TAB 2

N J Hamilton Smith
2nd Affidavit
Applicant
15 May 2009
Exhibit "NJHS2"

IN THE HIGH COURT OF JUSTICE

Nos. 13338 and 13959 of 2009

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER of STANFORD INTERNATIONAL BANK LIMITED (in liquidation in Antigua & Barbuda)

AND IN THE MATTER of THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

SECOND AFFIDAVIT
OF NIGEL JOHN
HAMILTON-SMITH

I, **Nigel John Hamilton-Smith**, of Torrington House, 47 Holywell Hill, St Albans, Hertfordshire, make oath and say as follows:

1. I make this, my second affidavit, in support of my application for recognition of the Antiguan liquidation proceedings, as a foreign main proceeding, in respect of Stanford International Bank Limited ("**SIB**" or "**the Bank**") which was issued on 21 April 2009. I refer to my previous affidavit filed in support of that application, also dated 21 April 2009.

2. This affidavit is also filed in response to the application issued by Mr Janvey, the receiver appointed over SIB and other Stanford group entities by a US Court on 16 February 2009, on 8 May 2009, together with the affidavits filed in support of that application. Mr Janvey seeks recognition of his status as a foreign representative in relation to all of the Stanford group companies, including SIB.

3. Further to the directions given by Mr Justice Henderson on 30 April 2009, the two applications are to be heard together.

4. I am authorised by Mr Wastell, my joint liquidator, to make this affidavit on his behalf. Save as otherwise appears, the facts and matters stated herein are within my own personal knowledge, having been acquired by me in my capacity as one of the Receivers, and now one of the liquidators, of SIB. Where such facts and matters are not within my own personal knowledge, the source of my information and belief is set out herein and I believe such facts and matters to be true.

5. As part of my investigations I have interviewed or spoken to Juan Rodriguez-Tolentino – President, Miguel Pacheco – Senior Vice President, Sascha Mercer – Senior Protocol Officer, Beverly Jacobs – Vice President Client Support, Eugene Kipper- Vice President Operations, Omari Osbourne – Finance Manager, and Jennifer Roman – Human Resources Manager, who have provided me with significant information about SIB's business and operations which supplements that which I have derived from SIB's documents. Where I make reference to having been informed of matters by employees of the Bank, unless specified otherwise, it is those employees that I am referring to. I have retained the services of some of these individuals and other key staff members who worked at the Bank in order to assist me in my investigations of SIB and to assist in the claims handling process which is being developed. I attach at page 1 a chart showing who these people are and what their previous job titles were.

6. I have also interviewed former employees of Stanford Trust Company ("**STC**") which was a Stanford group company offering trust services to clients. I am one of the joint receivers of STC. They have provided me with further information about the business and operations of STC and its relationship with SIB.

7. There is now shown to me marked Exhibit "NJHS2", which contains the documents I refer to in this affidavit. References to page numbers in this affidavit are references to pages in that Exhibit.

A Structure of this Affidavit

8. I am advised that there are two principal matters requiring the Court's decision in connection with my, and Mr Janvey's applications, in relation to SIB: first, whether the US Receivership is a "foreign proceeding" for the purposes of the Cross Border Insolvency Regulations and, secondly, whether the centre of main interest ("**COMI**") of SIB is Antigua or the United States of America (the "US").

9. The principal focus of this affidavit is the second issue, COMI, and I respond to the evidence of Mr Janvey, and Mr Van Tassel, on that issue in Section B below. There are certain other points in Mr Janvey's affidavit to which it is necessary to respond, and I do so in Section C below. In

relation to the first of the principal issues, whether the US Receivership is a "foreign proceeding", I refer to the affidavit of Daniel Glosband.

B Centre of Main Interest of SIB

10. Mr Janvey deals with the COMI of SIB at paragraphs 55 and 56 of his affidavit. I respond to those paragraphs (except to the extent that the response consists of legal submissions) in this section of my affidavit.

