investigation by the State of Louisiana of Stanford Trust Company operations.
- Communicating with this Court, customers, current and former employees, claimants, other constituents of the Estate, and the public.
- Working with the Examiner appointed by this Court on April 20, 2009.

- Working with receivers and other appointed officers in other jurisdictions.
- Closing operations of Stanford Group Company, Stanford Capital Management, Stanford Trust Company, and Stanford Coins & Bullion.
- Developing protocols for review and release of customer accounts and assets in entities in which that has not yet been done.
- Winding-down of Stanford employee benefit plans and arrangements.

In addition, it is likely that the Receiver and his team will be confronted with and have to respond to emergencies and other matters that cannot be anticipated at this time.

Estate Resolution Process

The goal of the Receivership is to maximize recovery for the Estate and distributions to defrauded investors and other claimants worldwide. As indicated above, the Receiver expects that the total value that will ultimately be available for distribution will be far less that the total amount of claims. Once the Receiver has identified, recovered and monetized the available assets and identified the claims against those assets, he will develop and file with the Court a plan for equitable distribution of value to claimants. This plan will be available for comment and objection by affected parties at that time, pursuant to procedures to be approved by the Court. After collection of comments and objections, the Court will be asked to issue a decision regarding the plan, with such modifications, if any, as the Court deems appropriate after hearing from affected parties. Upon approval of a plan, distributions will be made. Because of the complexities of the case and the fact that asset recovery efforts are still in an early stage, the Receiver cannot at this time estimate when he will be able to propose a plan.

Additional Information Regarding Activities and Accomplishments

The following sections contain additional information regarding the major actions taken by the Receiver and his team to date to implement the Court's orders and their accomplishments to date.

Locating, Securing and Monetizing Assets

Securing the Estate

The Receivership Order directed the Receiver to take control of the Receivership Estate; to collect, marshal and take custody of the assets and records of the Estate; and to enter and secure the premises of the Stanford companies. In addition, the TRO/Freeze Order imposed a freeze on accounts held in the name, on behalf or for the benefit of Defendants at financial institutions. To accomplish these directives, assure that the Freeze Order was implemented, and preserve the assets and records of the Estate, the Receiver and his team:

- On February 17, took possession of major U.S. control locations in Houston, Memphis and Tupelo, Mississippi, using multidisciplinary teams assembled by the Receiver and with the assistance of SEC representatives and U.S. Marshals.
    - These efforts included securing electronic and paper records, making photographic or video documentation, changing locks and security codes and posting security personnel as appropriate.
- Over the next several days, closed and ceased operations at 32 additional Stanford offices in 29 U.S. cities, four offices in Mexico and one office in St. Croix (other Latin America offices are under the control of government administrators in their respective countries), pending decisions on whether to continue operations.
- Interviewed numerous key Stanford employees in the U.S., the US Virgin Islands and Mexico in major operational departments.
    - These interviews included employees in treasury, accounting, information technology, human resources, risk management, real estate, building operations, aviation, security, private equity investments, broker-dealer operations, compliance, legal and Latin American operations.
    - The interviews covered numerous topics to acquire information related to existence of data systems, human resource involvement, location of assets, establishment of timelines, collection of cash, identification of related entities, and corporate structure.
- Served more than 120 affiliated entities and known control persons in the U.S. and outside the U.S. with the TRO and the Order Appointing Receiver.
- Communicated with approximately 240 banks and bank branches in and outside the U.S. holding Stanford cash and investments on deposit to advise them of the

TRO/Freeze Order and the Order Appointing Receiver and to direct them to cease electronic transfers.

- Ceased all other known transfers of assets out of the Estate while its holdings were inventoried.

- Issued directions to cease sales of SIBL CDs and the Stanford Allocation Strategy mutual fund wrap program.

- Directed that all activity in Stanford customer accounts cease, in order to preclude potential theft and to permit time to analyze which accounts might be associated with fraudulent products or activities.

- Coordinated with Pershing LLC and J.P. Morgan Clearing Corp. to accomplish freeze of customer accounts pursuant to TRO/Freeze Order.

- Identified and gathered strategic electronic and paper files and had them shipped to a central location.

- Imaged approximately 500 computer hard drives and other devices, collected approximately 120 fileshares from multiple servers, locked down the email system and reviewed and took possession of information from approximately 38 file servers from around the world – which resulted in the securing of more than 60 terabytes of information – to preserve information and to avoid potential data alteration.

- Collected and secured Stanford electronic data systems to provide information for 138 operational and forensic accounting purposes. These systems include accounting, human resource, and investment systems which are integral to understanding the flow of funds and human resource issues and for identifying assets held by the Stanford entities.

- Locked down documents, data and unsecured assets.

- Filed section 754 notices in 30 federal district courts in 16 States, the District of Columbia, Puerto Rico, American Samoa and the Virgin Islands in order to gain control of assets in these jurisdictions.

- Secured agreed stays of seven federal lawsuits filed after the Receivership was instituted; in seven other federal and state cases, filed joint motions to stay that are pending or otherwise achieved stays of the cases by agreement with plaintiffs' counsel.

- Established Receivership oversight of numerous litigation matters pending at the time of the Receivership. This effort involves monitoring and evaluation of approximately 70 cases pending in the United States, the Caribbean, Latin America and Europe.

- Obtained dominion of many deposit accounts and securities accounts of the Estate including, after extensive discussion and negotiation with certain custodians, both U.S. and foreign.

- Secured a fleet of 6 aircraft and 2 marine vessels.

- Developed and implemented policies and protocols to deal with lending matters and lenders.

- Conferred with government officials in Canada, Colombia, Ecuador, Guatemala, Israel, Mexico, Panama, Peru and Venezuela.

- Collected and analyzed records to determine identity and status of entities subject to the Order.

- Arranged physical security assistance in U.S. control centers and certain international locations.

- Developed and implemented document management and control policies and procedures.

Other Efforts to Recover Cash

The Receivership Order directed the Receiver to collect, marshal and take control of assets of the Estate. Efforts by the Receiver and his team to recover cash for the benefit of the Estate have included the following:

- Identifying accounting and financial information to secure and track cash, and tracing of cash activities through a large number of banks and Stanford's general ledger system to determine the ultimate recipients of funds for possible retrieval by the Estate.

- Identified all known Stanford accounts maintained at financial institutions, including banks and investment houses (more than 300 accounts).

- Compiled a comprehensive listing of all available information regarding cash, cash equivalents, marketable securities and private equity investments.

- Determined contact information including name, telephone number, email address, etc., for each cash account for which assets were believed to be available for potential recovery, and pursued all available contacts in efforts to recover cash.

- Analyzed clearing agreements with Pershing and JP Morgan, and negotiated stipulation with Pershing to release from its custody $10 million of proprietary funds belonging to Stanford.

- Negotiated with an investment fund and obtained approximately $10.5 million in cash related to investments held in the name of a Stanford entity.

- Negotiated with a brokerage firm and obtained an agreement to release approximately $5.6 million in cash that had been held in the name of Stanford entities; filed a motion with the Court seeking to obtain an additional $500,000.

- Negotiated with a bank and obtained the return of approximately $17 million in cash held in the name of Stanford entities.

- Negotiated with escrow agent for pending private equity transaction and obtained the return of $9.7 million in cash to the Estate.

- Negotiated with a hedge fund to obtain $4 million on an early redemption of an interest in the fund, without payment of early redemption fee.

- Negotiated with a bank and obtained the return of approximately $1.3 million in cash collateral related to letters of credit.

- Requested that elected officials and campaign committees to whom Defendants and their political action committees had made political contributions return those amounts to the Estate for the benefit of claimants against the Estate; to date, 15 elected officials have returned a total of $72,300 to the Estate and an additional 5 have advised the Estate that they intend to return a total of $16,300.

- Requested law firms that had received legal retainers to return those monies to the Estate.

- Analyzed broker/financial advisor compensation information for purposes of recovering for the Estate compensation paid to advisors for sale of fraudulent CDs.

- Performing extensive funds tracing through available bank account records and entities, including reviews of significant wire transfers and other disbursements.

- Performing extensive but not complete funds tracing of disbursements through the companies' general ledger system to identify the ultimate third-party recipients of disbursements from the company.

- Conducting review of the companies' financial records pertaining to certain pre-paid asset accounts to identify possible sources of asset recoveries.

- Performed relevant investigative due diligence checks on entities and individuals identified, as needed, and determined and documented existing relationships with Allen Stanford, Stanford entities and/or other Stanford employees.

- Aggregated names of current and former employees most likely to provide relevant information in regards to other assets/accounts and conducted selected interviews.

- Contacted all foreign locations and inquired as to the existence of all assets that may be available for potential recovery.

- Performed extensive "hard copy" document reviews for documents obtained in control centers in Houston, Tupelo and Memphis to identify other possible accounts containing cash and/or investments that could be recovered for the Estate.

- Conducted targeted e-mail searches for selected custodians to identify other possible accounts containing cash and/or investments that could be recovered for the Estate.

- Conducted other efforts to recover cash and other assets that are listed in other sections below, including those relating to real estate, private equity and aircraft.

Corporate Structure Analysis

In order to properly identify and categorize assets and claims, the Receiver needs to identify all Stanford entities and accurately understand the ownership relationships among them. Upon taking control, the Receiver found numerous inconsistent organizational charts and plans for internal restructuring. To compile accurate information, the Receiver and his team have worked to:

- Develop master lists of Stanford entities (this ongoing work has resulted in the identification of approximately 140 potential Stanford entities so far; that number does not include more than 100 other potential Stanford entities the names of which are referenced in various documents as having a Stanford relationship but as to which the Receiver's team has not yet found appropriate ownership records and/or other corporate or financial records).

- Develop an understanding of a complex and often confusing corporate structure and the business operations of these companies.

- Develop detail regarding parent/subsidiary and other relationships among entities.

Preparation of Financial Statements

In order to marshal, value and ultimately monetize the assets of the Estate and to determine the claims against the Estate, the Receiver needs to have reliable financial statements and data. The Receiver engaged Ernst & Young to summarize combined financial statements, working with best available Stanford Group data. Much of the necessary data has resided outside the U.S., presenting logistical challenges in locating it. Ernst & Young has:

- Worked to summarize a combined balance sheet, as of February 19, 2009 and as of December 31, 2008, for all identified Stanford controlled entities located throughout the world.
- Gathered supporting documentation to assist with summarizing a combined balance sheet, as of February 19, 2009.
- Worked to identify available assets for all entities controlled by the Estate along with associated liabilities.
- Reviewed company books and records, collected and analyzed electronic and paper-based evidence and engaged in numerous interviews with Stanford personnel to assemble information.
- Generated lists of assets by category (such as private equity investments, real estate, financial assets and coin and bullion inventory) under the control of the Estate, as well as associated liabilities, so that the Receiver can properly preserve or dispose of the assets and deal with the liabilities, as appropriate.

Real Estate

With a view to maximizing the value of the Estate, the Receiver and his team have taken the following actions regarding real estate:

- Developed comprehensive listings of 54 owned properties and 58 leased properties in 17 U.S. states, Canada, St. Croix, St. Kitts and Europe, with information regarding ownership, encumbrances and value, as well as 49 owned properties in Antigua.
- Worked to collect information and determine rights with respect to owned and leased real property in the Estate by reviewing leases, deeds, mortgages, insurance schedules, financial information and other relevant documentation.

- Began efforts and engaged brokers to assess values and markets in an attempt to monetize real estate assets.

- Assessed threats and risks of expropriation of Antiguan lands and related procedures, determinations and requirements.

- Developed an overall strategy and plan regarding rejection of leased properties, in order to save costs, and prepared and filed motion with the Court regarding procedures for rejection of leases and sale of furniture and equipment in leased space.

- Facilitated the lease rejection process, including removal of files and personal property, sale of furniture, rejection of leases (subject to execution of termination agreements with landlords whereby the Receiver agreed to quitclaim the personal property in exchange for landlord's full waiver and release of claims) and negotiations with landlords regarding the amount to be paid as administrative costs for the period of time of the Receiver's occupancy of the space, credits for furniture and limits on unsecured damage claims.

- Researched landlord's lien law in several jurisdictions as it relates to the Receiver's ability to sell the personal property free and clear of liens.

- Worked to determine rights with respect to security deposits and letters of credit in the Receivership in an attempt to free up cash that is tied up as collateral.

- Worked to implement the relocation of the Receiver's team, including retained Stanford Houston employees, from rented to owned space so that the lease on the larger leased space can be rejected, in order to save costs; negotiated with the landlord of the Houston headquarters to obtain its cooperation with the relocation process so as to maintain the Receiver's operations with minimal disruption.

- Collected and responded to multiple default notices and lien notices from landlords and contractors.

- Prepared letters to landlords regarding the effects of the receivership on their ability to exercise remedies.

- Prepared letters to tenants regarding payment of rent.

- Coordinated property tax appraisals, insurance, maintenance and other activities necessary to preserve value of owned properties.

- Coordinated management and leasing activities of Stanford in its capacity as landlord of the St. Croix properties related to the continuing occupancy by building tenants.

- Implemented required procedures to collect back rent from the General Services Administration for office space in St. Croix.
- Developed procedures for sale of real property that is owned by the Estate and prepared and filed motion with the Court for approval of these procedures.
- Established brokerage arrangements with CB Richard Ellis to market and sell owned properties in a reasonably expeditious manner while attempting to maximize value.

Private Equity

With a view to maximizing the value of the Estate as directed by the Receivership Order, the Receiver and his team have taken the following actions regarding the numerous private equity investments held by the Estate:

- Developed comprehensive listings of private equity holdings, with information regarding ownership, potential current value and loans outstanding.
- Reviewed information and contracts related to private equity investments and evaluated rights and responsibilities with respect thereto.
- Communications with portfolio companies and counsel regarding status of investments and rights to immediate cash withdrawals where available.
- Evaluated various investment holdings for potential sale to third parties; these efforts have included, with respect to several investments, negotiations with potential interested purchasers.
- Interviewed potential advisors regarding possible engagement to market Stanford's private equity holdings.

Aircraft

With a view to maximizing the value of the Estate as directed by the Receivership Order, the Receiver and his team took the following actions regarding the six aircraft held by the Estate:

- Supervised security and developed protocol for dealing with aircraft and aircraft facilities, including maintenance and insurance issues.
- Reviewed information and contracts related to aircraft title and liens.
- Communicated extensively with the lender that holds liens on five of the six Stanford aircraft to obtain two independent fair market value appraisals of the five

aircraft, in connection with negotiations concerning orderly sale and/or return of the aircraft to the lender and release of a portion of the substantial cash collateral held by the lender to the Receiver.

- Began making arrangements, including retaining aircraft broker, to assist in the sale of the Stanford aircraft.

<u>Litigation and Interaction with Governmental and Regulatory Agencies</u>

<u>Litigation and Other Disputed Matters Commenced at or after Appointment</u>

The Receiver's tasks included responding to the proceedings in or related to this case. In particular, the Receiver or his counsel:

- Appeared and filed papers at two preliminary injunction hearings in this Court, and prepared for potential Receiver testimony at those hearings.
- Appeared at two TRO hearings in the Southern District of Texas at the request of the Judge in that Court.
- Briefed and defeated a petition for mandamus to the Fifth Circuit related to this Court's jurisdiction to appoint the Receiver.
- Initiated litigation against financial advisors who sold fraudulent CDs, to seek return of more than $40 million in commissions and other tainted compensation.
- Responded with two consolidated briefs to more than 40 motions by account holders and brokers seeking intervention or similar relief.
- Considered scores of communications and demands by putative intervenors and their counsel.
- Litigated matters related to coin and bullion disputes.
- Analyzed and responded to motion to appoint an examiner.
- Analyzed and filed responses to motions to permit filing of litigation in other forums.
- Filed show cause motion to force the return of $3 million to the Receiver.
- Filed show cause motion to stop litigation against the Receiver in the Southern District of Texas.
- Communicated with counsel and other courts to obtain abatements in light of this Court's stay of litigation against the estate.

- Addressed issues raised by the individual Defendants regarding Receivership actions.

- Served subpoenas on several third parties who are in possession of Stanford records or assets that must be turned over to the Receiver.

- Prepared and filed appropriate papers regarding account release procedures and approvals.

- Prepared and filed appropriate papers regarding Receiver's procedures for rejection of leases.

- Responded to inquiries from numerous claimants regarding the injunction against proceedings outside the Northern District of Texas.

Assistance to and Communication with Governmental and Regulatory Agencies

The Receivership Order directed the Receiver to promptly provide the SEC and other governmental agencies with all information and documentation they may seek in connection with their regulatory or investigatory activities. To accomplish this direction, the Receiver and his team:

- Conducted numerous telephone conferences and meetings with governmental and regulatory agency representatives, including meetings with SEC representatives to advise them of the Receiver's work plans and progress to date, and to coordinate regarding numerous issues related to administration of the Receivership.

- Coordinated with the SEC, the FBI, the U.S. Postal Inspector and the U.S. Department of Labor in identifying and gathering documents and information relevant to their ongoing investigations and responded to numerous requests from these authorities to analyze and provide information and documents.

- Presented the results of preliminary investigative work to representatives of the Department of Justice, FBI, IRS, and U.S. Postal Services, including collection and provision of supporting corporate documentation.

- Communicated with FINRA regarding broker dealer activities, regulatory reporting and compliance issues.

- Working with employees in Stanford Capital Management's compliance department, considered compliance issues related to termination of personnel as well as updating filings related to the Investment Advisors Act of 1940, the broker-dealer regulations under the Securities Exchange Act of 1934 and applicable FINRA regulation.

- Communicated with the Board of Governors of the Federal Reserve System on banking and trust matters.
- Established, with the assistance of the SEC and Texas State Securities Board, a weekly call with various state securities regulatory authorities to respond to their information requests and to provide such regulators with status reports.
- Communicated with state banking agencies in Texas, Louisiana, North Carolina and Florida regarding Stanford branches and other offices.
- Communicated with foreign bank and securities regulators, particularly Mexico, Panama and Canada regarding wind-down of operations, liquidations, investor questions and arrangements for claims processes.
- Communicated with the Secretary of State and staff of various states to discuss issues regarding broker dealer activities and Stanford Trust Company.
- Responded to, and gathered documentation for production relating to, subpoenas and other formal document requests made by various state regulatory agencies.
- Conferred and coordinated with officials in Canada, Colombia, the Eastern Caribbean, Ecuador, Guatemala, Israel, Mexico, Panama, Peru, and Venezuela regarding Estate issues in those jurisdictions.

International Matters

For a discussion of matters related to Antigua and Canada, see "Issues Related to Antigua" in this Report above.

Latin American Matters

The Estate includes several Latin American subsidiaries with numerous offices and assets located in several countries. In this connection, the Receiver and his team have:

- Coordinated resources and researched locations of Stanford offices and receivership assets and records in Colombia, Ecuador, Mexico, Panama, Peru and Venezuela.
- Conferred and coordinated with SEC and Latin American securities and bank regulators regarding office closures and asset recovery in Latin America.
- Conferred, coordinated and attended numerous meetings with officers of Comision Nacional Bancaria Y De Valores (CNBV) and Mexican government officials regarding access to and securing of receivership assets in Mexico and regarding funds revocation and liquidation process under Mexican law.

- Prepared authorization letters and necessary powers of attorney, reviewed public deeds, obtained access to and closed and secured Stanford offices in Mexico City, Monterrey, and Puebla, Mexico.

- Conferred with Peruvian Embassy representatives regarding concerns of Peruvian investors and regarding asset recovery efforts.

- Conferred with Panamanian regulators regarding access to Stanford assets in Panama and extensively coordinated with those regulators regarding Stanford Bank (Panama).

- Reviewed and analyzed communications regarding leads for disposition and recovery of assets in office in Ecuador.

- Communicated with regulatory officials in Colombia regarding access to and securing of Stanford office for the Receiver; prepared Colombian proxies and prepared for shareholders meeting.

- Investigated, researched and advised Receiver regarding situation of Stanford Venezuelan bank and assets.

- Researched and began preparation of appropriate corporate resolutions and documentation to allow the recovery of Receivership assets from the various foreign entities.

- Worked to assist sales processes for Stanford bank and brokerage accounts in Panama and brokerage accounts in Columbia, Ecuador and Peru.

- Analyzed specific information regarding Latin American cash and investment accounts, as well as investments noted in over ten Latin American entities for asset identification.

See also the discussion under "Latin American Matters" in this Report above.

Switzerland Matters

The Estate includes a Swiss entity, Stanford Group (Suisse) AG, that owns substantial assets, including cash on deposit and an office building. In this connection, the Receiver and his team have:

- Placed various Swiss banks holding Stanford accounts of the Swiss entity and other Stanford entities on notice of the Receivership.

- Participated in efforts with Swiss directors of the Swiss entity regarding orderly wind-down of that entity to preserve and monetize assets; these efforts include wind-down of business activities, managing employee reductions, marketing and sale of Zurich office tower currently owned by the entity, handling existing liabilities, addressing leased properties, resolving liquidity issues, and appointment of liquidator.

- Examined issues of Swiss procedural expectations and venues as related to liquid assets in Switzerland.

- Evaluated issues raised by Swiss federal prosecutor's investigation into Stanford activities in Switzerland.

- Retained Swiss counsel to assist in the above efforts.

Customer Related Matters

Releases of Stanford Group Company Customer Accounts from Freeze and Related Broker Matters

The accounts at financial institutions that were frozen by the TRO/Freeze Order included Stanford customer accounts. Following efforts to confirm that the freeze had been implemented as directed by the TRO/Freeze Order, the Receiver collected data to analyze the accounts and the potential that the accounts or their owners were associated with fraudulent products or activities. The Receiver engaged in a balancing of the hardship the freeze was causing to owners of the accounts compared to the benefits of the freeze to the Estate, considering both the likelihood that the accounts are associated with fraudulent products or activities and the amount potentially recoverable by the Estate from those accounts if they are tainted. These activities led to the filing of motions with the Court requesting permission to release certain accounts, in stages, and the release of those accounts upon Court approval. In addressing these issues, the Receiver, assisted by a multi-disciplinary team of lawyers, forensic accountants, broker dealer experts and information technology experts:

- Established protocols to allow liquidating orders and other interim measures to provide customers flexibility to reduce market exposure.

- Analyzed certain mutual fund assets of Stanford clients held outside of Stanford's custodial arrangements and determined that they should be released from the freeze.

- Developed criteria by which Stanford Group Company customer brokerage accounts could be evaluated and released:

    - Approximately 50,000 accounts at Pershing and JP Morgan were initially identified.

    - The number was reduced to approximately 32,000 accounts after identifying and eliminating dormant accounts.

