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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., *et al.*,	§	
	§	
Defendants.	§	

STANFORD INVESTORS' OBJECTION TO AGREED MOTION FOR APPROVAL OF STIPULATION OF SETTLEMENT BETWEEN THE ANTIGUAN LIQUIDATORS AND THE U.S. RECEIVER, AND REQUEST FOR EVIDENTIARY HEARING

The undersigned attorneys, on behalf of their clients, a group of more than one thousand defrauded investors of Stanford International Bank, Ltd. ("SIBL"), and as signatories to a Stipulation and Proposed Order (the "Investor Stipulation") jointly submitted to this Court for consideration on or about March 30, 2010 [Dkt. No. 1051],[1] respectfully submit this objection to the motion (the "Motion") for approval of a stipulation of settlement between Nigel Hamilton-Smith and Peter Wastell (the "Antiguan Liquidators") and U.S. Receiver Ralph Janvey (the "U.S. Receiver;" the Antiguan

[1] The Investor Stipulation resolved the issues raised by the undersigned attorneys in the motion dated as of September 10, 2009 seeking Relief from the Injunction Contained in Paragraph 10(c) of the Amended Receivership Order (the "Bankruptcy Motion"). Among other things, that Stipulation and Proposed Order provides for the establishment of an official committee to represent the interests of defrauded investors and a protocol among SIBL investors and Ralph Janvey as Receiver, for cooperation in maximizing recoveries and distributions to Stanford victims.

Liquidators and the U.S. Receiver are hereinafter collectively referred to as the "Receivers"), dated as of May 18, 2010 (the "Stipulation").[2]

PRELIMINARY STATEMENT

1. By the Motion, the Receivers jointly seek Court approval of an agreement that purportedly resolves a protracted dispute between the defrauded Stanford investors' court-appointed representatives. While the litigation between the Receivers has drained the estates of scarce resources, the proposed settlement will not solve the problems inherent in a dual-receivership structure. In fact, for the reasons discussed below, approval of the proposed settlement would be a step backward for all Stanford investors and for their hopes of any meaningful recovery in these cases.

2. The Stanford creditor community would welcome an agreement between the Receivers that (i) actually resolves the Receivers' various disputes, (ii) cuts down on professional fees and other expenses, (iii) establishes a single vehicle and procedural mechanism, in one forum, for cooperatively pursuing and maximizing asset recoveries (including from pending litigation and potential litigations against third parties), and (iv) provides for the adjudication of investor claims and distribution of assets. But the agreement presented to the Court is ephemeral at best. Illustrative of the illusory nature of the proposed agreement is the Receivers' agreement to *possibly* negotiate toward some

[2] According to Caribbean media accounts today, it appears that the Antiguan liquidators may have been removed by the Antiguan courts or government following the submission of the proposed Stipulation. While the truth of this report is unclear, and its impact on these proceedings is uncertain, the undersigned submit this Objection out of an abundance of caution because today is the deadline for responding to the Motion. Indeed, in light of the Antiguan Liquidators' removal, the Stipulation may no longer be effective, or binding, even if approved by this Court. We expressly reserve our rights to object to the Stipulation on any legal or factual ground that may arise as a result of the apparent removal of the Antiguan Liquidators, and the appointment of any successor(s).

undefined agreement sometime *in the future* to cooperate and share information. (*See* Stipulation, ¶9). This agreement to (maybe) agree is not progress or a resolution at all.

3. The proposed agreement would perpetuate and formalize a wasteful, duplicative and harmful dual-receivership structure. Investors are entitled to better, and the motion to approve the Stipulation should be denied.

PROCEDURAL HISTORY AND THE AGREEMENT

The SEC Enforcement Action and the Receivership Order

4. On February 17, 2009, the Securities and Exchange Commission ("SEC") commenced this action by filing a Summons and Complaint, and on February 27, 2009, the SEC filed a First Amended Complaint.

5. The SEC alleges that the Defendants perpetrated a multi-billion dollar fraudulent "Ponzi" scheme by promising "high return rates on… [certificates of deposits] that greatly exceeded those offered by commercial banks in the United States," and by selling a "proprietary mutual fund wrap program, called Stanford Allocation Strategy ("SAS"), using materially false and misleading historical performance data." (*SEC v. Stanford International Bank, Ltd., et al.*, Case No. 09-cv-0298-N (N.D. Tex) (First Amended Complaint) at p. 2).

6. Subsequently, Allen Stanford and several others were indicted and are awaiting trial on numerous criminal charges before the United States District Court for the Southern District of Texas. Significantly, defendant and former Stanford CFO James Davis entered into a plea agreement in which he admitted the existence of the underlying fraud, and to his role in the fraud. Davis reportedly is cooperating with prosecutors. The criminal trial of the remaining defendants currently is scheduled for January 2011.