(1) SIB was just one part of a large fraudulent empire

11. It is suggested in paragraph 55 that the COMI of SIB should be assessed on the basis of all the Stanford group companies because *"...they were all a single entity used to perpetrate a fraud..."* Whilst I also consider that SIB has been engaged in a fraud on its customers, I take issue with the assertion that the companies in the Stanford group were in fact a single entity, at least so far as SIB is concerned. I am advised that the fact that SIB was probably complicit in a fraud involving also many other companies in the Stanford group is not a reason to treat SIB and all the Stanford group companies as a single entity for the purposes of establishing its COMI. I will deal with each of the sub-paragraphs of paragraph 55 in turn:

(a) I do not dispute that the findings of the US Receiver to date are consistent with the SEC's allegation that SIB and other Stanford group companies were involved in a massive "Ponzi" scheme. My own findings to date are also consistent with that allegation.

(b) I agree that Allen Stanford was the sole owner, directly or indirectly, of more than 100 separate entities, including SIB and STC. According to the organisational chart at RSJ10, of these companies, 40 were US entities, 38 were Antiguan entities, 28 were other Caribbean entities and 25 were Latin American entities. At pages 2-3, I have prepared a table listing the 38 Antiguan entities within the Stanford group, specifying whether they have day to day operations and whether they have employees in Antigua. Whilst I do not dispute that Allen Stanford and a small group of confidantes appear to have exerted overall control over all the entities in the group, I take issue with the suggestion that he, and his confidantes, "controlled and directed" the operations of SIB from the United States. So far as the marketing of CDs were concerned:

(i) CDs were sold all over the world;

(ii) as I indicated in my first affidavit (paragraph 49.6) of the total worldwide sales (as at the date of the receivership of SIB) 15.66% by number and 21.85% by value were sold to investors in the United States, 37.29% by number and 20.98% by value were sold to investors in Venezuela; 21.22% by number and 25.89% by value were to investors in Mexico, Canada, Haiti, Peru, Colombia, Panama and the BVI;

(iii) Financial advisers working for Stanford entities in Antigua, Aruba, Canada, Colombia, Ecuador, Mexico, Panama, Peru, Switzerland, and Venezuela, as well as in the US, marketed the CDs to investors and introduced those investors to SIB for the opening of accounts. There was also a number of independent financial advisers located in, inter alia, Canada, Peru and Panama (I attach a selection of pages from an example referral agreement with such an independent financial services provider at pages 4-5). All of the financial advisers marketed the CDs but none had authority to contract on behalf of SIB.

(iv) CDs were sold to investors by SIB directly from its headquarters in Antigua. SIB did have customers who came directly to the Bank in Antigua to purchase CDs, but the majority of its business was introduced to it by the financial advisers who were working under management agreements for various Stanford group companies in the jurisdictions listed above. Once a customer expressed that he wanted to invest in SIB, the paperwork would be completed by the financial advisers and sent to SIB for further checks to be carried out. The financial advisers and their clients would then wait to see whether SIB would approve their applications for the opening of an account.

(c) I agree that Antiguan law does not permit SIB or STC to accept deposits from Antiguans.

(d) Investors paying monies to SIB by cheque were instructed to send those cheques to SIB's offices in Antigua, not directly to one of its relationship banks. I agree that otherwise investors were required to transfer money, on purchasing CDs, either to Canada (the Toronto-Dominion Bank) or the United Kingdom (HSBC Bank PLC). No customer was directed to send money in any form directly to the US.

(e) The Bank of Houston account was the account to which funds were sent for the purpose of investing monies deposited with SIB. The monies moved out of this

account were therefore paid into portfolios to be managed by international banking institutions or to other group companies for onward investment in equities, debt or other investments. SIB also had an account at the Bank of Antigua, which was used for, amongst other things, dealing with credit card payments on behalf of clients, issuing bank drafts in settlement to vendors, settling outstanding invoices to vendors and paying various local taxes. Mr Janvey states that only a "small percentage" of SIB funds were in the Antiguan account, but at the date of receivership, of all the tier 1 investments (of which the Bank of Antigua account was a part), the Antiguan account held $10 million, or 22% of tier 1 assets.