- Identified, gathered, analyzed and applied information for purposes of potential release of accounts, including available databases regarding potential for accounts having a probability of being associated with fraudulent products or activities, as well as lists of directors, senior management and employees.

- Coordinated with Pershing to develop procedures for transferring eligible account assets using ACATS process.

- Prepared motions and orders for release of two rounds of customer accounts totaling 28,452 accounts; as of April 22, 2009, transfers of 20,840 accounts had been completed.

- Developed an account review process to enable owners of the remaining approximately 4,000 Stanford Group Company accounts to provide information to the Receiver that may be relevant to whether their accounts should be released; filed motion with the Court seeking approval of the process; and upon receiving such court approval, implemented the process with both online and mail-in versions and began processing applications; as of April 22, 2009, this process had been initiated by holders of 1,521 accounts.

- Filed motions to approve compromises concerning releases of certain frozen accounts in which the Receiver will retain certain funds in the accounts pending final adjudication of Receiver's claims.

- Reviewed Stanford Group Company's form client agreements, analyzed the legal requirements and obligations of the parties and developed a strategy to unwind such relationships.

- Reviewed and analyzed Clearing Agreement between Stanford Group Company and Pershing LLC and other relevant documentation regarding rights and obligations of Pershing LLC and Stanford and applicable expense and fee arrangements.

Stanford Trust Company Matters

- Communicated and met with the Commissioner and staff of the Louisiana Office of Financial Institutions to discuss regulatory matters related to Stanford Trust Company.

- Conducted the same analysis of Stanford Trust Company accounts that was performed for Stanford Group Company accounts, including gathering and reviewing similar types of information, in order to make the same type of decisions, with respect to the approximately 1,480 accounts at Stanford Trust Company.

- Prepared and filed a motion with the Court seeking approval of a process to release Stanford Trust Company accounts in certain categories; this motion is pending.

- Gathered trust documents from Stanford Trust Company locations and began to review those documents to determine the legal requirements applicable to having a successor trustee appointed under each trust instrument.

Stanford Private Label Funds

During Stanford's operations, it had, to varying degrees, formed, promoted and managed several private-label investment funds, including SCM Alternative Income I, L.P. and SCM Beta Partnership I, L.P. Stanford also promoted and sometimes invested in other investment funds. The establishment of the Receivership and implementation of the TRO/Freeze Order affected the day-to-day operations of some of these funds and the oversight and information reporting functions of some others. In addition, the existence of the Receivership has created concerns of various customers, vendors and other contractual counter-parties related to the continued viability of these funds as well as the effect of the TRO/Freeze Order on them. To provide information to these persons and to begin to resolve the issues related to these funds, the Receiver and his team:

- Reviewed and analyzed the agreements and private placement memorandums related to these funds regarding the legal rights and obligations of investors, Stanford and third-parties.

- Began developing strategies to facilitate the appointment of a successor general partner for the fund, terminate Stanford's involvement in the fund and/or recover funds for Stanford's investments in the fund to the extent possible.

- In some cases, began a dialogue with some of the largest investors in the fund regarding resolution of these issues.

- Responded to numerous requests for information from investors related to Stanford's private-label investment funds.

- Analyzed various issues under partnership agreements and applicable law related to investors' rights for information regarding the private-label investment funds.

- Reviewed and analyzed Financial Services Agreement by and between MadisonGrey Fund Services, LLC and Stanford and other supporting documentation regarding administrative services provided to the private-label investments funds regarding relative rights and obligations of MadisonGrey and Stanford.

- Interfaced with MadisonGrey, the administrator of the Stanford private-label funds to attempt to maintain the level of administrative services being provided to investors as well as respond to investors' information requests.

Coins and Bullion

One of the Stanford entities is Stanford Coins and Bullion, which engages in trading and customer investments in coins and gold bullion. In connection with this operation, the Receiver and his team have:

- Analyzed coin and bullion company operations.

- Moved coin and bullion inventory from Stanford facilities to large commercial bank safety deposit boxes to assure safety.

- Conducted physical inventory of coin and bullion inventory.

- Retained a numismatic consultant to assist in valuation and wind down of coin and bullion operations.

- Begun an analysis of customer claims to coins and bullion held by Stanford Coins and Bullion.

- Begun a review process to enable customers, vendors and other persons to provide information to the Receiver that may be relevant to determine the status of their claims.

- Reached agreements with two coin and bullion companies involving settling of disputed accounts between Stanford Coins and Bullion and these companies.

Operational and Administrative

Operations

The Order directed the Receiver to conserve, hold, manage and preserve the value of the Estate. The Receiver and his team:

- Analyzed available financial and other information to determine whether the Stanford companies included businesses that could continue as viable businesses.

- Soon after taking control, upon concluding that most of the businesses of the Stanford companies were not financially viable, issued directions and began implementing plans to cease those business activities.

- Developed and implemented protocol, consistent with regulatory and other requirements, for the receipt and delivery of mail at Stanford's headquarters in Houston, as well as implemented plan to coordinate the collection of mail at all domestic and St. Croix offices for forwarding to a central location.

- Reviewed existing operational roles and identified critical personnel to retain for continued administration of corporate functions.

- Developed and implemented procedures for payment of payroll, including the administration and resolution of pre-receivership payroll obligations.

- Coordinated with company personnel to ascertain ongoing operational obligations of the Stanford entities.

- Developed and implemented protocol for the identification and payment of other expenses and obligations of the Estate, as well as pre-receivership obligations of Stanford to certain critical vendors necessary to ensure ongoing operations and liquidation of the Estate.

- Developed and implemented treasury functions, including the establishment of new and secure bank accounts.

- Developed operational protocols for obtaining and moving cash to the new bank accounts.

- Developed operational protocols for the creation, approval and submission of wire transfer and other payment types for the payment of vendors.

- Completed permanent physical closure of 24 U.S. branch offices of Stanford entities through April 20, 2009 so that applicable office leases can be rejected in order to reduce ongoing expenses of the Estate; closure of an additional 12 U.S. offices is scheduled; each such shutdown required sending personnel to the branch office to oversee the closing process, including removal and safeguarding of records and documents.

Employee Matters

At the outset of the Receivership, the Stanford Companies had more than 3,000 employees, of whom approximately 1,200 were in the U.S. and the balance in numerous other countries. The Receivership Order directed the Receiver to take control of and preserve the assets of the Estate, necessitating management of the business. The Order also directed the Receiver to minimize expenses in furtherance of maximum and timely disbursement thereof to claimants. To accomplish these directives, and to do so consistently with the Receiver's determination (see above) that most of the businesses of the Stanford companies were not financially viable, the Receiver and his team:

- Assessed workforce in U.S. and Latin America and determined which employees should be retained to assist in managing and liquidating the Estate.
- After careful review and with a view to reducing costs to the Estate, issued notices of termination of employment to more than 1,000 U.S. employees, which necessitated, among other things:
  - Assessing and complying with federal and numerous state notification requirements and pay/payroll requirements.
  - Communicating with affected employees.
  - Responding to state and local governmental inquiries regarding layoffs.
- Responded to three separate inquiries/investigations from the U.S. Department of Labor ("DOL") from three separate groups within the DOL with respect to:
  - An audit of the Stanford employee benefit plans subject to the Employee Retirement Income Security Act ("ERISA").
  - An investigation of potential violations of federal wage and hour laws in connection with Stanford payroll issues.

  - A criminal investigation with respect to non-Stanford ERISA plans that may have invested in certificates of deposit issued by Stanford International Bank Ltd.

- The DOL audit and investigatory activities have required numerous on-site meetings with the various DOL agents; due diligence review of documents and other information requested by the DOL agents and analysis of the legal authorities, obligations and constraints on the Receiver with respect to the audit and investigatory actions and disclosure of documents and information requests by the various DOL agents.

- Reviewed numerous employee benefit plans, programs and arrangements and practices (both in the U.S. and outside the U.S.) and individual employment-related agreements established and/or entered into by the various Stanford companies.

- Analyzed Estate's obligations to employees, employee benefit plans and government agencies under Stanford employee benefit plans, programs and practices, including those identified below, and determined to cease some plans, where appropriate.

- Took action, via resolutions and amendments, as appropriate, to reconstitute the administrative committees of the Stanford ERISA and non-qualified U.S. employee benefit plans, programs and arrangements.

- Modified and/or discontinued operations of benefit plans in light of the reduced employee population and in order to preserve assets and reduce expenses of the Estate, which included:

  - Addressing the mandatory matching contributions and partial termination issues of the Stanford 401(k) plan.

  - Securing welfare benefit plan benefits, including employee medical coverage, until April 30, 2009 and terminating thereafter.

  - Securing administration of these benefits through April 30, 2009 and the defined "run-out" period thereafter.

  - Preparing and distributing to plan participants ERISA-required summaries of material modifications as required for such changes.

- Prepared and updated website and other communications to address changes to employee benefits coverages for former employees and retained employees.

- Reviewed benefit plan compliance with applicable law and initiated corrective action, where appropriate, including analyzing impact of recent federal legislation enacted by Congress regarding continuing health coverage under group health plans and the required notice requirements related to the same.

- Reviewed and assessed employee obligations to Estate under a broker loan program pursuant to numerous loan agreements with varying terms.
- Handled regulatory filings necessitated by termination of employment of registered representatives and financial advisors.
- Developed and administered protocol for controlled access and removal by employees of personal items from various office locations.
- Prepared and updated a statement regarding employee benefits that addressed health care, COBRA, flexible spending accounts, disability insurance, AD&D insurance, 401(k) plans, personal belongings and severance or bonus contracts.

Insurance Matters

The Receiver and his team have taken the following actions relating to insurance matters affecting the Estate and its assets:

- Performed a comprehensive review of the insurance program that was maintained by the Stanford entities before the receivership, and communicated with brokers and other parties to cancel coverage that is no longer needed in view of the Receiver's appointment.
- Provided initial and supplemental notices of claims to insurance carriers under policies providing primary and excess directors and officers liability coverage, excess Securities Investor Protection Corporation coverage, Financial Institutions Crime and Professional Indemnity coverage, and Foreign Political Risk coverage.
- Evaluated numerous claims and demands made by various parties relating to the Estate's insurance policies.
- Taken steps to recover letters of credit that were posted before the Receiver's appointment to secure customs bonds that are no longer necessary.
- Taken steps to obtain replacement insurance coverage for domestic and international Estate assets where coverage has expired by its terms or the Receiver has been informed by the carrier of policy cancellation.
- Discussed ongoing litigation matters and insurance matters with in-house counsel and employees.

Tax Matters -- Allen Stanford Personal Returns

The IRS has advised the Receiver that it has proposed or asserted against Allen Stanford a total of approximately $226.6 million in federal taxes (including interest and penalties) for tax years 1999-2003. Because Mr. Stanford personally is a named party to the Receivership and was the owner of the assets of the Estate, the Receiver must become familiar with potential tax liability of Mr. Stanford which could lead to possible tax claims being filed by the IRS in the Receivership. To that end, the Receiver has collected and is analyzing available files and records pertaining to these proposed and assessed tax liabilities. The Receiver has also been negotiating with the Department of Justice Tax Division ("DOJ Tax") with respect to the pending IRS motion to intervene in this receivership. A description follows of each of Mr. Stanford's tax years for which the IRS has proposed or asserted possible tax liability and of the IRS motion to intervene in the proceeding before this Court.

- 1999 Tax Litigation. The IRS has advised the Receiver that it has proposed a deficiency of approximately $7.2 million (inclusive of interest and penalties) with respect to Mr. Stanford's 1999 joint tax return.

- 2000 Tax Litigation. The IRS has advised the Receiver that it has proposed a deficiency of approximately $30 million (inclusive of interest and penalties) with respect to Mr. Stanford's 2000 joint tax return.

- 2001 Tax Litigation. The IRS has advised the Receiver that it has proposed a deficiency of approximately $72.8 million (inclusive of interest and penalties) with respect to Mr. Stanford's 2001 joint tax return.

- 2002 Tax Litigation. The IRS has advised the Receiver that it assessed tax of approximately $32.1 million (inclusive of interest and penalties) against Mr. Stanford with respect to his 2002 tax year, and that Mr. Stanford initiated a Collection Due Process or Equivalent Hearing before the IRS Office of Appeals.

- 2003 Tax Litigation. The IRS has advised the Receiver that it assessed tax of approximately $84.5 million (inclusive of interest and penalties) against Mr. Stanford with respect to his 2003 tax year, and that Mr. Stanford initiated a Collection Due Process or Equivalent Hearing before the IRS Office of Appeals.

- <u>IRS Motion for Intervention</u>. On March 13, 2009, DOJ Tax, on behalf of the IRS, filed a motion asking this Court to permit the IRS to be an intervening party and to lift its injunction to (i) allow the IRS to proceed with the pending Tax Court case for Mr. Stanford related to his 1999, 2000, and 2001 tax years; (ii) allow the IRS to proceed with the pending IRS Office of Appeals matter related to Mr. Stanford's 2002-03 tax years, (iii) recognize that the IRS may issue additional assessments against Mr. Stanford at any time because of the receivership, and (iv) compel Mr. Stanford to file his personal income tax return for 2007. On April 16, 2009, DOJ Tax, the SEC and the Receiver agreed to the terms of a proposed order in response to the IRS Motion and on April 17, 2009, this Court granted such order. Under the terms of the proposed order:

    - The IRS is allowed to intervene in this case before this Court.

    - The pending Tax Court cases involving Mr. Stanford's 1999, 2000, and 2001 tax years is transferred to this Court, and this Court will adjudicate the merits of the proposed tax deficiencies, including an adjudication of the underlying merits and amounts of the proposed tax deficiency.

    - It is recognized that the IRS has the right to issue an assessment against Mr. Stanford for his tax years 1999-2008 and to conduct audits and issue notices of deficiencies with respect to Mr. Stanford's tax liability.

    - The pending IRS Office of Appeals Collection Due Process or Equivalent Hearing involving Mr. Stanford may be resumed, but the IRS Office of Appeals retains the discretion as to when to issue its notice of determination with respect to such hearing. Mr. Stanford retains his right to appeal any such determination to the U.S. Tax Court. Any such appeal would be immediately stayed until this Court takes further action.

    - Any IRS claim made before this Court will be adjudicated by this Court, including an adjudication of the underlying merits and amount of any proposed, determined or assessed tax liability and assets available to satisfy any proposed, determined or assessed tax liability.

    - Mr. Stanford is directed to file his 2007 tax return on or before May 15, 2009.

<u>Tax Matters -- Stanford Entities</u>

Similarly, the IRS or other taxing authorities may assert tax claims against the Stanford entities. In assessing these issues, the Receiver and his team have:

- Determined that there is in excess of 250 jurisdictions (Federal, State, Local and Foreign) requiring tax support for the Estate.

- Identified approximately 100 returns currently required or in arrears and prepared extensions.
- Initiated a review of all foreign tax filings.

Claims Identification

The Receivership Order requires the Receiver to identify claims against the Estate. To begin this work, the Receiver and his team have:

- Begun compiling and categorizing known claims based on Stanford's internal records.
- Established a formal claims filing process, which is posted on the Receivership's website.
- Claim categories include certificate of deposit claims, vendor claims, secured creditor claims, coin and bullion claims, employee claims, landlord claims and other claims.

Communications with Customers, Employees and the Public

The establishment of the Receivership and implementation of the TRO/Freeze Order significantly affected the lives and financial affairs of many people and businesses, including customers, employees, vendors, creditors, landlords and others. To provide information to these persons, the Receiver and his team:

- Established a website for the Receivership, *www.stanfordfinancialreceivership.com,* that was available on the day the Receivership was announced.
- Used the website to provide regular updates with time sensitive information for investors, employees, media, other interested parties and the public.
- Provided an email address for persons to contact the Receiver, monitored and sorted into categories the more than 11,000 emails that have been received, and directed certain emails to team members for individual response if appropriate.
- Issued numerous public statements that were posted on the website and sent to media.
- Posted and updated numerous sets of Frequently Asked Questions ("FAQs") regarding a variety of subjects.

  - Subjects include account status, account transfer procedures for unfrozen accounts, account review procedures to seek release of frozen accounts, employee issues, coin and bullion issues, CD issues, brokerage account issues in non-U.S. entities, political contributions, mutual funds, and general receivership information.
  - FAQs are detailed and written in plain English.

- Posted Court orders and filings of greatest likely interest to users of the website, in addition to other material information.
- Translated major website materials into Spanish.
- Established a media alert system with major national and Houston media to facilitate the flow of information to investors and consumers.
- Established an email outbox to be used for replying to investors with questions on the account review process and claim notification process; began corresponding with investors where appropriate.
- Held an interview with the Houston Chronicle, which subsequently ran on international newswires, to increase information flow to constituents of the Estate and the public.
- Addressed status of and need for 17 separate websites that had originally been maintained by various Stanford entities.

<u>Team Assembled by the Receiver</u>

The Receivership Order authorizes the Receiver to employ such managers, agents, custodians, consultants, investigators, attorneys and accountants as he judges necessary to perform his duties. The following experts have been retained to assist him:

- Krage & Janvey, L.L.P., the Receiver's law firm.
- Baker Botts L.L.P, an international law firm headquartered in Texas.
- CB Richard Ellis, a real estate consulting firm.
- Ernst & Young, an international accounting and professional services firm.
- Financial Industry Technical Services, Inc., a brokerage operations specialist firm.
- Frizzell Group International, LLC, a security consultant.
- FTI Consulting, Inc., a forensic accounting and information technology firm.

- Pierpont Communications, Inc., a communications firm.
- Paul Montgomery, a numismatic expert.
- Strategic Capital Corporation, a business restructuring advisor with substantial broker dealer experience.
- Thompson & Knight L.L.P, an international law firm based in Texas with offices in Latin America.
- Local counsel and experts as needed in certain U.S. States, Canada, the United Kingdom, Switzerland and Antigua.

Dated: April 23, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

By: / s/ Kevin M. Sadler
Kevin M. Sadler
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
One Shell Plaza
910 Louisiana
Houston, Texas 77002-4995
(713) 229-1234
(713) 229-1522 (Facsimile)

1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039
(512) 322-2500
(512) 322-2501 (Facsimile)

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
BAKER BOTTS L.L.P.
2001 Ross Avenue
Dallas, Texas 75201
(214) 953-6500
(214) 953-6503 (Facsimile)

Richard B. Roper, III
TEXAS BAR NO. 17233700
THOMPSON & KNIGHT LLP
1722 ROUTH STREET
SUITE 1500
DALLAS, TEXAS 75201
(214) 969-1700
(214) 969-1751 (FACSIMILE)

ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF SERVICE

On April 23, 2009, I electronically submitted the foregoing Report with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have provided copies to the Examiner in this case and to all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
Kevin M. Sadler

Attachment 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	
Stanford International Bank, Ltd.	§	
	§	
Debtor in a Foreign Proceeding	§	Case No.: 3-09-CV-0721-N

RECEIVER'S RESPONSE TO THE ANTIGUAN LIQUIDATORS' DECEMBER 3 SUPPLEMENTAL BRIEF

BAKER BOTTS L.L.P.
Kevin Sadler
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
Robert I. Howell
Texas Bar No. 10107300
robert.howell@bakerbotts.com
David T. Arlington
Texas Bar No. 00790238
david.arlington@bakerbotts.com
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039
(512) 322-2500
(512) 322-2501 (Facsimile)

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
2001 Ross Avenue
Dallas, Texas 75201
(214) 953-6500
(214) 953-6503 (Facsimile)

ATTORNEYS FOR RECEIVER RALPH S. JANVEY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

The principal issue before the Court is the location of the "center of main interests" (equivalent to "principal place of business") of Stanford International Bank Ltd ("SIB"). As discussed herein, SIB's COMI was not Antigua. SIB had two "main interests": selling CDs and investing (or otherwise disbursing) sales proceeds. Both activities were managed and directed from the U.S. and conducted outside of Antigua. In fact, SIB's Antiguan managers (if they can be called that) were largely shut out of both. Most investors never saw an SIB employee and certainly never went to Antigua. Most dealt exclusively with a Stanford financial advisor.[1] SIB's connection with the US was widely known. Marketing material touted the advantages SIB enjoyed as part of Stanford Financial Group, Allen Stanford's Houston-based global financial empire. The roots of the business were advertised as going back to Lodis Stanford's insurance company in Mexia, Texas. We now know -- and the Antiguan Liquidators concede -- that the Stanford empire, SIB included, was a Ponzi scheme run by Allen Stanford and his cohorts. While Antigua played a role in the scheme, Antigua was not a nerve center or activity center -- it was where Stanford could buy off key officials in order to conduct his sham business without regulatory interference. SIB's COMI was not Antigua.

The Court requested briefing on three topics. The Receiver's responses, in summary, are as follows, with more detailed discussion following:

The applicability of alter ego doctrines. The Fifth Circuit applies alter ego doctrines not only to enforce liability against shareholders and parent companies, but also to determine a corporation's "principal place of business" for jurisdictional purposes. "When two corporate entities act as one, or are in fact one, they should be treated as one for jurisdictional purposes." *Freeman v. Nw. Acceptance Corp.*, 754 F.2d 553, 558 (5th Cir. 1985). Courts

---

1 *See*, *e.g.*, client communications directing questions regarding SIB transactions to Stanford Group Company financial advisors - October 9, 2007 Letter, April 1-June 30, 2008 Statement, February 5, 2008 Clearing Confirmation, attached as Exhibit A, at Appx. 1-4.

"[should] not permit themselves to be blinded or deceived by mere forms of law, but, regardless of fictions, ... deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require." *Id.* 754 F.2d at 557. Logic and consistency require that the same rule be applied in determining a corporation's COMI. The facts of the Stanford Ponzi scheme are such that multiple alter ego grounds (recognized by both state and federal common law) – most especially "sham to perpetrate a fraud" – support disregarding SIB's supposed corporate separateness and treating SIB for what it was, part of a global fraud conspiracy headquartered, not in Antigua, but in the United States.

The "passive v. active" and "far flung" factors of the *J.A. Olson* "principal place of business" analysis. Because SIB was clearly the alter ego of Stanford and his confederates, the analysis set out in *J.A. Olson* should be applied to the Stanford Ponzi scheme as a whole (which was clearly based in the U.S.) and not just to SIB. But even if the *J.A. Olson* analysis were applied to SIB in a stand-alone fashion, the conclusion would still be that SIB's COMI/principal place of business was its "nerve center," the U.S.