7. At the beginning of the case, the SEC moved for a temporary restraining order, as well as orders freezing assets, requiring an accounting, requiring preservation of documents, and authorizing expedited discovery. By Order dated February 16, 2009, as amended March 12, 2009 (the "Receivership Order"), this Court appointed Ralph Janvey as receiver for the assets and records of the defendants and all entities they own or control. The Receivership Order, as amended, includes, among other things, the following provisions:

> "Until the expiration date of this Order or further Order of this Court, Receiver is authorized to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate;"…
>
> "As of the date of entry of this Order, the Receiver is specifically directed and authorized to perform the following duties: …
>
> (b) Collect, marshal, and take custody, control, and possession of all funds, accounts, mail, and other assets of, or in the possession or under the control of, the Receivership Estate, or assets traceable to assets owned by the Receivership Estate, wherever situated, the income and profit therefrom and all sums of money now or hereafter due or owing to the Receivership Estate with full power to collect, receive, and take possession of, without limitation, all goods, chattel, rights, credits, monies, effects, lands, leases, books and records, work papers, records of account, including computer maintained information, contracts, financial records, monies on hand in banks and other financial initiations, and other papers and documents of other individuals, partnerships, or corporations whose interests are now held by or under the direction, possession, custody, or control of the Receivership Estate;
>
> (c) Institute such actions or proceedings to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate. All such actions shall be filed in this Court;…
>
> (i) Institute, prosecute, compromise, adjust, intervene in, or become party to such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve the value of the Receivership Estate, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate

> under this Order and likewise to defend, compromise, or adjust or otherwise dispose of any or all actions or proceedings instituted against the Receivership Estate that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order."

(*SEC v. Stanford International Bank, Ltd., et al.*, Case No. 09-cv-0298-N (N.D. Tex) (Order Appointing Receiver) at p. 3-5).

8. For almost sixteen months, the U.S. Receiver has been acting under the Receivership Order. Although creditors, including those represented by the undersigned attorneys, have sometimes been critical of the U.S. Receiver, they have never questioned his good faith, or that this Court, or a Bankruptcy Court under the purview of this Court, provided an appropriate forum to fairly adjudicate investor claims and determine potential claims against third parties that might inure to the benefit of Stanford creditors.

Antigua's Role in the Fraud and Refusal to Recognize U.S. Legal Proceedings, or the Rights of Stanford victims

9. After entry of the Receivership Order by this Court, the Government of the island of Antigua and Barbuda ("Antigua"), the location of certain tremendously valuable Stanford assets, and at least one of Stanford's residences, took several actions, among them (i) appointing the Antiguan Liquidators, notwithstanding the prior entry of the conflicting Receivership Order by this Court, (ii) seizing 49 Stanford-owned properties located on the island, all paid for with the proceeds of Stanford's fraudulent scheme, and (iii) orchestrating the seizure of the Stanford-owned Bank of Antigua, all collectively valued at several hundred million, if not *billions* of dollars.

10. Antigua's Prime Minister, in trying to justify his government's illegal expropriation of Stanford property, betrayed the tactical nature of that decision as an effort to gain some measure of control over the U.S. Receiver and the processes of this

Court: "We have to give ourselves a bargaining chip, so when the receivers come they have to deal with the government of Antigua and Barbuda."[3]

11. Since that time, one senior official of the Antiguan government, Leroy King, the former head of Antigua's Financial Services Regulatory Commission, the island nation's banking regulator, has been indicted in the United States. After considerable delay, and more than a year after his extradition was formally requested, it is by no means certain that King will ever be extradited by the Antiguan government to face charges in the United States.

12. Unfortunately, the government of Antigua is also doing its best to avoid lawful civil proceedings related to the Stanford fraud. On or about July 17, 2009, the undersigned attorneys, on behalf of certain clients, commenced a putative class action lawsuit seeking damages from the government of Antigua, not only for its illegal expropriation of Stanford properties discussed above, but also for the repayment of more than $230 million in direct loans made by Stanford, with investors' funds, directly to the government of Antigua, for other fraudulent transfers to Antigua, and for damages associated with the Antiguan government's complicity in the Stanford fraud itself (the "Antigua Action").

13. The Antiguan government, however, effectively thumbing its nose at this Court's jurisdiction, and in derogation of its treaty obligations under the Hague Convention, has thus far avoided formal service of the Summons and Complaint in the

[3] "More Stanford Assets Found," BBCCaribbean.com, www.bbc.co.uk/caribbean/news/story/2009/03/090302_landgrab.shtml, retrieved on June 8, 2010. Antigua's expropriation of Stanford's property is consistent with its history of illegally expropriating assets belonging to foreign citizens. The American owners of the Half Moon Bay Resort located in Antigua have been involved in litigation with the Antiguan government for at least several years over the Antiguan government's seizure of their valuable property.