(f) I agree.

(g) I agree.

(h) Whilst it is true that SIB utilised the services of employees of other Stanford entities (in particular sales staff located in the many jurisdictions where sales of CDs were made) I believe, based on my own investigations of SIB since my appointment, that Mr Janvey overstates the importance of other Stanford group companies in the US to the operations of SIB. I expand on this when responding to specific points made later in Mr Janvey's affidavit.

(i) The actions of the FSRC and the SEC in regulating SIB and investigating reports about SIB's actions are not something that I can, or feel it appropriate to, comment on at this stage.

(2) The COMI of SIB was in the United States

12. I deal with each of the sub-paragraphs of paragraph 56 under the separate side-headings below. (The side headings are for convenience only and do not purport to summarise all of the points made by Mr Janvey in the relevant sub-paragraph).

(a) SIB was controlled by Allen Stanford, a US citizen

13. I am advised that the citizenship of Mr Stanford and his place of residence are not relevant to establishing where the COMI of SIB is located. I should add, however, that Mr Stanford was a citizen of both the US and Antigua and had residences (and spent time) in both jurisdictions.

(b) **SIB was part of a single global financial services network**

14. I believe that Mr Janvey underplays the significance of SIB as a freestanding corporate entity with its own business, assets and creditors. It had many thousands of investors, for whom it was the only Stanford entity in which they could directly invest.

(c) **SIB's central role in the fraud perpetrated by the Stanford group**

15. My investigations undertaken as receiver, and now liquidator, of SIB support the points made in this sub-paragraph.

(d) **Allen Stanford's "accomplices" are also US citizens**

16. I am advised that this is not relevant to the COMI of SIB.

(e) **Allen Stanford and his associates have made appearances in the US court**

17. Similarly, I am advised that this is not relevant to the COMI of SIB.

(f) **The entire operation was a single economic unit & SIB relied heavily on the work of the other US local entities and employees of the Stanford enterprise**

18. I disagree that the Stanford group was a *"single economic unit"* as Mr Janvey contends. The Stanford Financial Group ("**SFG**") was not a legal entity but merely a concept. Customers did not contract with SFG, but with one or other of the companies in the group.

19. There was a clear distinction – particularly so far as customers were concerned – between SIB and other principal group companies such as Stanford Group Company ("**SGC**"). SGC (a US company) provided broker-dealer services, whilst SIB provided international deposit banking facilities. I note that Mr Janvey's principal ground for wishing to consolidate the group (or for treating it as a single economic unit) is the evidence of fraud, and not because the different companies, their assets or liabilities were, or are, in fact inseparable or indistinguishable from each other.

20. The other point made in this paragraph by Mr Janvey is that SIB relied heavily on the work of "other US located entities and employees of the Stanford enterprise". He makes similar points elsewhere in his affidavit, in particular at sub-paragraphs r, v and x. My response to these points is as follows:

(i) As an offshore bank, offering international private banking facilities, it is inevitable that SIB relied on a network of financial advisors located

throughout the countries in which it sought to attract investors. My investigations have shown that the vast majority of the financial advisors were retained by one or other of the Stanford group companies located in the jurisdictions in which investors were sought. For example, therefore, Mexican advisors sought to attract, and dealt with, investors in Mexico, and were employed by Stanford Group Mexico SA de CV, and Venezuelan advisors sought to attract, and dealt with, investors in Venezuela, and were employed by Stanford Group Venezuela CA. In the same way, investors in the US were sought and dealt with by financial advisors in the US employed by SGC. I exhibit at pages 6-11 an example of a "referral agreement" with a financial advisor, in this case with a financial advisor in Colombia. This agreement clearly identifies SIB as located in Antigua, and gives its Antiguan address for all communications. It is expressly governed by Antiguan law. The agreement is typical of all referral agreements entered into by SIB outside the US and the provisions as to the Bank's address and the governing law being Antiguan would usually apply.