SIB's activities were "far flung" in the same way that the activities of the 60 separate, but commonly-owned corporations in *Toms v. Country Quality Meats, Inc.*, 610 F.2d 313 (5th Cir. 1980) were far-flung, despite each having its own meat supply business.[2] SIB's certificates of deposit ("CDs") were sold worldwide through various Stanford-owned broker-dealer entities scattered about North, Central, and South America, as well as Europe. Indeed, SIB was prohibited by Antiguan law from selling CDs to Antiguans. Its investment activities were handled under the direction of Stanford and Davis by personnel in Tupelo, Memphis, Houston and Miami.

---

[2] See discussion of the far-flung nature of Quality Care Meats in *J.A. Olson Co. v. City of Winona,* 818 F.2d 401, 410-11 (5th Cir. 1987).

Likewise, SIB was "passive," thus providing another factor favoring SIB's "nerve center" in the U.S. as its principal place of business. SIB was passive, not in the sense that it consisted of raw land that did not require management, but in the more relevant sense that it was a sham used by Stanford and his confederates for the commission of their Ponzi scheme. The Antiguan managers had no authority over SIB's principal activities of selling CDs and investing (or diverting) proceeds. Indeed, their passivity was so extreme that they did not question the absence of valid audits of SIB's investments and investment income.

How SIB CDs were sold. SIB had no sales force. It relied on the network of Stanford-owned broker-dealer entities scattered about North, Central, and South America and Europe. It appears this network was established principally to aid in the commission of the fraud. The Antiguan Liquidators point to inter-company contracts that purportedly document a principal/agent sales arrangement. These are meaningless since all parties to the contracts were Stanford-controlled instruments being used to perpetrate the same Ponzi scheme. In determining "principal place of business," a court is "concerned with reality and not form, [and with] how the corporation operated. Unlike the theory of agency, which interprets a contractual relationship, alter ego examines the actual conduct of the parent vis-à-vis its subsidiary." *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (internal citations omitted).

The Receiver also addresses other issues raised by the Antiguan Liquidators following his discussion of these three topics.

1. The facts of the Stanford Ponzi scheme.

SIB was part of a massive Ponzi scheme devised and directed by Allen Stanford and his close confederates.[3] The principal source of funding for the Ponzi scheme was the sale,

[3] That SIB and other Stanford entities were operated as a Ponzi scheme is agreed. Mr. Hamilton-Smith states in his initial declaration: "I do not dispute that SIB and other Stanford entities were likely engaged in a Ponzi

worldwide, of CDs issued by SIB. The principal perpetrators of the scheme besides Stanford were Stanford's right-hand confederate, James M. Davis, and Davis's assistant, Laura Pendergest-Holt. Others below them also participated.

Allen Stanford was at all times a U.S. citizen, resident initially in the continental U.S. and later in the U.S. territory of the United States Virgin Islands ("USVI"). His global financial empire was headquartered in Houston, Texas – a fact that was widely advertised to CD investors.[4] Davis and Holt were U.S. citizens, residents of Mississippi, and worked from offices in Tupelo and Memphis. This core group was assisted in the fraud by Stanford-entity employees in Houston, Miami and USVI.

According to Davis's guilty plea, the fraud even pre-dated SIB. It began in the late 1980s, with a Stanford-owned Montserrat-chartered bank named Guardian International Bank, Ltd.[5] Because of increased scrutiny by the Montserrat regulators, Stanford, in 1990, moved the Guardian banking operation to Antigua and re-opened it as SIB.[6] The fraud continued and grew.[7]

The Stanford Ponzi scheme had two main functions: to bring in investor cash by selling fraudulent CDs and then to utilize that cash to perpetuate the scheme. Both activities were controlled by the conspirators from the United States, with no meaningful management

scheme -- indeed, my own findings to date are consistent with that allegation ...." Supplemental Declaration of Nigel Hamilton-Smith, Doc. 15 at 2, ¶ 4.

4 Declaration of Karyl Van Tassel, Doc. 21-20, at 20, ¶ 44. Stanford's dual Antiguan citizenship and Antiguan knighthood should be viewed for what they were – byproducts of the influence that allowed Stanford to operate a sham bank in Antigua. While Stanford owned property within Antigua, the vast majority of his assets were outside of Antigua. *See* Declaration of David Henry, attached as Exhibit B, Appx. 5-8 (Stanford promotional videos were recorded in Houston, Texas).

5 James M. Davis Plea Agreement, Doc. 50, at 41, ¶ 17(a).

6 *Id.* at 42, ¶ 17(b).

7 *Id.* at 41-42 ¶¶ 17(a)-(e).

input from Antigua.[8] Current sales proceeds were used to pay interest and principal on previously purchased CDs, to incentivize Stanford-affiliated financial advisors (i.e., salesmen) with above-market commissions, to richly reward Stanford's confederates for their complicity, and generally to maintain the Stanford empire's false appearance of strength. And, of course, money went to Allen Stanford himself. Lots of it. Secret SIB financial records, maintained exclusively in the U.S. and USVI, list $1.8B in "notes receivable" from Allen Stanford.[9] Money was also bled off in other ways to support Stanford's extravagant lifestyle. Funds that were left over after these diversions were invested, although the value of the investments totaled only a small fraction of the fictitious amount reported to the public and to regulators.[10]

To perpetrate the fraud, Allen Stanford and his confederates used more than 100 separately incorporated entities – all wholly-owned by Stanford, either directly or through intermediate companies.[11] These companies, which included SIB and Stanford Trust Company ("STC"), did business under the brand name of "Stanford Financial Group." A marketing video informed investors:

> Stanford Financial Group is a family of financial services companies with ***global reach***. We serve over ***40,000 clients who reside in 79 countries on six continents***. Our ***world headquarters are located in Houston, Texas***, and we have a continual ***growing number of offices around the world*** to serve our clients.[12]

SIB marketing materials touted the Bank's membership in the Stanford Financial Group as a great advantage and one of the reasons for its purported (but fictitious) success:

---

8 Doc. 21-20, at 5, ¶ 12.

9 Doc. 21-20 at 10, ¶ 24(b)(ii).

10 Doc. 50, at 31, 41-50, ¶¶ 17(a)-(ll).

11 Stanford Financial Receivership, Organization Chart Support, Entity Ownership Structure - Alphabetical Listing, attached as Exhibit C, Appx. 9-13.

12 KVT-20, Doc. 29, at 792.

> We are a ***member of the Stanford Financial Group*** of companies and greatly ***benefit from services and support provided by the wholly owned Stanford affiliates around the globe***.[13]
>
> SIB has received this benefit without the capital expenditures required for ***opening and maintaining multiple global offices***. As a result the Bank's operational and administrative costs are approximately 40% of revenue, compared to other international banks which generally allocate 60% to 80%.[14]

The vast majority of CDs were sold, not by SIB, but through financial advisors employed by Stanford-owned broker-dealer entities such as Stanford Group Company ("SGC") in the United States, Stanford Fiduciary Investment Services in Miami (which sold only to non-U.S. customers and thus was not required to follow SEC disclosure regulations), Stanford Bolsa Y Banca S.A. in Mexico, and Comisionista De Bolsa in Columbia.[15] Most CD purchasers never saw an SIB employee, and instead dealt only with their financial advisor, who, to them, was the face of the Stanford companies, including SIB.[16] "High-rollers" – potentially large investors – were given trips to Antigua as an incentive for them to invest, but in almost all instances, they were first "hooked" by a financial advisor, who would receive a commission if the sale occurred. SIB had few sales to "walk-up" customers.

CDs were sold to people from all over the world, although in terms of dollar amount, there were more sales to U.S. citizens (37% based on most recent statement mailing address) than to citizens of any other country.[17] Moreover, Stanford financial advisors located in the U.S. accounted for 42%-44% of all CD sales in 2007 and 48% of sales in 2008 – far more

---

13 KVT-22, Doc. 21-19, at 807.

14 KVT-22, Doc. 21-19, at 803.

15 Doc. 21-20, at 16, ¶ 33.

16 Doc. 21-20, at 16, ¶ 34.

17 According to the Antiguan Liquidators, Venezuela was the only other country that approached the U.S. in terms of dollars invested in fraudulent CDs. *See* Affidavit of Nigel John Hamilton-Smith (filed in UK on 4-21-09), at 15, ¶ 49.6, attached as Exhibit D, Appx. 14-34.

than financial advisors in any other country.[18] By contrast, there were virtually no Antiguan CD investors – partly because Antigua is an impoverished island but also because Antiguan law prevents Antiguan-chartered "international" companies like SIB from serving Antiguans.[19]

Most of the CD revenue money bypassed Antigua entirely and went directly to accounts in Canada, the United States and England, from where it was disbursed among many other Stanford entities and accounts.[20,21] Investors who paid by wire transfer were instructed to wire funds directly to SIB's account at Toronto Dominion. Checks in U.S. dollars were mailed by financial advisors to Antigua, but did not stay there. Those checks were not deposited in Antigua – they were bundled and sent regularly to Trustmark in Houston for deposit.[22]

Corporate separateness was not respected within the Stanford empire. Cash management for all of SFG, including SIB, was handled in Houston, by a group headed by Patricia Maldonado.[23] SIB's principal bank accounts were at two Houston banks – Trustmark and Bank of Houston.[24] Money was transferred from entity to entity as needed, irrespective of legitimate business need. Ultimately, all of the fund transfers supported the Ponzi scheme in one way or another, or benefitted Allen Stanford personally. For example, Davis personally approved transfers of SIB investor funds to other Stanford entities of at least $115M simply "on

---

18 Doc. 21-20, at 5, ¶ 14.

19 *See* Doc. 21-20, at 6, ¶ 16.

20 Doc. 21-20, at 6, ¶ 17 & at 22, ¶ 48.

21 The only substantial funds deposited in Antigua was $9M in November and December 2008. Davis ordered these funds be sent to Bank of Antigua, even though SIB was experiencing a flood of CD redemptions akin to a "run on the bank." The timing of the transfers, as the Stanford empire crumbled, suggests the establishment of a "flight fund." Doc. 21-20, at 6 and 8, ¶¶ 16, 22(b) & KVT-7, Doc. 21-16, at 686-87.

22 Declaration of Karyl Van Tassel, Doc. 18 in case number 3:09-cv-00298, at 10, ¶ 28 & 11-12, ¶ 31; Doc. 21-20, at 22, ¶ 49.

23 Doc. 21-20, at 7-8, ¶ 22.

24 Doc. 21-20, at 30-31, ¶¶ 61, 62.

behalf of Shareholder" -- in other words, for Allen Stanford. These transfers were ultimately recorded on SIB's balance sheet as receivables from the Shareholder, Mr. Stanford.[25]

SIB managers in Antigua were so marginalized that they had no role in managing the Bank's two principal activities, selling CDs and investing (or otherwise disbursing) the proceeds. Sales and marketing were directed from the U.S. Little actual sales activity occurred on Antigua (principally, the previously mentioned entertainment of "high rollers"). Everything having to do with investments -- choosing them, managing the portfolio, and maintaining the investment records -- was handled by Jim Davis (who was Chief Financial Officer for SIB even though he officed in Tupelo and Memphis) and persons working under Davis in the U.S. and USVI, including Laura Pendergest-Holt.[26] SIB customers were sent marketing materials called SIB Quarterly Updates which were printed and mailed from the U.S.[27]

Every Ponzi scheme depends on misrepresentations concerning profitability and investment safety. In this case, the lies emanated from the U.S. False statements regarding SIB's financial strength, investment portfolio value, investment diversification and earnings were regularly issued from the U.S. for use by financial advisors, potential investors and regulators.[28] Investment values and earnings were pegged at whatever amounts were needed to give SIB acceptable financial performance and capital ratios.[29] Davis's office produced SIB's quarterly financial reports that had to be filed with the Antiguan Financial Services Regulatory

---

25 Other examples of corporate disregard include: the bribing of SIB's Antiguan auditor using funds from a Swiss bank account in the name of Stanford Financial Group (*see* fn 37, *infra*); the use of corporate funds (whose ultimate source was SIB deposits) to purchase fishing equipment, lures, hooks, diving gear, clothing and apparel, furniture, placemats and napkin rings, make-up, and various other personal items (*see* Oct. 28 Decl. of Jeff Ferguson and its exhibits, Doc. 858 in case no. 09-298) and Allen Stanford's payment of entity funds to lobbyists working to reduce his personal tax liability (*see* § 7 *infra*).

26 *See* Emails dated March 18, 2008 and March 27, 2008, Exhibit E, Appx. 35-41.

27 *See* Emails dated June 18, 2007 and July 29, 2008, Exhibit F, Appx. 42-45.

28 Doc. 21-20, at 5-6, ¶ 15.

29 Doc. 21-20, at 11, ¶ 24(b)(iv).

Commission ("FSRC"). According to Davis's guilty plea, these were delivered to an SIB officer in Antigua identified only as Executive A, who would then sign them (apparently despite a lack of personal knowledge) and deliver them to the FSRC.[30]

For most of its core operational needs, SIB relied on services provided by Stanford entities located in the U.S. or the USVI. The SIB's Antiguan payroll totaled approximately \$3.6M annually. By comparison, in 2008 alone, SIB paid other Stanford entities \$268M for a wide array of services, including cash management, investment management, and in-house legal services. Approximately 75% of this money went to Stanford entities headquartered in the U.S. and the USVI.[31]

The principal functions of SIB employees in Antigua were to keep the client accounting records, send out client statements (although the statements were actually printed and mailed from Puerto Rico), and perform certain private banking functions such as paying credit card bills for a small subset of clients. These limited duties served principally to give SIB a false appearance of legitimacy. Sending out client statements indicating CD balances is fundamentally deceptive when the assets backing the CDs are woefully inadequate. In other words, Stanford and his confidants used SIB and its Antiguan employees as instruments of fraud (perhaps unwitting instruments) to further the Ponzi scheme.[32]

SIB's top Antiguan officer was not even on SIB's payroll. The salary of president Juan Rodriguez-Tollentino was paid by Stanford Financial Group from the U.S. SIB was not even involved in processing the payroll for its non-management employees. That was processed

30 Doc. 50, at 43, ¶ 17(i).

31 Doc. 21-20, at 13, ¶ 30 & at 14-15, ¶ 32(a).

32 Doc. 21-20, at 13, ¶ 29.

by SFG employees in Houston and paid from an SIB account located at Trustmark Bank in Houston.[33]

Admittedly, the small island nation of Antigua (population 86,000, per capita GDP $19,400[34]) had a role in the Ponzi scheme. While Antigua was neither its "nerve center" or "activity center," it did provide a compliant and lax environment in which Stanford could operate his sham bank. With local building projects and large loans to the Antiguan government (at least $80M, and perhaps more, of fraudulently-obtained investor funds), Allen Stanford was able to purchase the goodwill of the Antiguan government, along with Antiguan citizenship (without surrendering his U.S. citizenship) and an Antiguan knighthood. With bribes, Stanford purchased the complicity of Antigua's top international bank regulator, Leroy King, as well as a second as-yet unidentified official of the FSRC.[35] And King did not just "look the other way"; he actively supported the Ponzi scheme by, among other things, allowing Stanford's in-house lawyer to draft the FSRC's response to inquiries from the Eastern Caribbean Central Bank.[36]

Stanford also bribed SIB's Antiguan independent auditor, Charlesworth Hewlett, with payments from a Stanford Financial Group Swiss account.[37] Hewlett conducted his audits exclusively in Antigua, even though there were virtually no source records for investments or investment income for him to review there. That did not prevent him, however, from issuing

---

33 Doc. 21-20, at 18, ¶ 38.

34 CIA World Fact Book, https://www.cia.gov/library/publications/the-world-factbook/geos/ac.html.

35 Doc. 50, at 45- 46, ¶¶ 17(o)-(w).

36 08/01/06 email from Mauricio Alvarado re FSRC Antigua and enclosed letter from LeRoy King to Eastern Caribbean Central Bank, actually drafted by Alvarado, attached as Exhibit G, Appx. 46-50.

37 *See* Supplemental Declaration of Karyl Van Tassel, KVT-23, KVT-24, KVT-25, Doc. 42; filed in case no. 3:09-cv-00721-N. On May 19, 2008 Jim Davis emailed a Swiss bank, instructing the bank to increase monthly payments to Hewlett from £15,000 (approximately $29,000) to £20,000 (approximately $39,000) effective June 15, 2008. These payments, which were over and above Hewlett's audit fees, were made from a Societe Generali (SocGen) account in the name of Stanford Financial Group, the umbrella name for Stanford's entire empire. While Mr. Hamilton-Smith describes SFG as a mere "concept" and not a separate legal entity, it was certainly real enough to bribe on behalf of SIB.

clean audit reports, year after year.[38] Having co-opted SIB's regulator and its (supposedly) independent auditor, Stanford was able to perpetrate his scheme without interference.

2. The Fifth Circuit applies the alter ego corporate disregard doctrines in determining "principal place of business." Consistency and logic require that the same rules be followed for COMI purposes.

a. "When two corporate entities act as one, or are in fact one, they should be treated as one for jurisdictional purposes."

Appropriately, the first topic on which the Court requested additional briefing was the applicability of corporate-disregard doctrines. The Antiguan Liquidators assert that corporate disregard doctrines such as alter ego are used only to impose liability on shareholders or parent companies and are therefore irrelevant to the issue of COMI. AL's 2d Supp. Brief, Doc. 55, at 17. They are wrong. For more than twenty-five years, the Fifth Circuit has applied corporate disregard doctrines in determining both diversity subject-matter jurisdiction (i.e., the "principal place of business" analysis) and personal jurisdiction.[39] *Freeman v. Nw. Acceptance Corp.*, 754 F.2d 553, 558 (5th Cir. 1985) (Oregon parent corporation with Oregon presence nonetheless held to be citizen of Colorado for diversity purposes because it was the alter ego of its subsidiary, a Colorado corporation).

"When two corporate entities act as one, or are in fact one, they should be treated as one for jurisdictional purposes." *Id.* at 558. In determining "principal place of business," courts within the Fifth Circuit should "refuse[] to elevate form over substance." *Id.* at 557.[40]

---

[38] *See* KVT-24, Doc. 42, at 7.

[39] "[I]t would be irrational to hold that a parent and a subsidiary have been fused for purposes of in personam jurisdiction ... but remain separate for purposes of subject matter jurisdiction. Recognizing fusion as fusion for all jurisdictional purposes makes good sense." *Freeman v. Nw. Acceptance Corp.*, 754 F.2d 553, 558 (5th Cir. 1985).

[40] In the case of diversity jurisdiction, the alter ego doctrine is applied to defeat diversity, not to preserve it. For example, in *J.A. Olson,* 818 F.2d at 401, the plaintiff, an Illinois corporation, with its principal place of business in Mississippi, argued that diversity existed between itself and the Mississippi defendant because it was the alter ego of its parent company, whose principal place of business was in Illinois. In keeping with the rule that diversity jurisdiction is narrowly applied, the Fifth Circuit held that the plaintiff could not assert its own status as an alter ego to establish diversity. *Id.* at 413.

Courts "[should] not permit themselves to be blinded or deceived by mere forms of law, but, regardless of fictions, ... deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require." *Id.* (quoting *Chicago, Milwaukee, & St. Paul Ry. Co. v. Minneapolis Civic & Commerce Assoc.*, 247 U.S. 490, 501, 38 S. Ct. 553, 557 (1918). A court, therefore, "[sh]ould accomplish whatever piercing and adjustments [it] consider[s] necessary to protect the court's jurisdiction." *Panalpina Welttransport GmBh v. Geosource, Inc.*, 764 F.2d 352, 355 (5th Cir. 1985).

b. The same approach applies in determining COMI.

Courts have recognized that COMI generally equates to "principal place of business." *In re Bear Stearns High Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 129 (Bank. S.D.N.Y. 2007); *In re Tri-Cont'l Exch. Ltd.*, 349 B.R. 627, 634 (Bankr. E.D. Cal. 2006).[41] Given that parallel, it would be illogical and inconsistent not to apply alter ego doctrines in determining COMI. In fact, in the most apt Chapter 15 opinion to date, *In re Ernst & Young, Receiver*, 383 B.R. 773 (Bankr. D. Colo. 2008), the alter ego doctrine was applied for that very purpose. *Ernst & Young*, like the present case, involved a multi-jurisdiction, multi-entity fraudulent investment scheme (the opinion does not use the term Ponzi, but its description of the scheme sounds very similar to the Stanford Ponzi scheme, although smaller). The court treated the entities involved in the scheme as "one for purposes of perpetrating a fraud on investors." *Id.* at 781.

The Friedmans, husband and wife, resided in Canada, when they formed, under Canadian law, an investment company named KDI that purported to sell investments in real

[41] *See also* Jay L. Westbrook, *Chapter 15 At Last*, 79 Am. Bankr. L.J. 713, 719 (2005) ("Chapter 15 was drafted to follow the Model Law as closely as possible, with the idea of encouraging other countries to do the same. One example is use of the phrase 'center of main interests,' which could have been replaced by 'principal place of business' as a phrase more familiar to American judges and lawyers.")

estate syndicates. Through subsidiaries, KDI raised funds from investors in the United States, Israel and Canada. By far, most of the proceeds – 88% – were raised by KDI's U.S. subsidiary, KD/CO. As it turned out, the Friedmans were siphoning off much of the investment money as it came in. The fraud was discovered by Canadian regulators, who shut it down by obtaining a freeze order from an Alberta court and later, from the same court, an order appointing Ernst & Young as a common law receiver over KDI and its subsidiaries. *Id.* at 774-76.

Ernst & Young filed a Chapter 15 petition for recognition in bankruptcy court in Colorado, where KD/CO had been incorporated and had its offices. The Colorado Commissioner of Securities opposed the application on the ground that the COMI of KD/CO was in the United States because it was incorporated there and most of the fraud had been committed in the U.S. The bankruptcy court rejected the Commissioner's argument and held that KD/CO's COMI was in Canada, from where the fraud had been directed. According to the court, "there is a reasonable probability KDI and KD/CO were operated as one for purposes of perpetrating a fraud on investors." 383 B.R. at 781. "[T]here was no real business being operated out of either entity. Rather, the creation of both KDI and KD/CO was part of a fraudulent scheme." 383 B.R. at 780. "The driving force behind both entities was the Friedmans. ... [T]hey formed their fraudulent organizations(s) and directed the operations ... from Canada." *Id.*

Similar observations can be made about Stanford's control of SIB from the U.S.

c. Under either state law or federal common law, the corporate fiction is disregarded when the corporate form is used to perpetrate fraud.

