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October 31, 2024

The Hon. Esther Salas
United States District Court for the District of New Jersey
Martin Luther King Building & Courthouse
50 Walnut Street, Court Room MLK 5A
Newark, New Jersey 07101

Re: *United States v. TD Bank, N.A.*
Case No. 2:24-cr-00667-ES-1

Dear Judge Salas:

I write as the Court-Appointed Examiner in *SEC v. Stanford International Bank, et al.*, Civil Action No. 03:09-cv-00298-N in the U.S. District Court for the Northern District of Texas, and as the Chair of the Official Stanford Investors Committee ("OSIC") in that same action, concerning the above-referenced proceeding and the sentencing hearing over which you are scheduled to preside on November 7, 2024. In summary, I respectfully request that the Court require the U.S. Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section ("MLARS") to allocate some portion of the amounts it will collect from the TD Bank entities for fines and forfeitures in this proceeding to help compensate the approximately 18,000 investor-victims of the international Ponzi scheme perpetrated by R. Allen Stanford ("RAS") and his cohorts. As I explain further below, the DOJ's allegations described in the charging document are substantially similar to allegations against TD made by OSIC in a lawsuit that OSIC and TD settled prior to DOJ's disclosure of its investigation.

## I. The Stanford Financial Ponzi Scheme and Receivership

In February 2009, the Securities & Exchange Commission filed Civil Action No. 3:09-cv-00298-N, *SEC v. Stanford International Bank, et al.*, in the U.S. District Court for the Northern District of Texas (the "Stanford Receivership Action") against RAS, Stanford International Bank, Ltd., and others. The Stanford Receivership Action has spawned hundreds of Stanford-related proceedings. RAS "created and owned a network of entities (the "Stanford Entities") that sold certificates of deposit ("CDs") to investors through Stanford International Bank, Ltd. ("SIB"). These CDs promised investors extraordinarily high rates of return. Using the Stanford entities, [RAS] and his employees would explain to 'prospective investors that their

funds would be reinvested in high-quality securities so as to yield the investors the high rates of return purportedly guaranteed by the CDs.'" *Janvey v. Brown*, 767 F.3d 430, 433 (5th Cir. 2014). In fact, RAS and his co-conspirators did not invest CD investor funds as they had represented, but rather used those funds to (a) pay returns to prior investors, (b) fund a vast number of speculative investments and money-losing Stanford Entities for RAS's benefit, and (c) fund RAS's extravagant lifestyle. *See Chadbourne & Parke, LLP v. Troice*, 124 S.Ct. 1058, 1064 (2014). The scheme collapsed in early 2009, leaving some 18,000 CD investors with an aggregate loss of approximately $5 billion. *Zacarias v. Stanford International Bank, Ltd.*, 931 F.3d 382, 388 (5th Cir. 2019).

RAS was indicted, tried, convicted on thirteen (13) separate counts, including money laundering, and sentenced to 110 years in federal prison. *U.S. v. Stanford*, 805 F.3d 557 (5th Cir. 2015). At least five (5) of RAS's confederates pled guilty or were found guilty after trial; each of them was sentenced to federal prison.

At the beginning of the Stanford Receivership Action, the SEC requested that the Court appoint Ralph S. Janvey to serve as the Receiver (the "Receiver") for RAS, certain other individuals, and the Stanford Entities.[1] The Receiver was charged with marshaling and preserving the assets of the Stanford Entities, recovering assets that had been wrongfully transferred by the Stanford Entities, and ultimately distributing those assets to Stanford's investor-victims. The Receiver continues to serve.

**II. My Role**

On April 20, 2009, I was appointed to serve as Examiner in the Stanford Receivership Action. *See* ECF No. 322. The Court gave me the following directive:

> The Examiner shall convey to the Court such information as the Examiner, in his sole discretion, shall determine would be helpful to the Court in considering the interests of the investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendants in this action (the "Investors").

*Id.* at 1-2. The Order appointing me also gave me the authority and discretion to conduct investigations, to seek discovery, and to participate in the Stanford Receivership Action, and all related proceedings ancillary to or arising out of the Stanford Receivership Action. I continue to serve in the role of Examiner.