(ii) It was the financial advisors' responsibility to meet with clients and complete account opening documentation. That documentation was then sent to the manager in the relevant country who, having reviewed it, would then forward it to SIB in Antigua for approval. All client applications were reviewed in Antigua, firstly, by the Antiguan client accounts team and secondly, for the purposes of credit and money laundering checks. More than 85% of files related to investors from outside the United States (since more than 85% of investors were from jurisdictions other than the US).

(iii) It is true that SIB delegated significant investment decision-making to Stanford entities in the US. Mr Janvey exhibits (RSJ32, pages 36-39, 40-44 & 48-49) consulting and advisory service agreements in relation to investment portfolios with SGC and Stanford Global Advisory LLC (a US Virgin Islands company) ("SGA"). SGA contracted with SIB in August 2008, when it supposedly began providing the above services. Prior to August 2008, those same consulting and advisory services in relation to investment portfolios were provided to SIB by Stanford Financial Group Global Management LLC ("SFGGML"), a company incorporated in the US Virgin Islands. Up to the end of July 2008, SFGGML was paid $99.2 million for those investment services. From August 2008, SGA was paid

$42.2 million for its services and for the whole year, SGC was paid $14.4 million for its advice. These sums were paid even though it appears that such decisions were taken principally by Allen Stanford and/or Jim Davis and/or Laura Pendergest-Holt.

(iv) Mr Janvey also exhibits marketing and management support agreements between SIB and SFGGML (RSJ32, p.7-10 & 11-13), as well as a similar agreement with Stanford Financial Group Company ("SFGC"), a US company, from 2002 (p.45-47). The last of these chronologically is that dated 1 January 2008 (RSJ32, p.7-9). This purports to provide for wide-ranging "corporate direction, governance, marketing, branding" services, including "advice and monitoring of accounting, auditing, branding, compliance, human resources, information technology, legal, marketing, risk and insurance, treasury and related functions...". SFGGML was paid $21.1 million in 2008 for the supposed provision of these support services. SFGC was not paid any fees in 2008, presumably because the contract with SFGGML had replaced it. SIB also entered into a Management Support Agreement in September 2008 with Stanford Caribbean Limited ("SCL") (which I attach at pages 12-15) to provide "corporate direction, governance and other services" to SIB. For the last four months of 2008 it was paid $1.4 million.

(v) From my investigations of the records of SIB, and from my conversations with former staff of SIB, apart from the production of brochures and other marketing materials (which were produced externally, not in Antigua) and the provision of valuations of tier 2 & 3 investments, which came from the US, the remainder of the "services" purportedly offered by SFGGML were carried out within Antigua at SIB itself. For example, SIB in Antigua had its own accounts, human resources and IT departments, reporting to heads of department in Antigua, and its accounts were prepared and audited in Antigua by C. A. S. Hewlett & Co of St John's, Antigua. I have specifically been told by the employees of SIB who I have interviewed and been assisted by thus far that no substantial management services (in terms of IT, human resources, accounting or the running of the business) were provided to SIB from persons outside Antigua. I have found nothing in SIB's books and records (or elsewhere) to suggest that their information is other than correct.

(vi) Contrary to what Mr Janvey says in sub-paragraph (r), the Antiguan headquarters of SIB were more than an *"an administrative, bookkeeping and operational centre"*. Since the inception of my receivership I have not needed to resort to any group company in the US for the continued operation of the IT system, for the running of account statements for every customer to the date of the receivership or for the establishment of a claims management system. We have also managed to process over 4,500 change-of-address forms from Antigua to enable me to correspond with clients. The most important IT banking software for the operation of the Bank, Terminos, was also based in Antigua.