Antigua Action. While Antigua's Attorney General has informally acknowledged receipt of the Complaint, and denounced the Antigua Action in the Caribbean media and in Antigua's parliament (while brandishing an actual copy of the pleading), officials of the government of Antigua have simply refused to formally accept service of process lawfully made under the requirements of the Hague Convention, to answer the complaint, or to otherwise account for its responsibility for the Stanford debacle in any court of law.

14. Moreover, the Antiguan government has reportedly completed an internal investigation of its role in the Stanford debacle, but refuses to make that report public. This is perhaps not surprising (although no less disturbing) in light of the fact that Mr. Stanford's former personal attorney, Mr. Errol Cort, serves as the Antiguan Minister of Finance and Economy and was reportedly personally involved in the illegal seizure of the Bank of Antigua. In short, Antigua's formal legal processes, to the extent that they function at all, are manifestly hostile to, and in conflict with, the interests of Stanford's defrauded investors.

The Investor Stipulation

15. As this Court is well aware, the undersigned attorneys, in the Bankruptcy Motion, argued that Stanford's defrauded creditors must be afforded a substantive role in these proceedings. In resolving the Bankruptcy Motion, and entering into the Investor Stipulation, the U.S. Receiver has committed to cooperate with the plaintiffs in the Antigua Action, to share relevant documents in his possession and control, to become a co-plaintiff if necessary or appropriate, and assist in maximizing the value and realization of the claims that could benefit Stanford investors, including the claims against Antigua identified above. In contrast, no claims are pending to recover these valuable assets

before any other court. The Antiguan Liquidators, appointed by the Antiguan government, reportedly at the suggestion of defendant Leroy King himself, have taken no formal legal action against the Antiguan government, and have filed no lawsuits against Antigua to recover the $230 million admittedly owed to Stanford.

16. The Antiguan assets, including causes of action, may very well constitute the single largest sources of recoveries for Stanford investors. But the Stipulation provides that, "[a] claim or debt-obligation held by or owed to SIB is deemed to be located in the country or countries in which the debtor's assets are located." (Stipulation at p. 4, ¶ 3(c)(iii)). The U.S. Receiver undoubtedly was in a difficult position because of the Antiguan Liquidators' hard-fought attempts to resist U.S. jurisdiction over assets in Antigua. It appears, though, that the effect of the Stipulation, if approved, would be to cede control over SIBL's causes of action to recover property located in Antigua, including property unlawfully held by the Antiguan government, to the Antiguan Liquidators who will be required to pursue recoveries (if they choose to pursue the government that appointed them) only through the Antiguan legal system. This is an unpalatable result for Stanford investors.

17. Moreover, even if the successors to the Antiguan Liquidators pursue recovery of assets in Antigua (unlike their predecessors), the *investors'* claims against Antigua will nevertheless be adjudicated by *this* Court. The adjudication of these related claims in separate forums risks inconsistent results and would in itself result in unnecessary additional expenses that would be borne by Stanford's creditors, who must ultimately pay the costs of these proceedings and who will be the beneficiaries of any

recoveries from those actions. This conflict cannot be in the best interests of Stanford investors in the United States or abroad.

18. Perhaps, however, with the removal of representatives from Vantis from their positions as the Antiguan Liquidators, the U.S. Receiver will now have the opportunity to negotiate a more advantageous agreement with their successors, and formalize a multi-jurisdictional receivership structure that streamlines the claims and administration process and does not subject Stanford's creditors to unnecessary costs or duplication.

ARGUMENT

19. The primary purpose of the equitable receivership is the marshaling of the estate's assets for the benefit of all the aggrieved investors and other creditors of the receivership entities." *SEC v. Parish*, 2010 U.S. Dist. LEXIS 11786, *18 (D.S.C. Feb. 10, 2010).

20. Thus, in evaluating any settlement reached by the Receiver, this Court should determine if, "[t]he proposed settlement is consistent with and furthers the purposes of the receivership." *Id.* at 18-19. *See also, e.g.*, *SEC v. Funding Res. Group*, 2003 U.S.Dist. LEXIS 6919 (N.D. Tex. Apr. 22, 2003) (Kaplan, Magistrate Judge, recommending approval of a settlement after notice and a hearing, upon finding that the proposed settlement was "in the best interest of the [receivership] Estate and should be approved."); *SEC v. Learn Waterhouse, Inc.*, 2008 U.S. Dist. LEXIS 45825 (S.D. Cal. June 11, 2008) (approving a settlement after finding that it was in "the best interests of the receivership estate, and is fair and reasonable.")

21. Here, the Receivers have not made a factual or legal showing that would enable this Court to make such a finding. The Motion does not explain to the Court (or to Stanford's creditors) why approval of the Stipulation is in the best interests of the Receivership Estates or how the Stipulation will contribute to maximizing recoveries for the 28,000 Stanford victims from around the world who lost more than $7.2 billion as a result of this massive fraud.