The Antiguan Liquidators correctly point out that the Texas Supreme Court, in *SSP Partners v. Gladstrong Inv. (USA)*, 275 S.W.3d 444, 454 (Tex. 2008), held that there is no separate "single business enterprise" corporate disregard doctrine in Texas. Rather, the grounds for disregarding the corporate fiction in Texas remain those described more than twenty years ago in *Castleberry v. Branscum*, 721 S.W.2d 270, 271-72 (Tex. 1986). As a reminder of what those are, the court quoted from *Castleberry*:

> *We disregard the corporate fiction even though corporate formalities have been observed and corporate and individual property have been kept separately, when the corporate form has been used as part of a basically unfair device to achieve an inequitable result.* Specifically, we disregard the corporate fiction:
>
> (1) *when the fiction is used as a means of perpetrating fraud*;
>
> (2) *where a corporation is organized and operated as a mere tool or business conduit of another corporation*;
>
> (3) *where the corporate fiction is resorted to as a means of evading an existing legal obligation*;
>
> (4) where the corporate fiction is employed to achieve or perpetrate monopoly;
>
> (5) where the corporate fiction is used to circumvent a statute; and
>
> (6) *where the corporate fiction is relied upon as a protection for crime or to justify a wrong.*

Id.; 275 S.W.3d at 454 (emphasis added). The four grounds emphasized by italics apply directly to the Stanford scheme.

Federal common law, as applied in the Fifth Circuit, holds the same.

> . . . [C]ourts will apply the alter ego doctrine and hold a parent liable for the actions of its instrumentality in the name of equity when the corporate form is used as a "sham to perpetrate a fraud." In making an alter ego determination, a court is "concerned with reality and not form, [and with] how the corporation operated." Unlike the theory of agency, which interprets a contractual relationship, alter ego examines the actual conduct of the parent vis-à-vis its subsidiary.

Bridas S.A.P.I.C., 447 F.3d at 416 (internal citations omitted).[42] The kind of fraud or illegal

[42] The Antiguan Liquidators appear to contend that Antiguan law governs this question, although they cite nothing for this proposition. It is worth noting, however, that English common law, which Antigua purports to follow, also calls for the corporate form to be disregarded when it is used to perpetrate fraud. *See e.g., Kensington*

purpose that justifies disregarding the corporate veil "is present where incoming revenues are directed away from an undercapitalized corporation and into the hands of the controlling party." *Id.* at 420 (quoting with approval, *Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 188, 198 (3d Cir. 2003)).

Federal common law and state law regarding the corporate disregard doctrines are substantively the same. The Fifth Circuit made that point in *Jon-T Chemicals*. "Here, we find no need to determine whether a uniform federal alter ego rule is required, since the federal and state alter ego tests are essentially the same. Our non-diversity alter ego cases have rarely stated whether they were applying a federal or state standard, and have cited federal and state cases interchangeably." 768 F.2d 690, n. 6.[43]

Ponzi schemes fit precisely the alter ego and "sham to perpetrate a fraud" grounds for disregarding the corporate fiction. This is illustrated by *Securities and Exchange Commission v. Resource Development International, LLC*, 487 F.3d 295 (5th Cir. 2007), which arose out of a Northern District of Texas SEC receivership involving a Ponzi scheme. The Fifth Circuit in that case affirmed the district court's holding that the corporate veil of a corporation named M&M should be pierced so that its owner, Martella, would be held liable for its acts. 487 F.3d at 303. "[D]efendant Martella utilized his control over defendant corporation M&M for an illegal purpose (violation of the Court's [stay] order) and to perpetuate a fraud [the Ponzi scheme that gave rise to the receivership]." 487 F.3d at 303.

Int'l Ltd. v. Congo [2006] 2 B.C.L.C. 296, 341-50 (Cooke, J.) (The Court should pierce the corporate veil where a group has been structured in a dishonest manner and used for a scheme of concealment.).

43 In another case, *SEC v. Res. Dev. Int'l,, LLC*, 487 F.3d 295, 302 (5th Cir. 2007), the Fifth Circuit pointed out that the term "alter ego" has come to be used "as a synonym for the entire doctrine of disregarding the corporate fiction." The court, quoting from an earlier Fifth Circuit case, grouped corporate disregard grounds into three instead of six, as *Castleberry* did, although the substance of the two cases is the same: "The corporate veil is pierced when: (1) the corporation is the alter ego of its owners or shareholders; (2) the corporation is used for an illegal purpose, and (3) the corporation is used as a sham to perpetrate a fraud." *Id.*

3. The Ponzi scheme activities were "far flung," SIB's Antiguan operations were "passive," and its "nerve center" and "place of activity" were both in the U.S.

As discussed above, Fifth Circuit precedent requires application of the alter ego corporate disregard doctrines in assessing SIB's principal place of business. In other words, the relevant principal place of business is that of the Stanford Ponzi scheme as a whole. Nevertheless, even if that precedent were disregarded and the Court instead were to apply the guidelines from *J.A. Olson Co. v. City of Winona,* 818 F.2d 401 (5th Cir. 1987) just to SIB, the conclusion would be the same: that SIB's COMI/principal place of business was in the U.S.

The Court is familiar with the *J.A. Olson* guidelines:

> The principal place of business begins with the general rules of these component tests: (1) when considering a corporation whose operations are far flung, the sole nerve center of that corporation is more significant in determining principal place of business, (2) when a corporation has its sole operation in one state and executive offices in another, the place of activity is regarded as more significant, but (3) when the activity of a corporation is passive and the "brain" of the corporation is in another state, the situs of the corporation's "brain" is given greater significance

818 F.2d at 411. However, these guidelines are "only a starting point. In each case, [the court] must fully examine the corporation's operations and its nerve center in the context of the organization of that business." *Id.* A court "should not obfuscate the ultimate quest ...; the issue is not the nerve center of a corporation or the place of activity of a corporation but, rather, the issue is the principal place of business of the corporation." *Id.* "[N]either the 'nerve center' nor the 'place of activity' test inflexibly dictates the corporation's principal place of business." *Id.* at 409. The court must base its decision on the totality of the facts. *Id.* at 406.

The totality of the facts of this case, whether analyzed under the "nerve center" or "place of activity" test, point to the same COMI/principal place of business for SIB: the U.S.

a. The Stanford Ponzi scheme was far-flung and managed from a central nerve center, the U.S.

The Antiguan Liquidators describe the facts of *J.A. Olson Co.* as "strikingly similar" to those of this case. They are anything but that. The J.A. Olson Co., a Mississippi-incorporated subsidiary of an Illinois company, operated a picture frame manufacturing business in Mississippi. There was no hint of fraud in the case. J.A. Olson's Mississippi facility was a real factory that turned out a real product. In contrast, SIB's rented ersatz-Georgian-style bank building in Antigua was a front for a Ponzi scheme.

A far more analogous case, even though it does not involve fraud, is *Toms v. Country Quality Meats, Inc.*, 610 F.2d 313 (5th Cir. 1980). Country Quality Meats was a Delaware corporation qualified to do business in Georgia. Georgia was the location of its only place of business, all of its assets and all of its employees. However, it was one of 60 sister corporations, all owned by the same shareholders, that operated as meat supply companies. Each had its own local management for daily operations but received support and overall management services under separate contract from the same management firm, B&W, located in Texas. B&W had the power to transfer employees of the corporations to its own payroll, provided legal services to the corporations, formulated aspects of business policy, furnished lists of outlets from which the corporations could purchase meat, managed a blanket insurance policy covering all of the corporations, and provided the corporations with low-interest start-up financing. 610 F.2d at 315. The Fifth Circuit held that "given all these factors, Country Quality's principal place of business was in Texas." 610 F.2d at 316.

> While it is true that Georgia was where this corporation came into contact with the public, where the daily activities of the corporation occurred, and where its tangible assets were located, we find that *the activity which occurred in Texas was more significant because Country Quality was essentially run from there.*

Id. at 315. (Emphasis added.)

Seven years later, the Fifth Circuit in *J.A. Olson* relied on *Toms v. Country Quality* in crafting the "far flung" prong of its "principal place of business" guidelines:

> The scenario [in *Toms v. Country Quality*] was similar to that of a "far flung" corporation with a concentrated nerve center and diffuse places of activity. Country Quality's operations represented only a single location of the many locations of the corporate activities; the nerve center, however, was in one location. We therefore held that the principal place of business was Texas, the "nerve center" of the operation.

818 F.2d at 411.

SIB's operations were far-flung in the same way that Country Quality Meat's were. And just as Country Quality Meats was "run from Texas," SIB was "run from the U.S." Indeed, as an "international" bank, SIB was prohibited by Antiguan law from serving Antiguans. It could only serve people from other countries. Moreover, SIB's business model (if it can be called that) was not to function as a normal commercial bank, but instead to sell CDs throughout the world. SIB was then to generate a profit (again, this is the fictional version) by investing the sales proceeds and astutely managing the investments so that they returned more than the interest that it paid its customers. SIB, however, never had a sales staff or investments staff in its own name. These activities occurred in numerous places outside of Antigua through other Stanford-owned entities. The sales effort was coordinated from the U.S., with sales offices (brokerages) located across North, Central, and South America, as well as Europe. The investment function was handled under the direction of Stanford and Davis, from Tupelo, Memphis, Houston and Miami.[44]

[44] Email dated August 10, 2007 from F. Palmliden to K. Weedon, attached as Exhibit H, Appx. 51-54

b. SIB was passive. It was a sham used by Stanford and others for their fraud scheme.

SIB was a sham used by Stanford and his confederates to commit fraud. Its Antiguan managers had little or no authority over its principal activities of selling CDs and investing the proceeds. Worse yet, they were passive in the face of clear indications that the Bank was being misused.

No real bank president would have tolerated being denied a role in the management of the vast majority of his or her institution's reported asset value. Yet Mr. Rodriguez-Tollentino, SIB's president, was apparently content with that situation. The only information given to him and the other Antiguan bank officers regarding SIB's investments was in the form of monthly summaries provided by Jim Davis.[45] However, detailed backup for the summaries was kept in the U.S., and not in Antigua, where it would have been subject to examination by the FSRC in the event Stanford's people on the inside lost control of the agency's examination staff or left the agency.

It had to be apparent to higher-ranking SIB officers in Antigua that this was no benign division of labor. If nothing else, the internal audits should have alerted them that something was wrong. The audits were shams because the auditors were prohibited from seeing, much less auditing, source documents and detailed backup for 90% of SIB's assets. They had to take Davis's summaries at face value. Their audits merely compared investment values contained on SIB's financial statements against the summaries provided by Davis. Of course, the comparisons invariably matched, but that provided no audit assurance as both were fabricated by the same person.

This is a sampling of statements from SIB internal audit reports that went to

[45] Doc. 50, at 44-45, ¶¶ 17(j)-(n).

Rodriguez-Tollentino and others in Antigua:

- "On this occasion, we did not review supporting documentation for the investments and investment income accounts."[46]

- "The audit process for the investment portfolio solely consisted of tracing the account balances from the trial balance to the account balances as presented on the balance sheet as of March 31, 2006."[47]

- "Investment Portfolio . . . Account in good order. Investment account was expressed and recorded as per summary analysis reported by CFO office."[48]

The bank officers' acceptance of this situation can only be described as "hear no evil, see evil."

Similarly, in response to the Receiver's evidence that SIB paid $268M in fees to other Stanford subsidiaries in the U.S. in 2008, compared to a total payroll of less than $4M for SIB's Antiguan staff, Mr. Hamilton-Smith responded that the $268M was a gross overcharge.[49] While far more activity occurred in the U.S. and USVI than in Antigua, Mr. Hamilton-Smith may well be right that $268M was excessive. After all, this was not a legitimate setup; it was a Ponzi scheme designed to flow money to Stanford in various ways. But this just emphasizes the iron-grip control exercised by Stanford and his confederates in the U.S. and the passivity and impotence of SIB's Antiguan management. If SIB's Antiguan managers had been real bank officers with real authority, they would have protested the arrangements and demanded different terms.

---

46 KVT-13, Doc. 21-17, 1-6, at 714.

47 KVT-14, Doc. 21-17, 7-24, at 726.

48 KVT-12, Doc. 21-16, 12-25, at 705.

49 Second Affidavit of Nigel John Hamilton-Smith (filed in the UK on 5-15-09), at 9-10, ¶ 20(viii), attached as Exhibit I, Appx. 55-84.

4. **It does not matter that there were inter-company "contracts" that purported to make the Stanford broker-dealer entities agents for SIB in the sale of CDs. There was no substance to the contracts as all the entities involved were instruments of Stanford's fraud.**

The Antiguan Liquidators point out that the Stanford broker-dealer subsidiaries were under contract to SIB and that the contracts specified that the financial advisors were only agents of SIB with no authority to bind it. In addition, prospectuses stated that the CDs were obligations of SIB and not of the broker-dealer subsidiaries. In other words, the paperwork was made to look reassuringly like the documents of a real financial institution. The problem was, SIB was not a real financial institution. There was no real substance to the inter-company contracts and the verbiage contained in the prospectuses, since all of the Stanford entities, SIB included, were part of the same Ponzi scheme, puppets of the same puppeteer.

Under such facts, the "paperwork" defense does not apply. In determining "principal place of business," a court is "concerned with reality and not form, [and with] how the corporation operated. Unlike the theory of agency, which interprets a contractual relationship, alter ego examines the actual conduct of the parent vis-à-vis its subsidiary." *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (internal citations omitted).

5. **Public policy concerns require that the Antiguan Liquidators' application for recognition be denied or else their recognition be restricted to non-main status.**

Chapter 15 contains a public policy exception:

> Nothing in the chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

11 U.S.C. § 1506. The facts warrant application of the public policy exception here. The very agency that first appointed the Antiguan Liquidators and then obtained their confirmation from the Antiguan court was complicit in Stanford's fraud. That same agency has allowed financial

fraud to flourish on Antigua for decades. It would be contrary to public policy for this Court to cede to Antigua the winding up of a company that bilked Americans and others out of billions when it was Antigua that permitted the fraud.

We now know that Stanford was able to commit his fraud because he was abetted by high-ranking Antiguan officials. Jim Davis's guilty plea says that Leroy King, head of the FSRC, and another unidentified FSRC official were bribed by Stanford.[50] The revealing letters that the Receiver has found between King and Stanford suggest Davis is correct. Indeed, the Receiver has found where King went so far as to permit Stanford's in-house attorney to draft the FSRC's response to an inquiry about SIB from the regional central bank, the East Caribbean Central Bank.[51]

It would be naïve to suppose Stanford had only two Antiguan officials on the payroll. Antiguan Attorney General Justin Simon essentially conceded there were more when he told the press this week that "the scope of the ongoing investigations into the FSRC may very well see other people in Antigua and Barbuda being implicated."[52] He was probably referring to actions that he anticipates the U.S. Department of Justice taking. To date, the Antiguan authorities have done little themselves. The Antiguan government's principal actions have been to appoint the Antiguan Receivers/Liquidators, expropriate Stanford lands, and revoke Stanford's knighthood. There have been no Antiguan indictments and Antigua's consideration of the DOJ's request for King's extradition to the U.S. has lingered for months.

The collapse of SIB is just the latest chapter in a long history of financial fraud schemes involving Antigua. According to the U.S. State Department's website,

---

50 Doc. 50, at 45-46, ¶¶ 17(p)-(s)

51 Doc. 50, at 46-47, ¶¶ 17(t)-(w)

52 *Attorney General Hints at Widening Net in Stanford Case,* Staboeck News, June 30, 2009, http://www.stabroeknews.com/2009/regional/06/30/attorney-general-hints-at-widening-net-in-stanford-case/ (last visited December 17, 2009).

> [C]oncerns over the lack of adequate regulation of the financial services sector prompted the U.S. Government to issue a financial advisory for Antigua and Barbuda in 1999. The advisory was lifted in 2001, but the U.S. Government continues to monitor the Government of Antigua and Barbuda's regulation of financial services.[53]

Unfortunately, this small island nation (population about 80% that of Waco, Texas) has continued to churn out major financial scandals. These have included: European Federal Credit Bank (Eurofed Bank) (closed in 2001, after it became known that former Ukrainian Prime Minister Lazarenko, the majority owner of the bank, was using it to launder money[54]); Bank of Europe (closed in 2004; was a scam to "solicit[] funds from investors with promises of high rates of return over short investment periods." Losses totaled more than $250M[55]); Caribbean American Bank (closed after principals were convicted in the U.S. of running a loan scam that defrauded investors of more than $60 million[56]); BetonSports (an illegal internet gambling scam regulated by the FSRC that was closed in 2006[57]).[58]

A second public policy concern exists. The inconsistency between the Antiguan Liquidators' obligation not to disclose information, imposed on them by the Antiguan

---

[53] U.S. Department of State, http://www.state.gov/r/pa/ei/bgn/2336.htm (last visited December 17, 2009).

[54] *U.S. v. Lazarenko*, 476 F.3d 642, 645 (9th Cir. 2007); Matt Smith, *Cleaning House*, San Francisco Weekly, October 10, 2001, *available at* http://www.sfweekly.com/2001-10-10/news/cleaning-house/ (addressing Lazarenko's use of European Federal Credit Bank to launder funds).

[55] *Mazzaro de Abreu v. Bank of Am. Corp.*, 525 F. Supp. 2d 381, 384 (S.D.N.Y. 2007).

[56] *See 13 Sentenced in Largest Non-Drug Money Laundering Case Ever Conducted by U.S. Customs*, U.S. Custom Service, January 10, 2001, http://www.cbp.gov/hot-new/pressrel/2001/0111-01.htm (last visited December 17, 2001); *U.S. v. Petrie*, 302 F.3d 1280, 1284 (11th Cir. 2002) (affirming conviction of one of the 13 convicts).

[57] *U.S. v. BETONSPORTS PLC*, 2006 WL 3257797 (E.D. Mo., Nov. 9, 2006).

[58] Perhaps more telling of the corrupt nature of the Antiguan financial sector is the story of the indictment of William Cooper for his involvement in the Caribbean American Bank fraud. Following Cooper's indictment in Florida, he was arrested by the Antiguan authorities. Michael Allen, *Antigua Makes Arrest in Florida Case in Apparent Effort to Placate the U.S.*, Wall Street Journal, May 21, 1999, at A1 1, Col. 1. The U.S. requested extradition of Cooper, which an Antiguan court denied and ordered Cooper released. *Cooper v. Attorney General*, Civil Suit No. ANUHCV2002/0228, High Court of Justice, Jan. 13, 2003, available at http://www.oas.org/juridico/Mla/en/atg/en_atg-ext-juris-wc.pdf. In rejecting the extradition, the judge ruled that (1) the extradition treaty with the U.S. was not properly passed by the Antiguan parliament; and (2) the offense of money laundering was not a crime in Antigua until May 28, 1998, after the alleged acts of the defendant occurred. *Id.* at para. 30.

appointment order, and the obligation they would necessarily undertake to provide information to the SEC and the DOJ in the event this Court were to name them SIB's representatives in the U.S. The Receiver, SIB's current representative, is obligated by this Court's Receivership Order to "[p]romptly provide the Commission and other governmental agencies with all information and documentation they may seek in connection with its [sic] regulatory or investigatory activities."[59] The Antiguan Liquidators could not comply with that same requirement because the Antiguan order under which they serve prohibits "disclosure of customer specific information ... without further order of the [Antiguan] Court; and ... [any] disclosure of information ... to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations."[60]

This prospect of conflicting obligations is not just an abstract concern. It came to the fore in Canada. The Antiguan Liquidators, in what they referred to as "Operation Blue Water" – without seeking advance court authorization in Canada or advising either the Receiver or the AMF, the Quebec financial regulatory agency investigating SIB's collapse – entered the Montreal offices of SIB, copied all SIB computers and servers there, then erased the computers and servers and sent the copied data out of Canada, to Antigua.[61] When the AMF learned of this, it demanded the immediate return of the data. Vantis responded that they were not authorized by the Antiguan court to return it.

This situation was addressed by the Quebec court during the hearing on competing recognition motions filed by the Receiver and the Antiguan Liquidators.[62] Based on

---

59 Amended Order Appointing Receiver, Doc. 157, ¶ 5(k).

60 Antiguan order of appointment, Doc. 3, at 23-24, ¶ 12.

61 The Receiver presumes this effort was called Operation Blue Water because the objective was to place a large expanse of blue water between the data and the Canadian regulator.

62 The Receiver, in addition to moving for recognition himself, also moved to vacate the previous recognition order that the Antiguan Liquidators had obtained *ex parte* when the Antiguan proceeding was still a receivership.

the evidence, the Quebec court found that the Antiguan Liquidators' conduct was so reprehensible that they could not be trusted to serve as officers of the Canadian court.

> What motives -- unspoken and unspeakable -- justify the Blue Water operation, i.e., destroying the originals, making imaged copies, before even obtaining Court authorization and moving all information out of the country to Antigua?
>
> The Court concludes that Vantis' conduct, through the [Antiguan Liquidators], disqualifies it from acting and precludes it from presenting the motion [for recognition], *as it cannot be trusted by the Court. ...*
>
> Even if the liquidators' motion was well-founded on the merits, *it does not deserve the confidence of the Court*, an essential element enabling it to submit its motion, and this, because of *the absence of good faith and of respect towards the Canadian public interest*, represented by the Court and the regulatory authorities.[63]

The Quebec court also labeled "blatant and inexcusable" the Antiguan Liquidators' actions in obtaining an ex parte recognition order from a Canadian registrar (a judicial official authorized to act only in uncontested matters) without first notifying either the Receiver or the AMF and by failing to advise the registrar of "key information" affecting the right of recognition, including the existence of this receivership.[64]

The Antiguan Liquidators moved for leave to appeal the Quebec judgments (there is no appeal of right), but their motion was denied. The Quebec judgments and the findings contained in them are final.

To recognize Antigua as the jurisdiction principally responsible for winding up SIB would validate fraud, corruption and contempt for regulatory authority. That would be manifestly contrary to the public policy of the United States.

The Quebec court granted the motion and revoked the previous recognition order on the ground that it had been obtained improperly by withholding key information from the registrar and failing to notify the Receiver in advance. *See* Doc. 48, Exhibit E, at 62-82.

63 Quebec Judgment dismissing the Antiguan Liquidators' motion for recognition, Doc. 48, Exhibit E, at 80-81, ¶¶ 58-60 (emphasis added).

64 *Id.* at 77-78, ¶¶ 39-43.

6. The UK trial court's judgment (currently on appeal), which the Antiguan Liquidators want this Court to follow, cannot be followed because it expressly rejected U.S. Chapter 15 case law.

The Antiguan Liquidators repeat their argument that in deciding SIB's COMI, the court should consider only what was "ascertainable" to third parties. Stated another way, they ask the Court to give continuing effect to the Stanford-created illusion that SIB was a legitimate stand-alone bank. Chapter 15, however, contains no "ascertainability" requirement. Further, applicable U.S. case law would not countenance such a result, much less require it. The common theme of U.S. case law regarding "principal place of business," which should guide the Court in deciding the COMI issue, is that reality controls over fiction, substance controls over form.