(vii) SFGGML was paid for the administrative services it purported to provide, as set out in paragraph 18(iv) above. However, I am informed by members of the staff at the Bank that personnel from Stanford entities in the USVI (presumably SFGGML) only provided SIB with ad hoc legal advice, occasional commentary on the quarterly management reports and it ran a group wide purchasing department which was recharged to the various Stanford companies as appropriate. Apart from this ad hoc assistance, SFGGML, SFGC and SCL had no other involvement in running the day to day operations of SIB, and did not provide services worth (combined) $22.5 million. Moreover, none of the members of the Bank's staff I have spoken to is aware of SCL having provided any services to SIB.

(viii) In sub-paragraph (v), Mr Janvey compares the amount (said to be $268 million) which SIB paid in 2008 to other Stanford entities, predominantly in the US, and the $3 million SIB paid in 2008 in staff salaries. Payment of monies to other Stanford entities was split between payments for referrals of business and payments for management functions/investment advice, which I have referred to above. The amount for the former in 2008 was $158,000,000 and was paid to a number of different companies for customer referrals from around the world. SGC was paid $95 million for referrals in 2008, which was to cover the commission of SGC offices in North, Central and South America. The management/investment fees came to a total of $178 million and I have set out above how this amount was paid. It appears from my investigations that the $22.5 million that was actually paid to SFGGML and SCL was a substantial overpayment given the lack of tangible

services provided to SIB and the fact that most of these services were carried out in-house at SIB.

(h),(i)&(j) **Number and value of investors from US**

21. Mr Janvey notes that more US citizens than Antiguans invested or made deposits in SIB and that the aggregate deposits made by US depositors exceeded the aggregate deposits in SIB made by Antiguans.

22. I have already explained that as an offshore international bank prohibited from accepting deposits from Antiguans, SIB's investors were necessarily principally located in other jurisdictions. Moreover, I have also pointed out that only 15.66% (by number) of investors in SIB were from the United States, and only 21.85% (by value) of deposits came from the US.

23. I did not claim in my first affidavit that 19.46% of depositors were Antiguan but instead informed the Court at paragraph 45.6 of my previous affidavit that this figure included depositors who had invested through STC, which is an Antiguan registered company. None of the settlors of the trusts of which STC was trustee was a citizen of the US, though beneficiaries under the trusts could be.

(k) **Virtually all decisions concerning SIB were made in the US or otherwise outside Antigua and Barbuda**

24. Whilst it may well be true that many decisions at a strategic level were taken by Mr Stanford and Mr Davis (for example as to the nature of the products to be offered by SIB), the implementation of those strategic decisions was undertaken to a large extent within Antigua.

25. So far as Mr Stanford himself is concerned, according to the former staff of SIB in Antigua, Mr Stanford was a regular visitor to Antigua, spending several days a month there. I am also aware from staff at the Bank that he travelled extensively between the US, St Croix, Antigua and Europe.

(l) **Most sales activity occurred outside Antigua**

26. I have dealt above with the fact that sales of CDs was undertaken using the services of a network of financial advisors, employed by local Stanford group companies in the various jurisdictions in which they operated. They were based in Antigua, Aruba, Canada, Colombia, Ecuador, Mexico, Panama, Peru, Switzerland, USA and Venezuela.