22. Unfortunately, however well intentioned it may be, the Stipulation is *not* in the best interests of the estates. Under the Receivers' proposed agreement, Stanford investors would still be required to file multiple claims, in multiple jurisdictions, fund fees and costs for multiple professionals with duplicative roles, and have their claims determined by multiple courts, applying potentially different legal standards with respect to the very same claims. In these types of cases, the claims administration process is always costly, with an incremental but significant expense associated with each claim filing, each mailing and each disbursement. The unnecessary duplication of expense through separately administered and redundant claim procedures (almost certainly with distinct claims filing requirements, and differing legal standards) is an unnecessary and expensive undertaking that investors should not be required to endure or pay for. Only an agreement that resolves all these issues without undue delay or uncertainty and that is calculated to advance the cause of maximizing investor recoveries, is in the best interests of Stanford creditors.

23. The Stipulation before the Court for consideration is not such an agreement. Instead, because it would formalize and place this Court's imprimatur on a wasteful and cumbersome permanent dual receivership structure, which this Court has

never before endorsed or approved, implementation of the Stipulation would do significant damage to creditors' interests.

24. More dangerous and troubling to Stanford investors than even the continuation of the wasteful, duplicative administration of these cases by two Receivers, would be approval of the one truly substantive component of the proposed agreement – granting control over certain extremely valuable litigation and hard assets located outside of the United States, including assets located in Antigua, a state sponsor and alleged co-conspirator of Allen Stanford in the perpetration of the underlying fraud. If approved, this aspect of the Settlement would be an unmitigated disaster for Stanford creditors.

25. This Court also cannot find that the Stipulation is in the best interests of the estates because it is not clear how assets and claims are being divided. The Receivers fail to identify specifically – or even generally – what assets and causes of action they are assigning or deferring to the other, although they must have identified such assets after sixteen months of investigation by them and their professionals. This Court should not approve the Stipulation without knowing the details – rather than just the outlines – of the proposed power-sharing agreement.

26. In addition to the foregoing, the Motion is procedurally improper without a modification to the Receivership Order. While the Receiver has some discretion to enter into agreements that effectuate and carry out the purposes of the Receivership Order, he is powerless to enter into agreements that are contrary to the terms of the Receivership Order. The Receivership Order vested control over all of the Stanford defendants' assets, in the United States and abroad, in the U.S. Receiver, who was appointed by this Court and operates under this Court's supervision. As explained above,

relinquishing that power and authority to a foreign Receiver, outside of this Court's jurisdiction and control, and to a legal system operated by a foreign government that is, by its own admission, a major obligor to Stanford and its creditors to the tune of at least hundreds of millions of dollars, if not more, is contrary to the best interests of Stanford creditors. It is also directly at odds with the plain language of the Receivership Order. Because the Stipulation purports to cede control over assets that are now, pursuant to the Receivership Order, under the exclusive jurisdiction of *this* Court, the Stipulation cannot be approved. At a minimum, modification of the Receivership Order, on notice to all affected parties, would be a prerequisite for granting the relief requested in the Motion.

27. Based upon the Motion as filed, there appears to be no doubt that Stanford investors would fare better by obtaining from this Court a final adjudication of the disputes raised by the two Receivers in the litigation pending here for many months. That dispute has already been fully briefed by both sides, at considerable expense to Stanford victims, and was scheduled to be heard by this Court on January 21, 2010 before the long-awaited hearing was abruptly cancelled, with no explanation by either Receiver. The minor delay and expense (in the context of this case) of holding this hearing and determining this dispute based on the facts and law presented by both sides, is more than justified under the circumstances, and is certainly preferable to approval of the grossly flawed agreement now before the Court.

CONCLUSION

28. The Receivers have failed to satisfy *their* burden to demonstrate that the Stipulation is reasonable and in the best interests of creditors. The Receivers' conclusory statement in their one-paragraph Motion, that, "[t]he Parties' Agreement is for the

purpose of avoiding further expense and is in the best interests of those with claims against Stanford International Bank," is unconvincing and inadequate as a matter of law.

29. We respectfully submit that, based upon the foregoing, the Stipulation in its current form is unacceptable, and not in the best interests of the Receivership Estates and the Stanford investors. The undersigned, therefore, respectfully request that this Court deny the Motion at this time, and at a minimum require that the Receivers file an amended Motion explaining why the agreement should be approved. Stanford investors should then have a full and fair opportunity to respond based upon a real factual record and, if necessary, to participate in an evidentiary hearing on the Receivers' Motion, following reasonable discovery.

Dated: June 9, 2010

MORGENSTERN & BLUE, LLC

By: /s/ Peter D. Morgenstern
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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2010, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Peter D. Morgenstern
Peter D. Morgenstern