On August 10, 2010, the Court in the Stanford Receivership Action (the "Receivership Court") issued an order creating OSIC. Stanford Receivership Action, ECF No. 1149. OSIC was formed to represent Stanford CD investors, defined as "customers of [SIB] who, as of February 16, 2009, had funds on deposit at [SIB] and/or were holding certificates of deposit issued by [SIB]." *Id.* at 2. OSIC was given "rights and responsibilities similar to those of a

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[1] There were over 100 Stanford entities, based in multiple countries, when the Receiver was appointed.

committee appointed to serve in a bankruptcy case under" the Bankruptcy Code. *Id.* at 4. OSIC serves as the representative of the approximately 18,000 Stanford investor-victims. In my capacity as Examiner, I was appointed to serve as the initial chair of OSIC, *id.* at 3, and I have served as OSIC's chair continuously since OSIC's formation. In the context of the Stanford Receivership Action and related proceedings, OSIC served as the plaintiff in a number of lawsuits brought to recover assets for the Receiver or to recover damages on behalf of the Receivership Estate.

**III. The Role of TD Bank Entities in the Stanford Ponzi Scheme**

The Stanford Ponzi scheme was operated from, and centered in, Houston, Texas, but SIB – the entity that issued the purported CDs that are central to the scheme -- was based in Antigua, an island nation in the Caribbean. Over the life of the Stanford Ponzi scheme, multiple billions of dollars flowed into and out of SIB and among the various Stanford Entities, using bank accounts Stanford set up in Texas, Canada, the United Kingdom and Switzerland. Money transfers of that magnitude cannot happen without using the banking system, and TD Bank served as SIB's primary correspondent bank from 1991 until the Stanford Ponzi scheme was shut down in February 2009. Most of the money that came from CD investors flowed directly to, and then out of, a single SIB account at TD Bank in Toronto. From 1996 through February 2009, that account received approximately $8.8 billion in cash inflows and was the source of approximately $9.0 billion in cash outflows.

**IV. OSIC's Litigation and Settlement with TD Bank**

In August 2009, a group of putative class plaintiffs filed an action against TD Bank (and several other banks) in the 129th District Court of Harris County, Texas. That action was removed to the U.S. District Court for the Southern District of Texas in November 2009, and then transferred to the Northern District of Texas as a part of *In re Stanford Entities Securities Litigation*, MDL No. 2009, where it was pending as *Rotstain v. Trustmark National Bank, et al.*, Civil Action No. 3:09-cv-02384.

In December 2011, OSIC sought leave to intervene as a Plaintiff in *Rotstain*; that motion was granted in December 2012. *See Rotstain*, ECF Nos. 96, 129. OSIC's claims against TD Bank centered upon its allegations that TD Bank had failed to comply with anti-money laundering ("AML") and know-your-customer ("KYC") obligations imposed upon it by law, preferring instead to nurture its relationship with RAS and his financial empire. OSIC alleged that TD Bank's failure in that regard permitted RAS and the Stanford Entities to operate the Ponzi scheme using TD Bank accounts as the primary pipelines through which billions in investor funds were laundered for Stanford's benefit.

The *Rotstain* action was vigorously litigated for almost fourteen (14) years through multiple discovery disputes, multiple motions to dismiss, motions for class certification,[2] multiple motions for summary judgment, motions to intervene, and challenges to every expert

[2] Class certification was ultimately denied in November 2017. *See* Rotstain, ECF No. 428.

identified by any party.[3] Ultimately, the *Rotstain* action was remanded to the U.S. District Court for the Southern District of Texas for trial, *see Rotstain*, ECF Nos. 1151, 1152, where it was re-numbered and re-styled as *Abbott v. Trustmark National Bank, et al.*, Civil Action No. 4:22-cv-00800.