27. While it is true that only certain "high-rollers" were flown to Antigua for personal meetings at the Bank (my investigations of the company records show that there were 240 such clients who

visited the Bank in 2007 and 123 in 2008), I disagree that there was no other personal contact available for investors with employees of SIB in Antigua. SIB, through its employees in Antigua, did have direct contact with large numbers of customers through the client services department in Antigua, which I have worked with since my appointment. I have made enquiries of the client services team and Melinda Fletcher who was, and still is, the principal receptionist at the Bank's premises. Ms Fletcher told me that on average 30 calls a day were received from clients of the Bank. Given that the vast majority of SIB's customers were on fixed term deposits and rarely had reason to contact the Bank to enquire about their account, and each customer also had a financial adviser, this number is not insignificant. Beverley Jacobs has confirmed to me that the credit card services provided to 3,500 customers were managed directly from Antigua through the bill payments department. The private banking service used by several hundred customers was also operated in Antigua. These services meant that customers could request that employees of the Bank pay bills, mortgages, credit cards on their behalf and set up standing orders for them. I have met and made enquiries of the employees at the Bank who carried out these services. In addition to this, the employees in Antigua organised and sent out account statements to customers each month/quarter, other than to those customers on "hold mail". Following my appointment as Receiver, I was able to utilise the Bank's systems in Antigua to send out final account statements to customers to inform them of their closing balances at the inception of the receivership.

28. Much of the SIB marketing material also listed a telephone number for SIB, which was the Bank's phone number in Antigua where potential clients could call and make enquiries. I have been informed by former employees that calls from investors or potential investors were put through to the client services department. Instructions were not accepted verbally over the telephone for security reasons and any clients or potential clients who attempted to do so were informed that they had to send their instructions in writing.

29. SIB's marketing materials did indeed refer to the other aspects of the Stanford group, but they did not "emphasize that SIB was part of the larger Stanford group of companies, which was founded in Texas and headquartered in Houston". The independence of SIB and its location offshore in Antigua has always been made clear. The marketing materials referred to the group as comprising "independent financial services companies" (emphasis added) (exhibited at page 13 of KVT7, though due to the poor quality of that page I exhibit it again at page 16). In addition, according to the financial advisers who I have spoken to, SIB's financial advisers were not trained to emphasize that the investments were handled by a team in the US, as Mr Janvey asserts. In the marketing material that Mr Janvey exhibited, it states that "Our investment

teams...are comprised of seasoned investment managers located throughout the world" (emphasis added) (exhibited at page 8 of KVT 7).

30. I agree that the financial advisers collected from customers all of the account opening information required to set up an account. However, financial advisers could not open accounts or accept deposits themselves. All the information had to be sent to SIB in Antigua for approval first. Unlike Mr Janvey, I am aware of examples where SIB rejected applications from customers introduced through financial advisers, after carrying out checks of its own. This information was provided to me by Beverley Jacobs of the Bank and I attach at pages 17-19 an example of such a rejected application. The checks were thorough and independent, including running search programmes against the US Office of Foreign Asset Control and other international institutions running status enquiries.

(m) **SIB held itself out to creditors, borrowers and other obligees, as having its location in the United States**

31. Mr Janvey bases this assertion on certain contracts entered into by SIB, and related documents, in connection with investments that it was making in the US (exhibited at RSJ30). The most that these documents show is that SIB gave its contracting counterparties a correspondence address in the US. They do not support the assertion that it held itself out as being located in the US. For example:

(i) The first contract exhibited (at page 2 of RSJ30) identifies on the first page that SIB is "an Antiguan banking corporation", and the reference to an address in Memphis on page 3 of RSJ30 is for service of notices;

(ii) The agreements at pages 31-37, 45-46 and 56-57 of RSJ30, and the UCC financing statement at page 38 of RSJ30, make it clear that the address within the US is a "care of" address, being the address of a different Stanford entity;

(iii) In relation to the contract at pages 31-37 of RSJ30, I attach further pages of that contract (which Mr Janvey has not exhibited) (see pages 20-23), which specify at page 20 that SIB is *"a company organised under the laws of Antigua and Barbuda"* and, in relation to a schedule showing each party's percentage of shares at page 22, that SIB's address is No.11 Pavilion Drive, St John's, Antigua;

(iv) The various promissory notes at pages 4-7 of RSJ30 between Rob Westfall, Inc and SIB are provided without any context and presumably have a similar contractual relationship behind them to the contract at page 2 of RSJ30, which is not included in the affidavit;

(v) All the contracts between pages 8-30 of RSJ30 are between SIB and another Stanford group company which would have been aware that SIB was an Antiguan based bank – it was the main institution in the Stanford empire;

(vi) The certificate of foreign status at page 51 of RSJ30 similarly contrasts SIB's permanent address in Antigua with a "mailing address" in the United States.