The Antiguan Liquidators cite two U.S. cases for their "ascertainable" proposition, *In re Tri-Cont'l Exch. Ltd.*, 349 B.R. 627 (Bankr. E.D. Cal. 2006) and *In re Bear Stearns High Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 129 (Bankr. S.D.N.Y. 2007). Neither does more than mention in passing that the reporter notes of the failed European Union Convention[65] describe COMI as "the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties." *Tri-Continental*, 349 B.R. at 634; *Bear Stearns*, 374 B.R. at 129. This quote was dictum in that it did not form the basis for the court's decision in either case. Further, in cases such as this one, the Antiguan Liquidators' interpretation of this sentence perverts the meaning of "center of main interests." By giving exclusive effect to the last phrase, "ascertainable by third parties," it gives no effect to the first and more important phrase, "the place where the debtor conducts the administration of his interests on a regular basis." The Antiguan Liquidators in effect read the

[65] The European Union Convention was to be an agreement among the member states of the EU addressing which state was to be the venue of insolvency proceedings for debtors within the EU. It was not intended to be a cross-border statute that would govern insolvencies between EU and non-EU countries. Although the EU members failed to reach agreement on the Convention, the EU did later promulgate an insolvency regulation roughly based on the principles of the Convention. *In re Betcorp Limited*, 400 B.R. 266, 277 n. 14 (Bankr. D. Nev. 2009).

sentence as if it says that a debtor's COMI is where the debtor "*appears* to conduct the administration of its interests." But the sentence does not say that. Neither *Tri-Continental* nor *Bear Stearns* can be read to suggest that, when a given country's role was to front for a fraud scheme controlled and operated from the U.S., the court should find the debtor's COMI to be in the fronting jurisdiction and not in the U.S.[66]

The Antiguan Liquidators urge this Court to adopt the UK trial court's reasoning that SIB's COMI was in Antigua because of "objective and ascertainable" facts such as the presence in Antigua of a bank building, purported officers, and employees. Their position that this Court should follow the UK trial court is particularly ironic given that the UK trial court, *at the Antiguan Liquidators urging*, disregarded U.S. case law construing Chapter 15. The UK trial court instead adopted the Antiguan Liquidators' interpretation (with which the Receiver disagrees) of the European Court of Justice opinion in *In re EuroFood IFSC Ltd.*, 2006 E.C.R. I-3813.[67] The UK trial judge did so even though Chapter 15 and the English Cross-Border Regulation are virtually identical, and the EU Insolvency regulation construed in *EuroFood* is considerably different from both and even has a different function.[68]

According to the UK trial judge:

---

[66] In *Tri-Continental*, the court held that St. Vincent and the Grenadines (SVG) was the COMI of three fraudulent insurance companies that were formed in and at all times operated from SVG. The fraudster behind it all, although a U.S. citizen, had fled the U.S. years before to avoid charges based on a previous scheme. Then, during a ten year period, he launched and ran a new scheme from SVG. Unlike SIB, the fraudster's three SVG insurance companies were not part of a larger financial services empire headquartered in the U.S. 349 B.R. at 629-31. In *Bear Stearns*, the court held that the COMI of two Cayman Island-chartered hedge funds was in the U.S., from where they had been managed. 374 B.R. at 129-130.

[67] The Receiver disagrees that the *Eurofood* opinion would require a court to disregard outright fraud in determining a debtor's COMI, even under the EU insolvency regulation. There is no indication in the opinion that the Irish subsidiary at issue had been a sham to perpetrate a fraud. Although the parent company, Parmalat, was involved in a major financial scandal in Italy, the ECJ was silent about any involvement on the part of the Irish company. *In re EuroFood IFSC Ltd.*, 2006 E.C.R. I-3813.

[68] Rather than being a true cross-border statute, the European Regulation instead determines which of the Member States of the European Union will have jurisdiction to handle the insolvency of a company doing business within the EU. It does not address insolvencies arising outside of the EU. *See* fn 56.

> According to *re Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd* the[] contacts [that establish COMI] can include the location of the debtor's headquarters, the location of those who actually manage the debtor, the location of the debtor's primary assets, the location of a majority of the debtor's creditors or of a majority of creditors who would be affected by the case and the jurisdiction whose law would apply to most disputes. However, none of these factors in American jurisprudence is qualified by any requirement of ascertainability. In my judgment this is not the position taken by the ECJ in *Eurofood*.[69]

Rejecting American jurisprudence in favor of the Antiguan Liquidators' interpretation of *Eurofood*, the UK court was led to an astounding conclusion: "The location of the principal movers of the fraud (Sir Allen, Mr. Davis and Ms. Pendergest-Holt) … in the USA," because it was not "ascertainable by third parties," was irrelevant – so irrelevant that their presence in the USA did not even rebut the COMI presumption based on where SIB was chartered.[70]

Lest the Court get the misimpression that the UK trial judge was expressing bedrock English law, it should be pointed out that this was the first truly contested case applying the English Cross-Border Insolvency Regulation.[71] In an article published soon after the decision, one of the UK's more prominent insolvency practitioners questioned the logic of the decision:

> In cases of fraud, … over-emphasis [on third-party ascertainability] risks letting a party win by dint of a factually erroneous presumption, thereby shoring up the fraudsters' house of cards and potentially turning the court into a vehicle of fraud. That is not sound reasoning; nor is it sound policy for the Model Law.[72]

---

[69] UK Judgment, Doc. 35, at 20, ¶ 67.

[70] Doc. 35, at 28-29, ¶¶ 98-99.

[71] Further, in arriving at his conclusion, the UK trial judge had to overrule one of his own earlier rulings, *Re Lennox Holdings Ltd*, [2009] BCC 155, in which he determined the COMI of two Spanish companies by applying a "head office functions" test. The court rejected its approach in the previous case. "I now consider that I was wrong to do so." Doc. 35, at 18, ¶ 61.

[72] Look Chan Ho, *Cross-Border Fraud and Cross-Border Insolvency: Proving COMI and seeking recognition under the UK Model Law*, 24:9 Journal of International Banking and Financial Law 537 (2009).

That, however, was precisely the effect of the UK judgment: It gave effect to Stanford's smoke and mirrors.

Fortunately, the Court's reasoning was sufficiently novel (or controversial) that the Receiver was granted leave to appeal (there is no appeal of right in such a case). The Court of Appeal heard five days of argument last month. The parties await a decision.

Not only did the UK trial court apply an incorrect legal standard (certainly incorrect under Chapter 15), it applied that standard incorrectly in view of the evidence. SIB's strong connection with the U.S. was not just ascertainable to third parties, it was loudly trumpeted by Stanford and his cohorts. SIB was never marketed as a stand-alone bank perched on the tiny island of Antigua. In virtually all materials, it was represented to be part of Stanford Financial Group, a global company headquartered in the U.S. Some of those materials are discussed above.[73]

The UK trial court's form-over-substance approach is antithetical to U.S. law. It is also contrary to Canadian law, as evidenced by the Quebec court's recent judgments denying the Antiguan Liquidators' application for recognition and granting the Receiver's. Although the Antiguan Liquidators' are correct that the Quebec court was not concerned with COMI, as the Cross-Border Model Law had not yet gone into effect there, the Quebec court did, though, base its decision on the location from which the fraud scheme was controlled – in effect, the scheme's "principal place of business."

> The Court is of the view that for Ponzi style frauds, the real and important connection is situated at the place of business of the nerve center or as one could call it, the center of the spider web of this fraud.

---

[73] *See* Declaration of David Henry, attached as Exhibit B, Appx. 5-8 (Stanford promotional videos were recorded in Houston, Texas).

> The importance of the nerve center in Houston is beyond dispute. The most equitable solution is that the Court recognize the receivership and Janvey, the United States Receiver, as foreign representative.[74]

The Quebec court's conclusion that Houston was the center of Stanford's spider web is the only one permitted by the evidence.

7. Stanford's residency and his Antiguan citizenship.

The Antiguan Liquidators try to make much of Stanford's Antiguan citizenship and Antiguan knighthood. Both should be regarded for what they were: products of the same purchased influence that allowed Stanford to conduct a sham banking operation in Antigua for 18 years.

The Antiguan Liquidators also point to J. Hittner's order finding that Stanford resided on Antigua for 15 years. The Receiver does not know in what sense J. Hittner used the term "resided." Stanford had company-owned residences available for his use in Houston, Miami, St. Croix and Antigua. However, the Receiver's investigation indicates that Stanford spent far less time in Antigua than he did elsewhere.[75]

The evidence at the hearing will show that during the initial years of the Ponzi scheme, Stanford resided within the continental U.S., in Texas and Florida. In 2007, he established his residency on St. Croix, part of the USVI, in order to take advantage of valuable tax benefits offered under USVI statutes. USVI law required Stanford to be physically present on St. Croix at least 183 days of the year in order to be eligible for the tax benefits. Stanford

[74] Exhibit C, Doc. 48, Quebec Judgment Granting Janvey Application, at 33, ¶¶ 35-36.

[75] The Receiver certainly does not differ with J. Hittner's bottom-line conclusion that Stanford was a flight risk. He still had friends and allies in the Eastern Caribbean, some of whom are now pursuing legal actions on his behalf. Moreover, on Davis's orders, $9M was transferred to the Bank of Antigua (not to SIB) in November and December 2008, as the scheme was collapsing and liquidity was much needed elsewhere. The timing suggests this money may have been intended as a flight fund. Also, Stanford's residence on St. Croix was irrelevant for J. Hittner's purposes. First, its location in a U.S. Territory made it unsuitable as a bolt hole. Second, by the time of the bond revocation hearing, the St. Croix property was unavailable to Stanford, because the Receiver already had possession of it.

carefully orchestrated his activities in 2007 and 2008 so as to meet this minimum requirement.[76] Further, the evidence will show that Stanford commissioned lobbyists to help him meet the residency requirement, either as it then existed, or by lobbying Congress or the Treasury Department to alter the requirement to make it easier to meet, and that Stanford spent corporate funds (largely traceable to SIB deposits) in an effort to reduce his personal tax liability.

Stanford and his girlfriend, Andrea Stoelker, also a U.S. citizen, lived in Christiansted, St. Croix, in a large colonial-era mansion titled in the name of one of the many Stanford corporations. This is where they kept their clothing and other personal effects.[77] They had maids, chefs, gardeners and around-the-clock guards. Stanford received his personal mail in Christiansted, at a post office box at the Gallows Bay Station post office. His personal staff – Executive Assistant Kye Walker and Personal Assistant Kelly Taylor – also resided on St. Croix and had offices in the colonial mansion that contained the Stanford living quarters. Christiansted was the home port of Stanford's yacht, the Sea Eagle, on which he spent much time. It is also apparent that Stanford intended St. Croix to be his long-term residence. He purchased a large estate in the countryside outside of Christiansted and, over the year preceding the scheme's collapse, had an existing mansion and various out-buildings on the property torn down to make way for the new home he planned to build.

8. Substantive consolidation is a red herring.

The Antiguan Liquidators again assert that the Receiver has not established that substantive consolidation is appropriate for the Stanford entities. A number of points need to be made regarding this argument:

---

[76] See Emails between A. Stanford and D. Hubener dated October 8, 2007, attached as Exhibit J, Appx 85-89.

[77] The evidence will show that Stanford's effects included 13 custom suits, 60 dress shirts, 21 pairs of black dress shoes, 9 pairs of brown dress shoes, and much more.

A recognition motion under Chapter 15 raises only a limited number of issues, substantive consolidation not being among them. For purposes of this case, the pertinent issues are (i) COMI and (ii) whether recognition of the Antiguan Liquidators would violate U.S. public policy. *See* 11 U.S.C. sec. 1506, 1517(a)(3)..

- Substantive consolidation is a bankruptcy concept and this is not a bankruptcy proceeding. It is an equitable receivership. Because of the Court's broad discretion, equity receiverships are well suited for sorting out complex fraud schemes such as the one perpetrated here. The Receiver's previous briefs to the court cite numerous cases in which equity receiverships have been used to wind up complex frauds.[78]

- If, as the Antiguan Liquidators assert, it would be unfair to SIB investors for their claims to be put on a par with the claims of creditors of other Stanford entities, then this Court can take that into consideration in approving a final distribution plan. If, at that time, the Court determines that it would be more equitable for some or all SIB investors to have first claim against assets, then the court can order claims classified so as to achieve that result.[79]

- Although the bankruptcy substantive consolidation standard cited by the Antiguan Liquidators does not apply, if it did, it would be satisfied here. Mr. Janvey and Ms. Van Tassel point out in their respective declarations that whether or not SIB creditors are given first claim on assets will have no practical significance, since SIB investor claims will comprise the vast majority of claims against the combined Stanford entities (Mr. Janvey estimates more than 90%). In addition, if each of the more than 100 Stanford entities were separately wound up, the added administrative expense of doing so would result in SIB investors getting less than they otherwise would. In other words, even if the Court chose not to give priority to SIB investors, the dilutive effect of including other claims would be more than offset by the administrative cost savings.[80] Moreover, as already discussed, corporate separateness was not respected within the Stanford Financial Group. Once funds entered the system, they were shunted around irrespective of legitimate business needs. In addition, a major marketing draw for SIB was its membership in the Stanford Financial Group, which purportedly saved costs and allowed SIB to pay higher interest rates. Stanford Financial Group was one ball of wax and it was portrayed as such to creditors.

---

78 *See* Response to Petition for Recognition, Doc. 20, at 32-36 & nn.15-16.

79 "The district court has broad powers and wide discretion in equitable distributions." *S.E.C. v. Great White Marine & Recreation, Inc.*, 428 F.3d 553, 556 (5th Cir. 2005). *See also Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 298 (6th Cir. 2009) ("[A] district court's decision relating to the choice of distribution plan for the receivership is reviewed for abuse of discretion.")

80 *See* Declaration of Ralph S. Janvey, Doc. 21 at 24-25, ¶ 14; Doc. 21-20, at 32-33, ¶ 65.

- Even in bankruptcy cases (of which this is not one), substantive consolidation is used for multi-entity Ponzi schemes. *See In re Bonham*, 229 F.3d 750, 763-71 (9th Cir. 2000) (affirmed the substantive consolidation of the bankruptcy estates of the Ponzi control person and the entities she manipulated in perpetrating the Ponzi scheme.); *In re Bennett Funding Group, Inc.*, 232 B.R. 565, 567 (Bankr. N.D.N.Y. 1999) (notes the substantive consolidation of the various corporations involved in the Bennett Funding Group Ponzi scheme.); *In re New Times Securities Services, Inc.* 371 F.3d 68, 73 (2d Cir. 2004) (notes that the various entities comprising the $33M New Times Ponzi scheme were substantively consolidated.); *In re Financial Federated Title and Trust, Inc.*, 347 F.3d 880, 882 (11th Cir. 2003) (notes that related entities involved in the $115M FinFed Ponzi scheme were substantively consolidated.); *In re Baker & Getty Financial Services, Inc.*, 106 F.3d 1255, 1258 (6th Cir. 1997) (notes that personal estates of the perpetrators of a "classic 'Ponzi' scheme were substantively consolidated with the three corporations they used to perpetrate the scheme.); *Sender v. Simon*, 84 F.3d 1299, 1302 (10th Cir. 1996) (notes that the three hedge-fund limited partnerships involved in a Ponzi scheme were substantively consolidated.); *Grassmueck v. American Shorthorn Association*, 365 F. Supp. 2d 1042, 1043 (D. Neb. 2005) (Notes that the bankruptcy court substantively consolidated the estates of 271 investment partnerships involved in a fraudulent cattle investment scheme, the personal estates of the fraudsters, and 31 other "assumed name" and alter ego entities.); *In re Midland Euro Exchange Inc.*, 347 B.R. 708, 711 (Bankr. C.D. Cal. 2006) (In case involving "massive Ponzi scheme" totaling more than $100M, the court substantively consolidated the estates of the three entities involved in the fraud, as well as the personal estates of the fraudsters who directed them.); *In re Apponline.com, Inc.*, 315 B.R. 259, 267 (Bankr. E.D.N.Y. 2004) (notes that three corporations involved in a Ponzi-type scheme were substantively consolidated with the estates of the fraudster who directed the scheme.); *In re Western World Funding, Inc., et al*, 54 B.R. 470, 472 (Bankr. D. Nev. 1985) (notes the substantive consolidation of five investment entities involved in a Ponzi scheme.).

CONCLUSION AND PRAYER

Accordingly, the Receiver requests that the court deny the Antiguan Liquidators all relief they seek under their Chapter 15 motion and accord them no rights in or over SIB's assets and affairs.

Dated: December 17, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

Kevin Sadler
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
Robert I. Howell
Texas Bar No. 10107300
robert.howell@bakerbotts.com
David T. Arlington
Texas Bar No. 00790238
david.arlington@bakerbotts.com
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039
(512) 322-2500
(512) 322-2501 (Facsimile)

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
2001 Ross Avenue
Dallas, Texas 75201
(214) 953-6500
(214) 953-6503 (Facsimile)

ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF SERVICE

On December 17, 2009, I electronically submitted the foregoing response with the clerk of court for the US District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
Kevin M. Sadler

Attachment 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD., ET AL. Defendants.	§ § § § § § § § §	Case No.: 03-CV-0298-N

DECLARATION OF
KARYL VAN TASSEL

I, Karyl Van Tassel of 1001 Fannin, Suite 1400, Houston, TX 77002 state on oath as follows:

EXPERIENCE, EXPERTISE, WORK IN THIS CASE

1. A copy of my resume is attached as exhibit **KVT-1**. It summarizes my education and relevant work experience. As it states, I am a Certified Public Accountant in the State of Texas, USA, and a Senior Managing Director of FTI Consulting, Inc. I have 24 years of experience providing a variety of audit, accounting, tax, litigation, valuation and other financial advisory services. I have performed detailed financial analyses for a variety of litigation matters, including securities, intellectual property, breach of contract, antitrust, lender liability, fraud and wrongful terminations. In the litigation context, I have acted as an expert on a variety of economic damage claims and forensic accounting issues. In several cases alleging fraud and other wrongdoing, I have traced funds for potential recovery. I have

also been retained by audit committees to assist in investigating allegations of accounting and financial improprieties.

2. The statements made in this declaration are true and correct based on the knowledge I have gained from the many documents I have reviewed and other work I and my team have performed in the course of FTI's investigation on behalf of the Receiver.

3. I use the following acronyms or short-hand terms to refer to certain entities in this declaration:

- Stanford Entities — all legal entities owned, directly or indirectly, by the named Defendants in the SEC action as of the date the U.S. Receivership was instituted.
- SIB — Stanford International Bank, Limited.
- STCL — Stanford Trust Company Limited, an Antigua trust company.
- SFG — Stanford Financial Group, the name given to Allen Stanford's "global network of financial companies."
- SGH — Stanford Group Holdings, Inc., a U.S. holding company incorporated in Delaware.
- SFGC — Stanford Financial Group Company, a U.S. entity incorporated in Florida.
- SFGGM — Stanford Financial Group Global Management, LLC, a U.S. entity incorporated in the U.S. Virgin Islands.
- SGC — Stanford Group Company, a U.S. broker-dealer entity incorporated in Texas.
- STC — Stanford Trust Company, a Louisiana trust company.
- SEI — SEI Private Trust Company.

SEC ACTION AND FTI'S INVESTIGATION

4. On February 16, 2009, the United States District Court for the Northern District of Texas appointed Ralph S. Janvey the Receiver for SIB and the rest of the Stanford

Entities. On the same day, the Receiver retained FTI to perform a variety of services, including assisting in the capture and safeguarding of electronic accounting and other records of the Stanford Entities and forensic accounting analyses of those records, including cash tracing. I oversee, and am personally involved in, FTI's forensic accounting and cash tracing activities. The purposes of FTI's work have been, in part, to (a) determine the roles that the various Stanford Entities played in the fraud alleged by the SEC and specifically in the sale and redemption of SIB certificates of deposit ("CDs"); (b) identify the source(s) of income of the various Stanford Entities; and (c) trace those funds to determine how they were allocated and disbursed throughout the Stanford Entities.

5. As part of our work, we have interviewed numerous present and former Stanford Entity employees. These include, but are not limited to, the persons whose names (as well as employer, title, and supervisor) are listed in **KVT-2**. In addition, we have examined the available accounting and other records relating to the Stanford Entities located in and/or gathered from Houston, Texas; Tupelo, Mississippi; Baldwyn, Mississippi; Memphis, Tennessee; Miami, Florida; St. Croix, United States Virgin Islands; Antigua; Barbuda; and other Stanford locations within and outside the U.S. We have also reviewed extensive SIB customer records, including but not limited to paper and electronic records documenting SIB CD purchases, interest payments and redemptions.

6. FTI has also obtained and analyzed paper and electronic files from third-party financial institutions where bank accounts of various Stanford Entities are located. These financial institutions include Toronto Dominion Bank in Canada, Trustmark National Bank and the Bank of Houston. In addition, FTI has gathered and reviewed electronic and other

data from Pershing, LLC and JP Morgan Clearing Corp., both of which hold SGC customer accounts, and SEI, which holds STC accounts.

FACTUAL BACKGROUND

7. Allen Stanford was sole owner, directly or indirectly, of more than 130 separate entities, including SIB and STC. These entities comprised a single commonly-owned financial services network called the "Stanford Financial Group," which was headquartered in Houston.

8. Stanford, along with a close band of confidantes, controlled SFG (of which SIB was a part). These confidants included Jim Davis, CFO of both SFG and SIB, and Laura Pendergest Holt, Chief Investment Officer for SFGC.

9. SIB was nothing like a typical commercial bank. It did not offer checking accounts and did not, in the normal course, make loans. It had one principal product line — certificates of deposit — and one principal source of funds — customer deposits from CD purchases. SIB offered three types of certificate of deposit accounts; Fixed CDs, Flex CDs, and Index-Linked CDs. The terms of some SIB CDs permitted partial redemptions before maturity upon customer demand.

10. Most, and perhaps all, of the Stanford Entities were part of the scheme alleged by the SEC or derived benefit from it. The Stanford Entities that were most closely involved with the sale and redemption of SIB CDs were (a) SIB, which issued the CDs and made purported interest and redemption payments to investors; (b) SGC, the broker-dealer whose financial advisors marketed and sold the CDs to investors; (c) STC, where customer accounts were established to hold the purchased SIB CDs as well as purported interest and redemption payments from SIB CDs; and (d) SFGC and SFGGM, companies that provided a broad range

of services, such as human resources, marketing, accounting and legal services, to SIB and SGC. Customer funds intended for the purchase of SIB CDs were deposited into SIB accounts and then disbursed among the many other Stanford Entities and related accounts.