OSIC's suit against TD Bank (and four other Banks) was set for trial on February 27, 2023. At trial, OSIC was prepared to prove that Stanford laundered billions of dollars from his Ponzi scheme using accounts at the defendant Banks. OSIC intended to offer evidence that the enormous sums of money flowing into and out of these Banks bore numerous indicia of money laundering, including years of large, high-velocity, round-dollar transfers among and between the Banks, with no obvious legitimate business purpose. With regard to TD, OSIC also intended to prove that TD Bank knew that its relationship with SIB was high risk because of SIB's offshore status, its location in Antigua, its private ownership by a sole shareholder (RAS), and the inherently high-risk nature of correspondent banking. OSIC also intended to demonstrate that TD Bank knew that there was no legitimate purpose in its Toronto office serving as the principal U.S. dollar correspondent bank for SIB, and that it made no sense for a Canadian bank to serve in that role for almost two decades. OSIC contended that, despite this knowledge, TD Bank turned a blind eye to years of Stanford's money-laundering, chose not to conduct required due diligence, ignored its own AML and KYC policies, and didn't file a single suspicious transaction report on Stanford's activities (save for one filed with Canadian regulators over three years *after* the Stanford Ponzi scheme was shut down). *Abbott*, ECF No. 1434 at 12. OSIC sought to recover over $5 billion in damages which would be used to compensate Stanford's victims.

In advance of trial, OSIC and the Receiver mediated with the various Bank defendants, including TD Bank, and ultimately settled with all of the Bank defendants on the eve of trial. With respect to TD Bank, OSIC and the Receiver agreed to accept a payment of $1.205 billion. That settlement was approved by the Receivership Court, Stanford Receivership Action, ECF No. 3331, and was finally funded after a frivolous appeal by RAS was dismissed by the Fifth Circuit, *SEC v. Stanford*, Case No. 23-10891 (5th Cir. Sept. 18, 2023) and a petition for writ of certiorari was denied by the United States Supreme Court.

In order to achieve that result, the Receiver and OSIC paid $100 million to OSIC's counsel, who were working on a contingent fee basis, approximately $14 million to counsel from Baker Botts (which generally serves as the Receiver's counsel and appeared as special counsel to OSIC), approximately $6.6 million in expert fees, and approximately $3.7 million in expenses. That approximately $125 million expenditure is noteworthy because, in contrast to the *Madoff* Ponzi scheme,[4] all of the litigation prosecuted by the Receiver and/or OSIC is funded using Receivership assets, such that any dollars paid in fees or expenses are not available for distribution to the investor-victims.

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[3] Multiple appeals also were taken during pretrial proceedings in *Rotstain*.

[4] In the proceedings involving the *Madoff* Ponzi scheme, such fees and expenses were funded, in the first instance, by the Securities Investor Protection Corporation ("SIPC"), and did not erode investor recoveries.

**V. Efforts to Involve DOJ and MLARS**

Over the course of the Stanford Receivership Action, the Receiver and OSIC have worked with the DOJ, and particularly with MLARS, including in the negotiation of a cross-border protocol and settlement with Joint Liquidators appointed by the courts of Antigua to oversee the liquidation of SIB, and in the recovery of Stanford assets in Canada and Switzerland. The Receiver and OSIC, and their years of efforts on behalf of Stanford victims, were well-known to DOJ. Yet at no time did DOJ inform OSIC or the Receiver that DOJ was investigating TD for involvement in money-laundering.

Nevertheless, it seems beyond debate that DOJ *should and could* have investigated TD's (and the other Banks') role in the Stanford Ponzi scheme beginning as early as 2009, when RAS was indicted for, among other things, conspiracy to commit money-laundering. As part of its prosecution of RAS and other defendants, DOJ accumulated a significant volume of financial and bank records regarding Stanford's long-running Ponzi scheme, and much of that information *was provided by the Receiver to DOJ*. The CFO of the Stanford Ponzi scheme, James Davis, was a cooperating witness for the Government and had detailed knowledge of how billions of dollars flowed through the Banks as part of the scheme. Yet for unknown reasons, even after RAS's conviction in 2012, neither OSIC nor the Receiver had any indication that DOJ's attention had turned towards the Banks' role in the scheme.