11. Misinformation regarding SIB's financial strength, profitability, capitalization, investment strategy, investment allocation, the value of its investment portfolio, and other matters, was disseminated from Stanford, Davis, Holt and others working under them to Stanford financial advisors, intending for the brokers to use that misinformation to induce potential investors to purchase SIB CDs.

12. CD redemptions increased in late 2008 and early 2009 to the point that continuing CD sales could no longer cover purported redemptions, interest payments and normal operating expenses. This caused a rapid depletion of liquid assets. By the time the U.S. Receivership was instituted, SIB had already suspended redemptions for certain investors and many of the Stanford Entities had stopped paying many payables.

13. At the inception of the U.S. Receivership on February 16, 2009, the total principal amount of outstanding SIB CDs was approximately $7.2 billion (U.S.), according to SIB records. This $7.2 billion reflects a liability on the books of SIB, as it is owed to the investors. Although the SIB financial statements reflect investments valued at $8.3 billion (classified as assets) as of December 31, 2008, based on my analysis to date, the combined assets of all Stanford Entities (SIB included) for which we have financial records have a total value of less than $1 billion. SIB is insolvent and apparently has been for a considerable time.

14. Our analysis of cash flows for 2008 through February 17, 2009 indicates that funds from sales of SIB CDs were used to make purported interest and redemption payments on pre-existing CDs. Redemptions of principal and payments of interest on CDs should

generally be paid from earnings, liquid assets or reserves. In this case, CD sale proceeds were used because sufficient assets, reserves and investments were not available to cover the liabilities for redemptions and interest payments. Although SIB received some returns on investments, these amounts were miniscule in comparison to the obligations.

15. It appears that most CD sale proceeds not used to pay interest, redemptions and current CD operating expenses, including commissions, bonuses, Performance Appreciation Rights Plan ("PAR") payments and up-front forgivable loans to financial advisors who sold the CDs, were either placed in speculative investments (many of them illiquid, such as private equity deals), diverted to other Stanford Entities "on behalf of shareholder" — *i.e.*, for the benefit of Allen Stanford, or used to finance Allen Stanford's lavish lifestyle (*e.g.*, jet planes, a yacht, other pleasure craft, luxury cars, homes, travel, company credit card, *etc.*).

16. SIB investments (which are over 90% of all assets as of December 31, 2008) were divided into three tiers, each managed differently, although all ultimately controlled by Stanford, Davis and, at least to the extent of Tier 2 assets, Holt.

17. Tier 1, the smallest tier in dollar value, consisted of cash and cash equivalents. Stanford accounting records indicate that as of February 18, 2009, SIB Tier 1 totaled $31.8 million.

18. Tier 2 principally consisted of investments placed with a variety of investment firms or funds located in the U.S. and Europe, together with a small amount of cash or cash equivalents. According to SIB's weekly summary reports, Tier 2 had a total value of approximately $345 million at February 9, 2009, down substantially from $889 million at December 31, 2007. The documents indicate there were approximately $29 million in further liquidations between February 10, 2009 and February 17, 2009. Tier 2's precipitous decline in

reported value over the thirteen months leading up to the Receivership was due to a combination of declining market values and numerous liquidations ordered by Davis and Stanford and implemented by Holt and her staff.

19. Tier 3, by far the most significant financially (as valued by Stanford and Davis) and the most secret, was managed by Stanford and Davis, apparently with assistance and participation by Holt and others working under them. They kept its value and composition secret from regulators, investors, creditors, auditors and others. Stanford Tier 3 records do indicate, however, that $1.8 billion in value consisted of notes receivable from Allen Stanford. It appears this amount corresponds to funds that Stanford, with the assistance of Davis and possibly others, diverted from SIB. These funds were used for various purposes, including transfers to 51 other Stanford Entities. (*See* **KVT-3**, an internal Stanford schedule listing past uses of SIB funds supporting Allen Stanford's note receivable liability to SIB in the amount of $1.844 billion.). This receivable appears to be uncollectible, as Mr. Stanford's recent press statements indicate he does not have the $1.8 billion to pay the loan made to him.

20. Approximately $1.2 billion of Tier 3 value (as apparently valued by Stanford and/or Davis or others acting in concert with them) was in merchant banking assets. These consisted mostly of equity and debt investments in private and public companies (*see* **KVT-8,** a Stanford Financial Group schedule dated 30 June 2008 listing Tier 3 merchant banking assets), which was contrary to representations made to investors about SIB's investment portfolio. Early indications are that the fair value of these merchant banking assets was — and remains — only a small fraction of the $1.2 billion value that Stanford and Davis assigned to them for financial reporting purposes.

21. In addition, Tier 3 records assigned $3.174 billion of value to real estate. However, those same records list only two assets in this category: real estate holding companies that own properties in Antigua known as Pelican Island and Asian Village. The two properties were purchased (via the purchase of their holding companies) in 2008 for a combined $63.5 million. I have seen no evidence — such as appraisals or other similar valuations — that would support this extraordinary and highly improbable increase in value, particularly in a period that generally is regarded as a global real estate downturn.

22. SIB investment earnings amounts were provided monthly by Jim Davis and persons working at his direction and under his supervision. I have reviewed internal Stanford documents from which I concluded that earnings were "pegged" at whatever amount was needed to give SIB the appearance of acceptable financial performance and capital ratios for regulatory purposes, as well as continuing to induce investors. In other words, earnings — at least for the last three years and probably longer — were fictitious "plugged" numbers.

23. Notwithstanding SIB's insolvency and the rapid liquidation of its investments during 2008 and into 2009 to alleviate a severe cash flow crisis, CD sales continued until February 16, 2009, when the SEC and the U.S. Court intervened.

24. Based on FTI's analysis to date, I have reached the following conclusions, which are all to a reasonable degree of certainty, and all of which were determined using reliable practices and methodologies, described herein, that are standard in the fields of finance and accounting:

- The substantial majority of funds received or utilized by the Stanford Entities, and in particular SIB, SGC, SFGC and SFGGM, was proceeds from the sale of SIB CDs;

- The substantial majority of funds used to pay purported CD interest and redemption payments to investors on pre-existing CDs was proceeds from sales of new SIB CDs;

- The schedules attached hereto as exhibits **KVT-4, KVT-5** and **KVT-6** reflect the identity of certain persons and entities holding SIB CD accounts with identified purported CD interest and/or redemption payments from SIB or who otherwise received purported CD interest and/or redemption payments from SIB, and the amounts of payments identified;

- Exhibit **KVT-4** further identifies the Pershing, SEI and JP Morgan accounts currently frozen under the Court's orders determined to be associated with the persons and entities listed on that schedule based on the customer records and other information available;

- Exhibit **KVT-5** further identifies the amounts, which total $18.5 million in the aggregate, transferred by the persons and entities listed on that schedule to the Receiver's segregated escrow account pending final adjudication of rights to those funds;

- Exhibit **KVT-6** identifies persons and entities holding SIB CD accounts with identified purported CD interest and/or redemption payments from SIB or who otherwise received purported CD interest and/or redemption payments from SIB (and the amounts of payments identified) and who do not have any accounts currently frozen at Pershing, JP Morgan or SEI and have not transferred any funds to the Receiver's segregated escrow account; and

- The substantial majority of funds used to pay CD commissions, loans, PAR payments and bonuses to financial advisors who sold SIB CDs was proceeds from sales of new SIB CDs.

OVERVIEW OF SIB BANK ACCOUNTS

25. Based on our review of the activity in multiple SIB bank accounts, the primary operating accounts for CD activity utilized by SIB were Toronto Dominion account no. 0360-01-2161670 ("TD 1670"), Trustmark account no. 300-310-1707 ("Trustmark 1707"), Trustmark account no. 300-310-1558 ("Trustmark 1558") and Bank of Houston account no. 8706 ("BOH 8706"). SIB also transferred substantial amounts of money between its operating accounts and two money market accounts, Trustmark account no. 1097 ("Trustmark 1097") and BOH account no. 8284 ("BOH 8284"). These money market accounts were

essentially used as short-term holding locations for the funds from the SIB operating accounts, earning nominal amounts of interest, until those funds were needed by SIB. As explained further below, the overwhelming majority of the funds deposited into all of the aforementioned SIB operating and money market accounts was proceeds from the sale of SIB CDs.

26. The above accounts were used for a variety of purposes. For example, the TD 1670 and Trustmark 1558 accounts were used to make purported CD interest and redemption payments to investors. The TD 1670 account was also used, along with the Trustmark 1707 and BOH 8706 accounts, for the purchase or funding of Tier 2 and Tier 3 investments, payments for services rendered to other Stanford Entities and capital contributions or loans to other Stanford Entities. In 2008 alone, approximately $474 million was transferred from the TD 1670 account to the BOH 8706 account, which in turn distributed roughly $450 million among the various Stanford Entities.

SUBSTANTIAL MAJORITY OF FUNDS FOR STANFORD ENTITIES CAME FROM CD SALE PROCEEDS

Deposits of CD Sale Proceeds

27. The SIB CDs were SIB's only product line. Although SIB provided a limited number of other financial products (*e.g.* credit card services and loans), these were offered only to CD holders and acted as incentives for the purchase of CDs.

28. Based on FTI's review of SIB CD sale records, the majority of CD purchasers paid for their CDs with U.S. dollars, and those funds were deposited into SIB's Trustmark 1707 and TD 1670 accounts. Customers who purchased SIB CDs by wire transfer were instructed to wire their funds directly to SIB's TD 1670 account. (*See* **KVT-7**, CD investor wiring instructions). Investors who paid by check sent their checks to SIB in Antigua, where

those denominated in U.S. Dollars were bundled and sent regularly to Trustmark in Houston for deposit into SIB's Trustmark 1707 account. If any SIB CD sales proceeds were actually paid by investors at SIB's offices in Antigua, it was likely a small amount relative to overall sales. Further, as stated above, SIB would promptly send investor checks denominated in U.S. Dollars to Houston for deposit into the Trustmark 1707 account.

29. Based on our review of 2008-2009 data for the Trustmark 1707 and TD 1670 accounts, and comparing that to SIB's CD sales records for the same time period, my team and I have been able to confirm that the funds from investors who purchased SIB CDs in U.S. dollars were in fact deposited into these accounts.

30. Because the wire transfer data from the TD 1670 account and the SIB customer account records are both in electronic form, we were able to electronically match the wire transfers into the TD 1670 account to records of specific CD purchases, CD nos., transaction dates or amounts or other criteria contained in the SIB CD customer account records. Based on this analysis, we have determined that, for the time period of January 1, 2008 through February 17, 2009, approximately $1.7 billion in SIB CD sale proceeds were deposited into the TD 1670 account.

31. With regard to CD purchases in U.S. Dollars made by check, the data available from Trustmark does not allow for electronic matching with SIB's CD sale records. Instead, FTI has been able to review images of checks provided by Trustmark and then search the SIB CD sale records for transactions in those same amounts. By doing so for checks representing approximately 33% of the commercial deposits reflected on the Trustmark 1707 account statements provided by Trustmark for the time period of January 1, 2008 through February 17, 2009, we have been able to confirm, with only one exception, that each of these checks

corresponds to a specific purchase identified in the SIB CD sale records.[1] Based on this analysis, we have determined that between January 1, 2008 and February 17, 2009, approximately $384 million in SIB CD sale proceeds were deposited into SIB's Trustmark 1707 account.

32. In addition to the SIB CD sale proceeds that were deposited directly into the TD 1670 and Trustmark 1707 accounts, there were some small additional amounts of CD sale proceeds that were deposited in other accounts initially and then transferred over to the TD 1670 and Trustmark 1707 accounts.

(a) Investors who purchased CDs in Canadian dollars were instructed to wire those funds to SIB's Toronto Dominion account no. 0360-01-2161573 ("TD 1573"). **(KVT-7)**. Performing an analysis similar to that performed on the wire transfers into SIB TD 1670, FTI has been able to electronically match the wire transfers into the TD 1573 account to records of specific CD purchases, CD nos., transaction dates or amounts or other criteria contained in the SIB CD sale records. Based on this analysis, we have determined that, for the time period of January 1, 2008 through February 17, 2009, over $5 million in SIB CD sale proceeds were deposited into the TD 1573 account. Correspondingly, Toronto Dominion's records reflect that approximately $10 million was transferred into the TD 1670 account and another approximately $10 million into the Trustmark 1707 account from the TD 1573 account. These transfers included not only the $5 million in deposits referenced above but likely deposits of CD sale proceeds into the TD 1573 account that occurred prior to January 1, 2008.

(b) Investors who purchased CDs in British pounds or Euros were instructed to wire those funds to SIB accounts at HSBC Bank PLC in London. **(KVT-7)**. Although HSBC has not provided any account data to the Receiver, we have been able to determine that over $36 million was transferred from HSBC accounts to the TD 1670 account between January 1, 2008 and February 17, 2009.

[1] Though we have been unable to confirm that the one check identified as an "exception" was used to purchase a CD, circumstantial evidence indicates that it was. The data required to reach a definitive conclusion, however, was not available for this transaction.

SIB's CD Operating Accounts Were Funded Almost Exclusively from CD Sale Proceeds

33. Based on the analysis described above, and additional analysis of data relating to SIB's primary operating accounts — TD 1670, Trustmark 1707, BOH 8706 and Trustmark 1558 — I have determined that the overwhelming majority of funds received by SIB came directly or indirectly from CD sale proceeds.

34. The deposits into the SIB Trustmark 1707 account between January 1, 2008 and February 17, 2009 totaled approximately $497 million.[2] The approximately $384 million in checks for CD purchases that were deposited into the account comprised 77% of the deposits into that account between January 1, 2008 and February 17, 2009. Based on the following, I have concluded that up to an additional $94 million or 19%, for a total of 96%, of the deposits into the Trustmark 1707 account during that time period also consisted primarily of SIB CD sale proceeds.

(a) Approximately $55 million, or 11% of the deposits into the Trustmark 1707 account were funds from the liquidation of Tier 2 investments Based on my review of the data relating to the Tier 2 investments, it appears that the vast majority of those investments were funded by monies from the TD 1670 account. Further, the vast majority of the liquidations occurred when the investments were in loss positions. Accordingly, any deposits from the Tier 2 investments would have consisted primarily of the CD sale proceeds that were originally invested rather than investment returns.

(b) Approximately $29 million, or 6%, of the deposits into the account were from SIB's BOH 8706 and TD 1670 accounts,

[2] This amount does not include approximately $337 million in deposits from the Trustmark 1097 account. The Trustmark 1097 account was a short term money market investment account that was funded almost exclusively from the Trustmark 1707 account and used to hold those funds until they were needed by SIB. At that time, the funds were transferred back into the Trustmark 1707 account. Based on my review of the Trustmark 1097 account records, these funds earned only nominal amounts of interest.

which as discussed below, were funded primarily from CD sale proceeds.

(c) Approximately $10 million, or 2%, of the deposits into the account were transfers from SIB account TD 1573, which was the account into which CD purchase money in Canadian Dollars was deposited, as described above.

(d) The other deposits into this account — approximately $19 million or just 4% of the total — were from other Stanford Entities (funded primarily by CD sale proceeds), unidentified sources or sources on which FTI's analysis is ongoing.

35. The deposits into the SIB TD 1670 account between January 1, 2008 and February 17, 2009 totaled approximately $2.4 billion. The approximately $1.7 billion in wire transfers for CD purchases that were deposited into the account comprised 71% of the deposits into that account between January 1, 2008 and February 17, 2009. Based on the following, I have concluded that up to an additional 26% or $619 million, for a total of 97%, of the deposits into the TD 1670 account during that time period also consisted primarily of SIB CD sale proceeds.

(a) Approximately $318 million, or 13%, of the deposits into the account were from SIB's Trustmark 1707 account, which as described above, is funded almost exclusively by proceeds from the sale of SIB CDs.

(b) Approximately $154 million, or 6% of the deposits into the account were funds from the liquidation of Tier 2 investments. As described above (*See* ¶34(a) above), such funds primarily consisted of proceeds from the sale of SIB CDs.

(c) Approximately $127 million, or 5%, of the deposits into the account were from SIB's BOH 8706 operating account, which as discussed below, was funded primarily from SIB CD sale proceeds.

(d) Approximately $20 million, or 1%, of the deposits into the account were transfers from HSBC Bank accounts and the TD 1573 account, which were the accounts into which CD purchase money in non-U.S. currency, were deposited, as described above.[3]

(e) the other deposits into this account — approximately $82 million or 3% of the total — are from other Stanford Entities (funded primarily by CD sale proceeds), unidentified sources or sources on which FTI's analysis is ongoing.

36. The total deposits into the SIB BOH 8706 account between January 1, 2008 and February 17, 2009 were approximately $801 million.[4] Based on the following, I have concluded that up to $710 million or 89%, of the deposits into the BOH 8706 account during that time period consisted primarily of SIB CD sale proceeds.

(a) Approximately $505 million, or 63%, of the deposits into the account were from SIB's TD 1670 account or Trustmark 1707 account, which as described above, are funded almost exclusively by proceeds from the sale of SIB CDs.

(b) Approximately $205 million, or 26%, of the deposits into the account were funds from the liquidation of Tier 2 investments. As described above (*See* ¶34(a) above), such funds primarily consisted of proceeds from the sale of SIB CDs.

(c) The other deposits into this account — approximately $91 million or 11% of the total — were from other Stanford Entities (funded primarily by CD sale proceeds), unidentified sources or sources on which FTI's analysis is ongoing.

37. The total deposits into the SIB Trustmark 1558 account between January 1, 2008 and February 17, 2009 were approximately $127 million.[5] Based on FTI's review of

---

[3] Another $26.5 million, or 1%, of the deposits into the TD 1670 account was from HSBC accounts. These funds also likely originated from CD purchase money originally denominated in non-U.S. currencies, as described in the wiring instructions attached hereto as exhibit **KVT-7.** Because HSBC has not provided the necessary records, we are unable to confirm that this is the case.

[4] This amount does not include approximately $457 million in deposits from the BOH 8284 account. The BOH 8284 account was a short term money market investment account that was funded exclusively from the BOH 8706 account and used to hold those funds until they were needed by SIB. At that time, the funds were transferred back into the BOH 8706 account. Based on my review of the BOH 8284 account records, these funds earned only nominal amounts of interest.

[5] This amount does not include additional deposits consisting of funds originally paid out of the Trustmark 1558 account that were returned for various reasons (*i.e.*, rejected by recipients, *etc.*).

records from Trustmark relating to this account, 99% of the deposits during this time period were transfers from SIB's Trustmark 1707 account. As discussed in paragraph 34 above, the Trustmark 1707 account was funded almost exclusively from the CD sale proceeds. Accordingly, the overwhelming majority of funds in the Trustmark 1558 account consisted of SIB CD sale proceeds.

PROCEEDS FROM SALES OF NEW CDS WERE USED TO MAKE PURPORTED CD INTEREST AND REDEMPTION PAYMENTS ON PRE-EXISTING CDS

38. Based on FTI's analysis to date, I have concluded that the overwhelming majority of the funds used to make purported SIB CD interest and redemption payments was proceeds from the sale of new SIB CDs to investors. Although SIB received some returns on investments, these amounts were miniscule. Moreover, there were not sufficient assets to cover these payments, illustrated by the fact that liquidating Tier 2 allowed SIB to maintain payments for only a short period of time.

39. Based on SIB CD transaction records reviewed by FTI, SIB made purported principal and interest redemption payments in U.S. Dollars to investors totaling approximately $2 billion from January 1, 2008 through February 17, 2009.

40. For interest and redemption payments made by wire transfer in U.S. Dollars, SIB used its TD 1670 account. FTI has reviewed the outgoing wire transfer records from the TD 1670 account and electronically matched those records to the CD related payment records from SIB. Based on this analysis, we have been able to confirm that approximately $1.87 billion, or 92%, of all redemption payments made by SIB in U.S. Dollars were made by wire transfer to investors from the SIB's TD 1670 account. Because the funds deposited into SIB's TD 1670 account were almost exclusively proceeds from the sale of new CDs to investors, the

payments made from the TD 1670 account to investors were likewise almost exclusively CD sale proceeds.

41. SIB also made some purported interest and redemption payments to investors in U.S. Dollars by checks written from its Trustmark 1558 account. FTI has reviewed approximately 300 checks written to investors from the Trustmark 1558 account. By comparing those checks to records of specific payments in SIB's records, we have determined that between January 1, 2008 and February 17, 2009, checks totaling $92 million, or 94% of the sample set of purported CD interest and redemption payments selected,[6] were written from SIB's Trustmark 1558 account. Because the overwhelming majority of the funds deposited into SIB's Trustmark 1558 account was proceeds from the sale of new CDs to investors, the overwhelming majority of payments made from the Trustmark 1558 account to investors was primarily proceeds from the sale of new SIB CDs to investors.

IDENTIFICATION OF INVESTORS WHO RECEIVED PURPORTED CD INTEREST AND REDEMPTION PAYMENTS

42. Attached as exhibits **KVT-4, KVT-5** and **KVT-6** to this declaration are schedules identifying certain investors holding SIB accounts with identified purported CD interest or redemption payments from SIB or who otherwise received purported CD interest or redemption payments from SIB, along with the amounts of payments identified. The investors listed in **KVT-4** also have Pershing, JP Morgan or SEI accounts that are currently frozen by the Court's orders. The investors listed in **KVT-5** do not have any accounts that are currently frozen under the Court's orders. Instead, their accounts were released and they agreed, by stipulations filed with the Court, to transfer funds equal to the amount of purported

[6] The sample selected totaled 78% of the population of purported CD interest and redemption payments made by SIB denominated in U.S. Dollars for the period January 1, 2008 through February 17, 2009.

SIB CD redemptions or interest payments they received to the Receiver's segregated escrow account until the rights to those funds are fully adjudicated. The investors listed in **KVT-6** do not have any accounts that are currently frozen under the Court's orders and have not transferred any funds to the Receiver's segregated escrow account.

43. The schedules contained in exhibits **KVT-4, KVT-5** and **KVT-6** were developed by the FTI team through a detailed review and analysis of the SIB records of CD interest and redemption payments from SIB customer accounts. If a payment was made from an SIB customer account, the customer(s) who held that account were identified as recipient(s) of the purported CD interest or redemptions. Once the customer(s) were identified, the SIB customer records were searched electronically for certain common identifiers, such as name, address, *etc.*, to identify all other SIB accounts associated with the customer(s). If the names on each of the customer accounts appeared to be the same, the purported interest and redemption payments were added together into one line item entry on the schedule. If the names on the accounts did not appear to be the same, they are listed as separate entries on the schedules. If we determined through review of available records that someone other than the SIB account holder received purported CD interest or redemption payments, they are included on the appropriate schedule.