Even after the Receiver and his counsel twice met with DOJ attorneys assigned to MLARS in Washington, D.C. in 2014 for the specific purpose of encouraging them to investigate and prosecute the various Banks, including TD Bank, there was no sign of any action by DOJ. That was all the more surprising given that in connection with those meetings, the Receiver and his counsel provided DOJ with information developed by the Receiver's professionals concerning the various Banks' roles in the Stanford Ponzi scheme, including the amounts and manner in which Stanford washed billions of dollars among and between the Banks, including TD. Yet again, DOJ never showed any interest in pursuing the Banks -- unlike in the *Madoff* proceedings where DOJ investigated and prosecuted claims against J.P. Morgan Chase (for failing to maintain adequate AML systems, among other things) and obtained a recovery of some $2 billion for the benefit of the *Madoff* victims.

Despite all the information DOJ had about TD's and the other Banks' involvement with the Stanford Ponzi scheme, and despite the fact that DOJ was well aware of OSIC's civil litigation against TD and the other Banks for their role in the Stanford Ponzi scheme, DOJ never told the Receiver or OSIC that it was investigating TD Bank for the substantially similar conduct described in the plea agreements before this Court. That would have been vital information for the Receiver and OSIC to know as they were prosecuting claims against, and ultimately negotiating their own settlement with, TD Bank.

**V. Stanford's Investor-Victims**

There are approximately 18,000 investor-victims of the Stanford Ponzi scheme, with aggregate losses of approximately $5 billion. Those investor-victims are located predominately

in the United States, Mexico, and South America. Many of those investors were duped into investing their life savings in the SIB CDs, and for more than 15 years have been relying on the efforts of the Receiver and OSIC to attempt to make them whole.

To date, the Receiver has proposed and the Receivership Court has approved eleven (11) interim distributions to Stanford's investor-victims. When those eleven (11) distributions are completed, the Stanford investor-victims will have recovered approximately 40% of their losses.[5] Again, that is a far cry from the approximately 90% recovery accomplished for the victims of the *Madoff* receivership, all with the active assistance of DOJ.

It is also noteworthy that the plea agreements reached with TD Bank US Holding Company and TD Bank, N.A. in this proceeding don't identify a single victim of the various money-laundering schemes addressed in those plea agreements, nor do those plea agreements provide for any payments of restitution to any victim, much less the 18,000 Stanford victims. Apparently, no crime victims will benefit from the payments to be made by TD Bank; those funds will simply go to various government entities. But as alleged by DOJ, and as was alleged by OSIC, it simply is not the case that TD's years of turning a blind eye to money-laundering is a victimless crime.

**VI. Requests for Consideration by the Court**

On behalf of the 18,000 investor-victims of the Stanford Ponzi scheme, I would respectfully ask the Court to inquire of DOJ as to (a) their failure to pursue any investigation or claims against TD Bank relating to the Stanford Ponzi scheme, despite having been provided with ample information by the Receiver and his counsel concerning TD Bank's involvement, and (b) their failure to inform the Receiver and OSIC that they were pursuing the claim asserted in these proceedings against TD Bank entities.

Additionally, I respectfully ask the Court to require DOJ to allocate some portion of the amounts they will collect from TD Bank entities for fines and forfeitures in this proceeding to compensate the 18,000 victims of the Stanford Ponzi scheme, whose harm was caused, at least in part, by TD Bank. In that regard, the amount that the Stanford Receivership had to pay in attorneys' fees and expenses to obtain its settlement with TD Bank – approximately $125 million – is a useful starting point. Because that amount was paid to counsel, to experts, and for other expenses, it is not available for distribution to Stanford's investor-victims. I respectfully submit that directing DOJ to allocate some multiple of that $125 million to compensate Stanford's investor-victims would be wholly appropriate.[6] To be clear, OSIC is not seeking anything from TD at this stage, and is not seeking any increase in the fines or forfeitures to be paid by TD.

[5] The eleventh distribution includes the money obtained from the settlement with TD Bank and two other Banks, and was approved on September 27, 2024. Stanford Receivership Action, ECF No. 3418. The eleventh distribution will alone represent a recovery of approximately 24.99% of investor losses. Stanford Receivership Action, ECF No. 3412.

[6] The Receiver has in place a Court-approved distribution mechanism to facilitate getting any such funds to Stanford's investor-victims.

I greatly appreciate the Court's attention to this matter. I will be happy to answer any questions the Court may have, and to provide the Court with any further information that the Court might request.

Respectfully submitted,

John J. Little

Examiner
Chair, Official Stanford Investors Committee

JJL/ss