44. Once the customers who received purported CD interest or redemption payments from SIB were identified, the FTI team also reviewed Pershing, JP Morgan and SEI customer account records to determine whether those previously identified SIB customers also had Pershing, JP Morgan or SEI accounts that are subject to the Court's freeze orders. Similar to how related SIB accounts were identified, the Pershing, JP Morgan and SEI account records were searched electronically for common identifiers — again name, social

security number, tax identification number, address, *etc.* — to identify any Pershing, JP Morgan or SEI accounts associated with those customers. Those identified accounts, to the extent they are still frozen by the Court's orders, are listed on exhibit **KVT-4**.

45. Many of the customers listed on exhibits **KVT-4** and **KVT-5**, and perhaps some of those listed on exhibit **KVT-6**, had other Pershing, JP Morgan or SEI accounts that were previously subject to the Court's freeze orders but have since been released. Some of those accounts were released pursuant to the Court's orders dated March 5, March 12, or April 23. Other Pershing, JP Morgan and SEI accounts associated with the customers listed on exhibits **KVT-4** and **KVT-5** have been released through the account application review process approved by the Court in its March 27 and May 27 orders and subsequent modifications thereto. As of the date of this declaration, all Pershing, JP Morgan and SEI accounts associated with the customers listed on exhibit **KVT-4** have been released, except those accounts necessary to satisfy an order of disgorgement from this Court being requested by the Receiver. All Pershing, JP Morgan or SEI accounts associated with customers listed on exhibit **KVT-5** have been released, but funds equal to the amount of proceeds received by the customers identified in **KVT-5** have been transferred to the Receiver's segregated escrow account pending adjudication of rights to those funds.

46. The investors listed on exhibit **KVT-4** received approximately $373 million in purported CD interest and redemption payments in the aggregate. Comparing these amounts and the amounts contained in the Pershing, JP Morgan and SEI accounts associated with those customers, there is approximately $295 million in the Pershing, JP Morgan and SEI accounts that are available to satisfy any claims by the Receiver for the recovery of CD proceeds. The investors listed on exhibit **KVT-5** received approximately $18.5 million in purported CD

interest and redemption payments in the aggregate. Such amount has been transferred by the investors to the Receiver's segregated escrow account pending final adjudication of rights to those funds. The investors listed on exhibit **KVT-6** received approximately $494 million in purported CD interest and redemption payments in the aggregate. There are no frozen Pershing, JP Morgan or SEI accounts that have been identified as associated with these customers, and they have not transferred any funds to the Receiver's segregated escrow account.

PROCEEDS FROM SALES OF NEW CDS WERE USED TO PAY COMMISSIONS, PAR PAYMENTS AND BONUSES AND MAKE LOANS TO FINANCIAL ADVISORS

47. Based on a review of accounting and payroll records of SGC, the FTI team and I have determined that many of the financial advisors who marketed and sold SIB CDs to customers received up-front forgivable loans as part of their compensation package when they began work. For the years 2007, 2008 and 2009 (prior to February 17), loans were made to financial advisors in the approximate aggregate amounts of $12.9 million, $35.8 million and $2.76 million respectively.

48. Many of the financial advisors further received commission, PAR payments and bonus payments associated with SIB CD sales, typically in the range of 1% to 3% percent of the cumulative value of the CDs they sold. For the years 2007 and 2008, SGC made commission, PAR payments and bonus payments to financial advisors in the approximate aggregate amounts of $31 million and $38 million respectively.

49. Based on our analysis and review of the records and information referenced herein, I have concluded that the substantial majority of funds used to pay the loans, bonuses,

PAR payments and commissions to financial advisors was proceeds from the sale of the SIB CDs.

50. The loans, bonuses, PAR payments and commissions to financial advisors were funded primarily from two Trustmark bank accounts held in the name of SGC, specifically Trustmark account no. 300-310-7357 ("Trustmark 7357") and Trustmark account no. 300-008-7916 ("Trustmark 7916")(collectively, the "Trustmark 7357/7916 accounts"). These were the primary operating accounts used by SGC. Loans were paid directly to the financial advisors from the Trustmark 7357/7916 accounts. Commissions, PAR payments and bonuses first passed through SGC's payroll account, which was funded exclusively by the Trustmark 7357/7916 accounts, and were then paid to the financial advisors by SGC's third party payroll services provider, ADP.

51. The SGC Trustmark 7357/7916 accounts, in turn, were funded directly or indirectly from SIB's operating accounts — TD 1670, Trustmark 1707 and BOH 8706 — which, as detailed above, were funded almost exclusively from SIB CD sale proceeds.

52. One of the primary funding sources for the SGC Trustmark 7357/7916 accounts from which loans, bonuses, PAR payments and commissions were paid was referral fees paid by SIB as compensation for the sale of CDs. Over the course of 2007 through February 17, 2009, an aggregate total of $172.3 million in referral fees was transferred directly from SIB's TD 1670, Trustmark 1707 and BOH 8706 operating accounts to the SGC Trustmark 7357/7916 accounts. Based on our interviews with personnel from the various Stanford Entities, FTI learned that these referral fees were, in part, intended to fund commission and bonus payments and loans to financial advisors who sold SIB CDs. The

amount of referral fees paid by SIB to SGC between 2007 and 2009 far exceed the amounts of commissions, PAR payments, bonuses and loans paid to financial advisors during that time.

53. The conclusion that proceeds from the sale of SIB CDs were used to fund commission and loan payments is further confirmed by the fact that another significant source of funding into the Trustmark 7357/7916 accounts was capital contributions that originated from SIB's TD 1670, Trustmark 1707 and BOH 8706 operating accounts. Although many of these capital contributions passed through other Stanford Entities and their accounts before landing in the Trustmark 7357/7916 accounts, they are traceable back to the SIB accounts and therefore to proceeds from the sales of SIB CDs.

54. For example, in 2008 alone, funds in the amounts of $396 million and $77 million respectively were transferred from the SIB BOH 8706 account and the TD 1670 account into the operating account of SFGGM, BOH 8870. During the same time period, a capital contribution in the amount of $47.5 million was made from SFGGM's BOH 8870 account to SGH's operating account, Trustmark account no. 300-310-2150 ("Trustmark 2150"). Finally, a capital contribution went from the Trustmark 2150 account to the SGC Trustmark 7357/7916 accounts in the amount of $46.5 million. There are many other examples of smaller capital contributions making their way into SGC's Trustmark 7357/7916 accounts that are traceable back to SIB's accounts. In addition, based on FTI's analysis of records available for the accounts that funded the Trustmark 7357/7916 accounts, I have concluded to a reasonable degree of certainty that a majority of the funds deposited into these accounts came from sources traceable to the SIB accounts that were funded almost exclusively by proceeds from the sale of SIB CDs.

Executed this 27 day of July, 2009.

Karyl Van Tassel

Attachment 5

State of Texas

County of Brazos

Before the undersigned, an officer duly commissioned by the laws of Texas on this 24th day of May 2010, Sally Matthews personally appeared, who having been first duly sworn depose and say:

1. My name is Sally Matthews. I reside at 1400 Tucker Nuck College Station, Texas 77845.

2. I became a customer of Stanford Group Company's Houston office in May 2008. My registered financial advisor was Doug Shaw. Doug Shaw was a licensed and very experienced professional whom I depended on to help invest my retirement funds.

3. On 5/20/2008, I purchased a Stanford International Bank Certificate of Deposit in the amount of $450,000.00. Doug Shaw worked with Pershing to wire my funds to the appropriate Stanford account to purchase the CDs.

4. I was told Stanford Group Company and Stanford International Bank were both owned by Allen Stanford and were part of the Stanford Financial Group of Companies.

5. My only point of contact with any the Stanford Financial Group of Companies was Doug Shaw. I never spoke to anyone at Stanford International Bank.

6. Doug Shaw referred to all of the Stanford companies as simply "Stanford," or Stanford International Bank was referred to as "the Bank," indicating it was owned/controlled by the same management as Stanford Group. All of the marketing materials displayed the same Stanford eagle logo. There was never any differentiation between the components of the Stanford Group of companies. It was always, "we," "Stanford," or "The Stanford Group of Companies."

7. Doug Shaw assured me the Stanford International Bank CDs were insured by SIPC.

8. I never received my Stanford International Bank certificate.

9. I have been unable to verify that I have a claim with Vantis, the receiver for Stanford International Bank in Antigua.

The statements in this affidavit are true and correct, to the best of my knowledge.

Witness: ______________________

Sally Matthews

Printed Name: Sally Matthews

Sworn and subscribed before me this 24th day of May 2010 A.D.

MARCUS TAPIA
NOTARY PUBLIC
State of Texas
Comm. Exp. 07/10/2013

Notary Public:

My Commission Expires: 7-10-2013

Attachment 6

WILLKIE FARR & GALLAGHER LLP

1875 K Street, NW
Washington, DC 20006-1238
Tel: 202 303 1000
Fax: 202 303 2000

November 12, 2009

VIA MESSENGER

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Liquidation of Stanford Group Company under the Securities Investor Protection Act

Dear Chairman Schapiro:

The Stanford Victims Coalition ("SVC") requests that the U.S. Securities and Exchange Commission ("SEC" or "Commission") direct the Securities Investor Protection Corporation ("SIPC") to initiate a liquidation of Stanford Group Company ("SGC"), a U.S.-registered broker-dealer, under the Securities Investor Protection Act of 1970 ("SIPA") to compensate customers of SGC whose cash was stolen through SGC.[1] R. Allen Stanford, the ultimate owner of SGC, used the broker-dealer to sell fictitious securities, "certificates of deposit" ("CDs"), as part of a massive Ponzi scheme. Compensation to SGC customers who purchased fictitious securities is consistent with the scope and intent of SIPA and in keeping with the SEC's past practice of meeting legitimate customer expectations. In this case, as in past cases, SGC customers had a legitimate reason to believe that their U.S.-regulated broker dealer was selling them actual securities.

I. Procedural History and Factual Background

We set out the procedural history, relevant facts and legal standards relating to SIPC's compensation of Stanford investors. We realize that this information will be familiar to you, but we believe the analysis will facilitate discussions on this issue.

[1] SVC is a nonprofit organization representing 28,000 innocent investors from around the world who collectively have lost up to $7.2 billion in Stanford International Bank certificates of deposit sold to them through the Stanford Financial Group of Companies ("SFG"), a global network of financial services companies based in Houston, Texas, and owned and controlled by R. Allen Stanford. This letter specifically addresses SVC members who were customers of, and purchased CDs through, SGC.

A. Procedural History

As you know, the Commission filed a civil complaint (the "Complaint") in the United States District Court for the Northern District of Texas (the "Court") against Allen Stanford, Stanford International Bank Limited ("SIBL"), SGC, Stanford Capital Management LLC (collectively, "Stanford"), and two other individuals. In the Complaint, filed February 16, 2009, and the amended complaint, filed February 27, 2009, the SEC alleges that the Stanford companies were used to execute a Ponzi scheme at Allen Stanford's direction.

On the date the Complaint was filed, the Court appointed Ralph Janvey ("Receiver") as receiver for all assets of Stanford. The Receiver delivered his first report to the Court on April 23, 2009 ("April Report").[2] The Receiver also retained Karyl Van Tassel and FTI Consulting, which, among other things, identified the source of income of various Stanford entities and traced the disbursement of those funds throughout those entities, as set out in the Declaration of Karyl Van Tassel ("Declaration").[3]

B. Factual Background

SIBL purportedly was a private international bank domiciled in Antigua, West Indies.[4] SIBL's sole shareholder was Allen Stanford.[5] SGC was a wholly owned subsidiary of Stanford Group Holdings, Inc. ("Holdings") with its headquarters located in Houston, Texas.[6] Holdings, in turn, was owned by Allen Stanford, who was Holdings' sole director.[7]

Allen Stanford controlled and operated all of the Stanford companies, disregarding traditional corporate structure. The April Report states that:

- "The Stanford companies ("Stanford") were a complex, sprawling web of more than 130 companies, *all of which were controlled and directly or indirectly owned by Allen Stanford.* The companies were operated in a highly interconnected fashion, *with a core objective of*

---

[2] The April Report is attached hereto as Exhibit 1. The Financial Industry Regulatory Authority ("FINRA") commissioned an internal investigation to evaluate its examination performance with respect to the Stanford and Bernard L. Madoff Ponzi schemes. *See Report of the 2009 Special Review Committee on FINRA's Examination Program in Light of the Stanford and Madoff Schemes*, Sept. 2009 (the "FINRA Report"). Among other things, the Report notes a disagreement between the SEC and FINRA staffs as to whether the CDs issued by SIBL were securities, with the SEC staff taking the position that they were. FINRA Report at 25.

[3] Declaration of Karyl Van Tassel, July 29, 2009, attached hereto as Exhibit 2.

[4] April Report at 18.

[5] Complaint at ¶ 22.

[6] FINRA BrokerCheck Report at 8, available at http://brokercheck.finra.org/Firm/FirmSummary.aspx?SearchGroup=Firm&FirmKey=39285&BrokerKey=-1&IndvlCtgry=-1.

[7] *Id.*

selling certificates of deposit ("CDs") issued by Stanford International Bank Limited ("SIBL")."[8]

- "In contrast to a conventional multi-tiered corporate structure, the stock of almost half of these entities was *owned directly by Allen Stanford*, rather than through a central holding company."[9]

- "The structure was seemingly designed to obfuscate holdings and transfers of cash and assets."[10]

- "The Receiver believes, however, based on his investigation to date, that *the principal purpose and focus of most of the combined operation* was to attract and funnel outside investor funds into the Stanford companies through the sale of CDs issued by Stanford's offshore entity SIBL."[11]

The lynchpin of Allen Stanford's Ponzi scheme was the use of SGC to sell CDs, SIBL's primary investment product.[12] Investors in the United States purchased the CDs *only* via SGC pursuant to a Regulation D offering through a Form D filing[13]; no third-party, i.e., non-Stanford broker-dealers, sold the CDs.[14] The Receiver's April Report makes clear that the essential goal of the Stanford companies was to sell fictitious certificates of deposit – in other words, to collect money from investors to feed the Ponzi scheme. The registered representatives at SGC "used the apparent legitimacy offered by U.S. regulation of Stanford's U.S. brokerage subsidiary in order to generate sales of SIBL CDs."[15] Investors opened brokerage accounts at SGC in order to purchase CDs as well as some legitimate investments. In doing so, the customers each entered into an "Account Application and Agreement" ("Account Agreement"). We understand that the form of the Account Agreement may have varied somewhat by customer, but the Account Agreement attached to this letter includes the Stanford logo and contains language on the first page indicating that customers were entering into an Agreement with SGC, an NASD/Financial Industry Regulatory Authority ("FINRA") and SIPC member.[16] Moreover, at least some SGC customers received account statements from SGC showing,

---

[8] April Report at 5 (emphasis added); *see also* Declaration at ¶ 7.

[9] April Report at 5 (emphasis added).

[10] *Id.* at 6.

[11] *Id.*

[12] *Id.* at 5.

[13] 17 CFR § 230.501 *et seq.*

[14] Complaint at ¶ 33. The Receiver estimates that at the inception of the receivership, there were approximately $7.2 billion in CDs outstanding. April Report at 12; Declaration at ¶ 13.

[15] April Report at 7.

[16] Account Agreement, attached hereto as Exhibit 3. SGC was an introducing broker-dealer that utilized an agreement with a clearing broker-dealer to settle and clear its customers' transactions and carry its customers' accounts. We understand that SGC variously used Pershing LLC, Bear Stearns Securities Corp. (now J.P. Morgan Clearing Corp.) and ADM Investor Services, Inc. as it clearing broker-dealers. The first mention of SGC's clearing broker-dealer at the time that the parties entered into attached Account Agreement, Pershing LLC, appears on page 7 of the Account Agreement.

among other things, their CD balances. The statements were emblazoned with the Stanford logo across the top of the page and indicated that SGC was an NASD or FINRA member and a member of SIPC.[17]

The CDs were never legitimate; they were fictitious from the start.[18] A cash flow analysis "indicates that funds from sales of SIB[L] CDs were used to make purported interest and redemption payments on pre-existing CDs."[19] Payments on the CDs should have been paid from earnings, liquid assets or reserves.[20] Such payment sources, however, were insufficient to make interest and redemption payments.[21] CD payments not used for interest and redemption payments generally were diverted for Allen Stanford's personal use or to fund SGC's operations, as discussed more fully below.[22] Stanford's Ponzi scheme ultimately collapsed because CD redemptions increased in late 2008 and early 2009 "to the point that continuing CD sales could no longer cover purported redemptions, interest payments and normal operating expenses."[23]

Just as Allen Stanford needed SGC to generate cash to feed his Ponzi scheme, SGC could not have survived without sales of the CDs. SGC's compensation structure "highly incentivized" SGC's registered representatives to sell CDs and discouraged customers from redeeming those CDs.[24] Many of these representatives "who marketed and sold SIB[L] CDs to customers received up-front forgivable loans as part of their compensation package when they began to work."[25] Such loans totaled $12.9 million in 2007, $35.8 million in 2008 and $2.76 million in 2009.[26] The SGC registered representatives also received commission, Performance Appreciation Rights Plan ("PAR") and bonus payments for selling CDs, generally equal to a percentage "of the cumulative value of the CDs they sold."[27] It appears that commissions paid typically were in the range of one to three percent.[28] In addition to the commission and other payments made to SGC's registered representatives, a selling representative's branch office and SGC generally were allocated a portion of commission payments

---

[17] Account Statement, attached hereto as Exhibit 4.

[18] *See* April Report at 7 ("Once CD funds entered the Stanford companies, they were disbursed to Allen Stanford or other Stanford-owned entities or used to purchase private equity and other investments, to pay CD redemptions and interest or to pay other expenses and obligations") and *Id.* at 13 ("The SEC has alleged in its lawsuit against the Defendants [Stanford] that the CDs were sold in a Ponzi scheme, in which money from sales of new CDs was used to make payments on older CDs instead of invested on the new purchaser's behalf").

[19] Declaration at ¶ 14.

[20] *Id.* at ¶ 14.

[21] *Id.*

[22] *Id.* at ¶ 15.

[23] *Id.* at ¶ 12.

[24] April Report at 7.

[25] Declaration at ¶ 47.

[26] *Id.*

[27] *Id.* at ¶ 48.

[28] April Report at 8.

based on the representative's CD sales.[29] In 2008, CD commissions paid to SGC "were instrumental to the maintenance and viability of Stanford Group Company's operations," accounting for 39 percent ($95 million) of SGC's total revenues.[30] According to the April Report, "Stanford's financial statements show that the low third party revenue and high cost structures of the U.S. broker dealer and related financial operations were not capable of sustaining freestanding operations without the revenue they received upon their sale of SIBL CDs, as well as the infusion of investment capital, all or most substantially all of which was derived from CD sales."[31]

Although SGC's customers paid for CDs purchased from SGC through SGC's clearing broker-dealer, which then sent the payments to SIBL, those payments ultimately were forwarded to Allen Stanford for use in his Ponzi scheme.[32] According to an affidavit from John Ward, Managing Direct of Pershing LLC's Global Securities Services business, "Pershing, at the direction of SGC and pursuant to letters of authorization from SGC clients sent more than 1,600 wires totaling more than $500,0000,000 [sic] to SIBL since 2006." Cash from those payments was then used, at least in part, to fund SGC's operations, as noted above. Payments made to SGC's registered representatives were funded from two SGC bank accounts.[33] Loans to registered representatives were paid directly from the two SGC accounts.[34] "Commissions, PAR payments and bonuses first passed through SGC's payroll account, which was funded by [the two SGC bank] accounts, and were paid to the financial advisers by SGC's third party payroll services provider, ADP."[35] SGC's bank accounts, in turn, were funded directly or indirectly by SIBL's operating accounts, "which ... were funded almost exclusively from SIB[L] CD sale proceeds."[36] One of the primary funding sources of SGC's bank accounts was referral fees that SIBL paid as compensation for CD sales.[37] From 2007 through February 2009, SIBL, whose sole shareholder was Allen Stanford, paid total referral fees from its operating accounts to SGC bank accounts of $172.3 million.[38] SIBL also made capital contributions to SGC that were deposited in SGC's bank accounts. The contributions "are traceable back to the SIB[L] accounts and therefore to proceeds form the sales of SIB[L] CDs."[39]

The Receiver requested SIPC to review the Stanford Ponzi scheme with the goal of compensating customers of SGC under SIPA. In a letter dated August 14, 2009 (the "Letter"), SIPC

---

[29] April Report at 8.

[30] *Id.* at 8-9.

[31] *Id.* at 6-7.

[32] Affidavit of John Ward, ¶ 4, Feb. 13, 2009, attached hereto as Exhibit 5 ("Ward Affidavit").

[33] Declaration at ¶ 50.

[34] *Id.*

[35] *Id.*

[36] *Id.* at ¶ 51.

[37] *Id.* at ¶ 52.

[38] *Id.* at ¶ 52.

[39] *Id.* at ¶¶ 53-54.

declined to provide SIPA coverage.[40] As a threshold matter, SIPC noted that either the SEC or FINRA would be responsible for investigating the facts surrounding the Stanford Ponzi scheme and notifying SIPC that action under SIPA would be necessary. According to SIPC, it had not received any such notification from either the SEC or FINRA.[41] Moreover, SIPC asserted that SGC's customers' cash was forwarded to SIBL to purchase CDs and those CDs were either held by the customers in physical form or by SIBL in book entry form. SIPC further stated that SGC therefore held nothing of value (no cash, which was forwarded to SIBL, or securities, which were held elsewhere) for its customers.[42] SIPC then suggested that SGC customers were seeking reimbursement for the decline in value of the CDs, rather than for having been sold fictitious securities.[43]

The Receiver is continuing his work identifying and securing assets to satisfy investor claims. The Receiver has determined, as noted, that the Stanford companies, including the broker-dealer entity, SGC, are not viable. The Receiver has begun to shut the operations down to reduce costs. The offices of SGC are now closed and nearly all employees have been terminated. Investors have little information about whether they will recover the funds paid for the fictitious securities. The Receiver states that "it appears that the total value of the assets of the Estate is likely to be only a fraction of the total amount that would be needed to pay all outstanding CDs and other anticipated claims against the Estate."[44]

II. SIPC Should Initiate a SIPA Liquidation and Satisfy Customer Claims

SIPC should initiate a liquidation of SGC under SIPA and satisfy the net equity[45] claims of SGC's customers who purchased CDs through SGC. If the Commission or a self-regulatory organization believes that a registered broker-dealer is in or is approaching financial difficulty, it must immediately notify SIPC.[46] If SIPC determines that the registered broker-dealer, which almost always is a SIPC member, is in danger of failing to meet its obligations to customers and generally is insolvent or failing to meet its obligations under the SEC's financial responsibility rules, SIPC may file an application for a protective decree in a district court with jurisdiction to commence a liquidation of the broker-dealer under SIPA.[47]

---

[40] Letter from Stephen H. Harbeck, SIPC, to Ralph S. Janvey, Receiver, Stanford Financial Group Receivership, Aug. 14, 2009, attached hereto as Exhibit 6.

[41] Letter at 1.

[42] *Id.* at 3.

[43] *Id.*

[44] April Report at 13.

[45] A customer's net equity in his or her securities account effectively is the dollar value of the account calculated by determining what the value of the account would have been had all of the securities positions been liquidated on the filing date of the action commencing the liquidation of the insolvent broker-dealer, minus any indebtedness of the customer to the broker-dealer, plus certain repayments of such indebtedness. 15 U.S.C. § 78lll(11) (2009).

[46] 15 U.S.C. § 78eee(a)(1) (2009).

[47] 15 U.S.C. § 78eee(b)(1).

The Commission has "plenary authority" over SIPC.[48] If SIPC does not comply with the Commission's direction, SIPA expressly gives the Commission the power to apply to a district court for an order to compel SIPC to act.[49]

If the assets of a broker-dealer are insufficient to satisfy customers' net equity claims, SIPC may make advances to customers out of a special pool (the "Fund") established to compensate customers of broker-dealers whose cash and securities are missing from or have been stolen by the insolvent broker-dealer.[50] Compensation is subject to statutory limits discussed more fully in the following sections.

As set out below, SIPC should commence a liquidation of SGC under SIPA. Persons who purchased CDs through SGC were "customers" of SGC within the meaning of SIPA entitled to be reimbursed, up to SIPA's limits, for their claims for securities.

A. Customer Status

Persons who purchased SIBL CDs through SGC are "customers" of SGC within the meaning of SIPA and entitled to coverage under the statute. "'Customers' include those who have entrusted securities to the brokerage in the ordinary course of its business and those who have deposited cash with the brokerage for the purpose of purchasing securities."[51]

SGC's customers are in the same position as the customers who were the subject of *In re Old Naples Securities, Inc.* The United States Court of Appeals for the Eleventh Circuit held in *Old Naples* that customers of an introducing broker-dealer who thought that they were purchasing bonds through the broker-dealer were "customers" of the broker-dealer within the meaning of SIPA and entitled to coverage under the statute.[52] Old Naples Securities, Inc. ("Old Naples") was an introducing broker-dealer, i.e., it did not clear and carry its customers securities accounts, registered with the SEC. Old Naples' owner, James Zimmerman, perpetrated a Ponzi scheme through the broker-dealer. A registered representative of Old Naples, at the direction of Zimmerman, solicited customers to make short-term investments through the broker-dealer that purportedly paid a high rate of return and

---

[48] *SIPC v. Barbour*, 421 U. S. 412 (1975) at 417 (*citing* S.Rep. No. 91-1218, p. 1 (1970); H.R.Rep. No. 91-1613, p. 12 (1970)).

[49] 15 U.S.C. § 78ggg(b). *See also Barbour*, 421 U.S. at 417-18.

[50] 15 U.S.C. § 78ddd (2009).

[51] *In re Old Naples Securities, Inc.*, 223 F.3d 1296 (11th Cir. 2000) ("Old Naples"). Under SIPA, "customer" means:

> any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer. The term "customer" includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities. 15 U.S.C. § 78lll(2) (2009).

[52] *Old Naples*, 223 F.3d at 1303.

typically were rolled over more than once.[53] The customers believed that Zimmerman used their payments to purchase bonds in their names, but amounts received from some customers were used to make payments of fictitious interest to other customers who also thought that they had purchased bonds or to Zimmerman for his personal use.[54] The customers made payment for the bonds to a non-broker-dealer entity that Zimmerman also owned.[55] The fictitious interest paid to some customers was deposited into the customers' accounts at Old Naples' clearing broker-dealer.[56] Zimmerman ultimately could not sustain the Ponzi scheme, Old Naples collapsed, and SIPC initiated a liquidation of the broker-dealer under SIPA.[57]

The Old Naples customers who thought they had purchased bonds asserted claims for reimbursement in the SIPA liquidation, which the trustee administering the liquidation denied.[58] The trustee argued that the claimants were not "customers" under SIPA. The bankruptcy court entered an order in which it concluded that the claimants were customers of Old Naples, and the district court affirmed that order.[59] On appeal to the Eleventh Circuit, SIPC and the trustee argued that the claimants were not customers for SIPA purposes because (1) the funds used to pay Zimmerman to purchase the bonds were wired to his non-broker-dealer entity, not to Old Naples; (2) the investments were not securities; and (3) the investments were poorly documented and paid such high rates of return that they could not be viewed as having been sold within Old Naples' "ordinary course of business."[60]

The Eleventh Circuit affirmed the district court order allowing the claims of Old Naples' customers in the SIPA proceeding.[61] First, the court affirmed the bankruptcy court's determination that the customers' had deposited cash with the debtor broker-dealer. The court reasoned that whether a claimant deposited cash with the debtor "does not ... depend simply on to whom the claimant handed her cash or made her check payable, or even where the funds were initially deposited."[62] Rather, the issue was one of "'actual receipt, acquisition or possession of the property of a claimant by the brokerage firm under liquidation.'"[63] Specifically, the court concluded that the bankruptcy court's determination that the claimants had no reason to know that they were not dealing with Old Naples was not in error.[64] Moreover, the court determined that Old Naples acquired control over the

[53] *Old Naples*, 223 F.3d at 1300-1301.

[54] *Id.* at 1301.

[55] *Id.*

[56] *Id.* at 1300.

[57] *Id.*

[58] *Id.* at 1301.

[59] *Id.*

[60] *Id.* at 1302.

[61] *Id.* at 1305.

[62] *Id.* at 1302.

[63] *Id.* quoting *SEC v. Kenneth Bove & Co.*, 378 F. Supp. 697, 700 (S.D.N.Y. 1974).

[64] *Id.* at 1303.

claimants' funds because the funds were used by, or at least for (through Zimmerman), Old Naples.[65] Zimmerman used the claimants' funds to pay Old Naples' expenses. "[T]he funds of the individual claimants in this cased were used by the owner of Old Naples Securities for the benefit of Old Naples Securities."[66]

Second, the Eleventh Circuit concluded that the claimants deposited cash for the purpose of purchasing securities. SIPC and the trustee asserted that the claimants made payments with the understanding that Zimmerman would purchase bonds in his name and share profits with the claimants. According to SIPC and the trustee, the claimants would have been participating in an "investment plan" or lending money to Zimmerman, neither of which would constitute "securities" under SIPA.[67] The court, however, found no error in the bankruptcy court's conclusion that the "claimants reasonably believed they were buying bonds."[68]

Third, the Eleventh Circuit held that a claimant asserting coverage under SIPA does not need to make a special showing that funds were entrusted to a broker-dealer in the ordinary course of the broker-dealer's business.[69] In so holding, the court noted that SIPC and the trustee conceded that no court had disallowed a SIPA claim because "the underlying transaction was not in the brokerage's ordinary course of business."[70]

Like the claimants in *Old Naples*, the victims of R. Allen Stanford's Ponzi scheme are "customers" of SGC under SIPA and entitled to reimbursement under the statute. First, in purchasing the CDs, SGC's customers deposited cash with SGC, contrary to SIPC's assertion in its Letter that, "SGC is not, nor should it be, holding anything for [an SGC] customer."[71] Although some of SGC customers may have understood that SIBL ostensibly *issued* the CDs, SGC's customers had no reason to know that they were not dealing with SGC in *purchasing* the CDs. Customers entered into an Account Agreement with SGC to open brokerage accounts. Displayed prominently at the top of the first page of the Account Agreement attached to this letter are "Stanford" and "Stanford Group Company, Member NASD/SIPC."[72] The first mention of a clearing firm in the Agreement attached to this letter appears on page 7, section IX in small print.[73] At least some SGC customers also received account statements from SGC, again with "Stanford" and "Stanford Group Company, Member

---

[65] *Old Naples*, 223 F.3d at 1303.

[66] *Id.* at 1303, n. 16.

[67] *Id.* at 1304.

[68] *Id.* at 1305. "When a claimant deposits cash with his brokerage to make an investment, SIPA provides protection even if the claimant does not identify specific securities for his broker to purchase." *Id.* citing *Ravis v. Caretti (In re Investors Sec. Corp.),* 30 B.R. 214, 219 (Bankr. W.D.Pa. 1983).

[69] *Id.* at 1305.

[70] *Id.* at 1305.

[71] Letter at 3.

[72] It is not clear at this point if all Account Agreements contained identical language.

[73] Account Agreement at 7.

FINRA/SIPC" displayed in the center of the first page.[74] SGC instructed its customers where to send payment for the CDs they purchased.[75] The customers' interactions with SGC, therefore, reasonably led them to believe that they were dealing with SGC in purchasing the CDs.

Moreover, SGC acquired control over the claimants' funds because the funds were used by and for SGC.[76] Although SGC's customers may have paid for CDs purchased from SGC through SGC's clearing broker-dealer, which then sent those payments to SIBL, those fund were forwarded to Allen Stanford, SGC's ultimate owner. As discussed above, CD commissions, paid to SGC out of the funds that SGC's customers paid to purchase CDs, accounted for 39 percent ($95 million) of SGC's total revenues in 2008.[77] Bank accounts used to make loan, commission, PAR and bonus payments to SGC's registered representatives and to make capital contributions to SGC were funded out SIBL bank accounts, which, in turn, were funded by CD sales.[78] SGC, in fact, could not have survived without the commissions. According to the April Report, "Stanford's financial statements show that the low third party revenue and high cost structures of the U.S. broker dealer and related financial operations were not capable of sustaining freestanding operations without the revenue they received upon their sale of SIBL CDs, as well as the infusion of investment capital, all or most substantially all of which was derived from CD sales."[79] Allen Stanford, SGC's owner, used SGC's customers' funds to pay SGC's expenses, just as Zimmerman used Old Naples' customers' funds to pay Old Naples' expenses. Thus, SIPC's contention that SGC is not holding anything of value for SGC's customers is untenable under *Old Naples* because SGC acquired control over its CD customers' funds. Otherwise, the argument would seem to be that SGC did not acquire control over the SGC customers' funds even though SGC marketed the SIBL CDs, sold the CDs to its customers, payment for the CDs ultimately was made to the SGC's owner, Allen Stanford, and Allen Stanford either kept the funds for his own use, used them to make interest or redemption payments to earlier CD holders, or paid those funds back to SGC to support SGC's continued operations so that it could perpetuate the Ponzi scheme, i.e., convince additional SGC customers to purchase CDs.

Second, SGC's customers deposited cash with SGC to purchase CDs, which are securities for purposes of SIPA. Under SIPA, the term "security" includes, among other things, a certificate of deposit.[80] The FINRA Report, furthermore, references a letter from the SEC's Fort Worth Office to FINRA's Dallas office dated July 21, 2005. In that letter, the SEC staff takes the position that the CDs are securities.[81] In the Complaint, the SEC asserts a cause of action against SGC, Allen Stanford and

---

[74] *See* Account Statement.

[75] Ward Affidavit at ¶ 4.

[76] We note that disclosure four of four in SGC's FINRA BrokerCheck report indicates that in 2007, SGC was cited for holding customer funds without making required reserve computations or deposits into a reserve bank account as required by Rule 15c3-3 under the Securities Exchange Act of 1934, 17 C.F.R. § 240.15c3-3 (2009).

[77] April Report at 8-9.

[78] Declaration at ¶¶ 50-54.

[79] April Report at 6-7.

[80] 15 U.S.C. §78lll(14) (2009).

[81] FINRA Report at 25.

all of the other defendants for securities fraud under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[82] The SEC avers that SGC, Allen Stanford and the other defendants committed fraud "in connection with the purchase and sale of securities," i.e., in connection with, among other things, the sale of CDs to SGC's customers.[83] Thus, the SEC effectively concedes that the CDs are securities.

Third, SGC sold the securities to its customers in the ordinary course of its business. CD sales were the most significant portion of SGC's business, as discussed above.

C. Claim for Securities

Customers of SGC who purchased the CDs have claims for securities, not claims for cash and, therefore, are entitled to reimbursement from the Fund up to the statutory limit of $500,000, depending on the size of their net equity claims. If a customer of a broker-dealer being liquidated under SIPA has not recovered his or her entire net equity claim after receiving customer-name securities[84] and a pro rata share of customer property,[85] the customer may receive a distribution from the Fund of up to $500,000, of which $100,000 may be in the form of cash as compensation for missing or stolen cash (with the rest being compensation for missing securities).[86]

SGC's customers are in the same position as the customers who were the subject of *In re New Times Securities Services, Inc.*[87] In that case, the United States Court of Appeals for the Second Circuit affirmed the district court's determination that customers who purchased fictitious mutual fund shares had claims for securities, rather than claims for cash, that entitled them to compensation under SIPA of up to $500,000, depending on value of their net equity claims.

In *New Times*, William Goren sold fictitious mutual fund shares, as well as shares of bona fide mutual funds, to investors via two entities, one a registered broker-dealer that was a SIPC member, and the other a non-broker-dealer entity.[88] The mutual funds in which investors thought they were

---

[82] Complaint at ¶¶ 58-62.

[83] *Id.* at ¶ 59.

[84] "Customer name securities" are securities "held for the account of a customer on the filing date [of the SIPA liquidation] by or on behalf of the debtor and which on the filing date were registered in the name of the customer, or were in the process of being so registered." 15 U.S.C. § 78lll(3) (2009).

[85] "Customer property" is "cash and securities ... at any time received acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted." 15 U.S.C. § 78lll(4) (2009).

[86] 15 U.S.C. § 78fff-3(a) (2009). In order to provide for prompt payment and satisfaction of net equity claims of customers of the debtor, SIPC shall advance to the trustee such moneys, not to exceed $500,000 for each customer...except that...the amount advanced to satisfy such claim for cash shall not exceed $100,000 for each such customer.

[87] 371 F.3d 68 (2d Cir. 2004).

[88] *New Times*, 371 F.3d at 71.

investing never existed.[89] Although the investors received confirmations and account statements indicating that their payments had been invested in mutual funds, Goren had stolen their money.[90]

The SIPA trustee took the position that *New Times* investors in fictitious securities had claims for cash subject to the $100,000 SIPA limit on cash advances. *New Times* investors whose cash Goren stole, but who were misled into believing that he had purchased existing mutual fund shares, were treated as having claims for securities subject to the higher $500,000 SIPA limit for advances to purchase securities.[91] The trustee argued that this disparate treatment was justified because he could purchase actual securities to satisfy the claims for existing securities.[92]

New Times customers who had purchased non-existent securities filed written objections with the district court to the SIPA trustee's determination that they had claims for cash.[93] The trustee and SIPC moved for an order from the district court upholding the trustee's determination.[94] The district court denied the trustee's motion and determined that the customers who purchased fictitious securities had claims for securities.[95] In making its determination, the district court relied upon the SIPC 500 series rules, which state that receipt of a confirmation of purchase or sale of a security generally determines the type of claim a customer has.[96]

The Second Circuit held that the *New Times* investors who purchased fictitious securities had "claims for securities." In doing so, the court gave deference to the position of the Commission over that of SIPC. The Commission in *New Times* took the position that the purchasers of the fictitious securities had claims for securities because they received confirmations and account statement from the insolvent broker-dealer and the customers' legitimate expectations, i.e., that they had purchased securities, should be satisfied.[97]

Like the purchasers of fictitious securities in *New Times*, the customers of SGC, who also purchased fictitious securities (CDs), have claims for securities, rather than claims for cash. SIPC suggests in its Letter that the SGC customers are seeking recovery for CDs that have lost some or all of their value; SIPA does not protect broker-dealer customers against diminution in the value of securities.[98] The SGC customers who purchased CDS, however, are not seeking recovery for securities that are now worthless. Rather, they are seeking recovery for fictitious securities. Funds

---

[89] *New Times*, 371 F.3d at 74.

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *Id.* at 76, 87.

[98] Letter at 3.

from CD sales were "used to make purported interest and redemption payments on pre-existing CDs," paid to SGC and its registered representatives for expenses and commissions, diverted to other Stanford entities or to fund Allen Stanford's lavish lifestyle.[99] There is no indication that the CDs ever existed. The fact that Allen Stanford may have made some small investments with CD payments does not alter the fact that the CDs are fictitious. "Although SIB received some returns on investments, these amounts were miniscule in comparison to the obligations."[100]

The SGC customers who purchased CDs had legitimate expectations that they were purchasing actual securities. They purchased the CDs through SGC, a broker-dealer registered with the Commission, and paid for the CDs per SGC's instructions. At least some of SGC's customers received Account Statements that showed their CD positions. Per the Second Circuit's holding in *New Times*, the SGC customers' CD-related claims should be valued at the amounts initially paid, but not include fictitious interest or dividend reinvestments.[101]

II. Conclusion

SVC understands that the Commission staff has undertaken an investigation of the Stanford situation with regard to liquidation of SGC under SIPA. We request that the Commission revisit the issue in light of facts and applicable law set out in this letter. The law and fairness dictate that the Stanford investors be protected under SIPA.

We would appreciate the opportunity to discuss the matters addressed in this letter at your convenience. Thank you for your attention to this matter.

***

SVC requests that this letter and its enclosures be afforded confidential treatment pursuant 17 C.F.R. §200.83 and the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Should the Commission receive any request which would either encompass this letter and/or the enclosures, pursuant to FOIA or otherwise, please contact me and we will provide additional information in support of SVC's request for confidential treatment.

Sincerely,

Matthew B. Comstock

MBC/mbc

[99] Declaration at ¶¶ 14-15.

[100] *Id.* at ¶ 14.

[101] *New Times*, 371 F.3d at 87-88.

Enclosures

cc: United States Senate Banking Committee

United States House of Representatives Financial Services Committee

The Honorable Kathleen L. Casey, Commissioner, U.S. Securities and Exchange Commission

The Honorable Elisse B. Walter, Commissioner, U.S. Securities and Exchange Commission

The Honorable Luis A. Aguilar, Commissioner, U.S. Securities and Exchange Commission

The Honorable Troy A. Paredes, Commissioner, U.S. Securities and Exchange Commission

David M. Becker, General Counsel, U.S. Securities and Exchange Commission

Robert W. Cook, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission

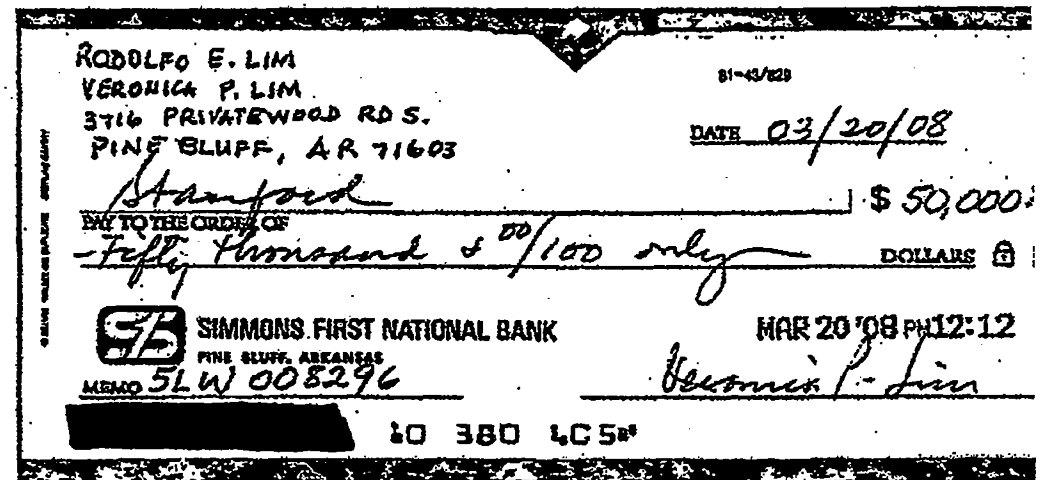
Stephen H. Harbeck, President & CEO, Securities Investor Protection Corporation

Josephine Wang, General Counsel & Secretary, Securities Investor Protection Corporation

Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission

Thomas K. McGowan, Deputy Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission

Attachment 7



Check 0 Amount $50,000.00 Date 3/24/2008

View Check Copy

Check Number	Date Posted	
000000000001634	07/03/06	$7,00(

122/06

JEFFREY M. KEENAN
6422 CINDY LN.
HOUSTON, TX 77008

37-65
1119 2324
0909113695

Date 6/25/06

Pay to the Order of Stanford $ 7,

Seven Thousand & 00/100 Dollars

Wells Fargo Bank Texas, N.A.
1000 Louisiana, Tunnel Level
Houston, TX 77002
www.wellsfargo.com

Memo

J M Keenan

[redacted] 1634 #000070

Attachment 8

In The Matter Of:

IN RE: BERNARD L. MADOFF
INVESTMENT SECURITIES LLC

U.S. COURT OF APPEALS - SECOND CIRCUIT
March 3, 2011

BENDISH REPORTING, INC.
271 Route 46W - Suite D204
Fairfield, New Jersey 07004
973.244.1911
business@bendish.com

Original File 03-03-11 CT OF APPEALS(1).txt
Min-U-Script® with Word Index

demonstrates a Ponzi scheme which nobody ever had any investment made.

MS. WANG: That's absolutely correct, Your Honor. Thank you.

MR. SHEEHAN: Good morning, Your Honors. David Sheehan, Baker Hostetler, attorney for the Trustee.

I would submit that the Trustee in this case has not only followed reasonably the statutory construction, by doing what he did, but he did so in a reasonable exercise of his discretion.

This is a Ponzi scheme. It's a zero-sum game. The customer fund is the money that went in. We can't talk about anything else. Can't talk about profits. Can't talk about stocks.

JUDGE JACOBS: The SIPC fund is not the customer fund.

MR. SHEEHAN: No. I said the customer fund -- if I said SIPC fund I misspoke.

JUDGE JACOBS: No, no. But the SIPC fund is what we're talking about here today.

MR. SHEEHAN: There is no SIPC fund without a net equity claim, Your Honor.

JUDGE JACOBS: Well, that may be.

MR. SHEEHAN: The way the statute