32. As against this, the vast majority of SIB's contracts were with its customers (roughly 27,000 immediately prior to its collapse). These contracts strongly suggest that SIB was headquartered, and third parties would consider it to be headquartered, in Antigua:

(i) The Stanford International Private Banking marketing brochure (exhibited at pages 12-26 of KVT7), on its first page (page 15 of KVT7) states, "Stanford International Bank Ltd conducts business with the world from its headquarters in Antigua".

(ii) The Stanford International Bank Ltd 20 Year Investment Philosophy brochure (exhibited at pages 1-11 of KVT7) shows on its second page (page 4 of KVT7) a picture of the SIB offices in Antigua and states, "SIB Headquarters, Antigua".

(iii) All of the evidence I provided in paragraph 45.9 (*Client acceptance procedures and account openings*) of my first affidavit from the Terms and Conditions and other documents that investors received when opening an account with SIB also indicate that SIB's customers, and other third parties, would have viewed SIB as being an Antiguan company, not a US company.

(iv) SIB's standard form contracts with its customers are governed by Antiguan law and contain a jurisdiction clause giving exclusive jurisdiction to the Antiguan courts to resolve disputes arising under the contracts. I refer to paragraph 45.9 of my first affidavit which sets out this clause in full.

(v) SIB's assets are primarily held outside Antigua, which is consistent with the operations of an offshore bank. When customers invest in a bank in the British Virgin Islands or a hedge fund in the Cayman Islands, they do not expect that all of their money will be invested specifically in that jurisdiction, and the same applies to Antigua.

33. I exhibit at page 24 a copy of a standard form of CD. This clearly identifies SIB as being located in Antigua, and states that it is executed in Antigua.

34. Further, all bank statements and investment portfolios issued to SIB were addressed and sent to Antigua. The banks and financial institutions providing them, which are very conscious of their "know your client" obligations, obviously considered their customer (SIB) to be an Antiguan company.

(n),(o)&(p) **The assets of SIB are located principally in jurisdictions other than Antigua and Barbuda**

35. It is true that SIB invested the funds it received from customers in many jurisdictions around the world. SIB recorded its investments in three tiers, which I deal with separately below.

36. Tier 1 covered cash balances held by SIB and the cash balance analysis as at 18 February 2009 and the location of those assets is as follows:

Country	Bank(s)	Balance US$ million	% of total balance
Canada	Toronto Dominion	19	41%
Antigua	Bank of Antigua	10	22%
United States	Trustmark Bank of Houston Comerica	9	20%
United Kingdom	HSBC Bank Plc	5	11%
Panama	HSBC Bank Panama SA	3	6%
	TOTALS	46	100%

37. Tier 2 covered funds under investment with international financial institutions. As at the inception of the receivership, the values of those investments were as follows, though it should be noted that some institutions have refused to provide current balances and are thus not represented in this table:

Country	Bank / Institution	Balance US$ million	% of total balance
Switzerland	SG Private Banking		

	Banque Franck Galland RBS Coutts Bank Julius Baer	117	50%
United Kingdom	Credit Suisse Marex	105	45%
United States	Barclays Wealth Charles Schwab Northern Trust	12	5%
	TOTALS	**234**	**100%**

38. The third tier of investments was in private equity, land holdings and shareholder loans. These can be broken down as follows:

(i) Equity and loan advances to corporations – as per Mr Janvey's and Mr Van Tassel's evidence at KVT4, the value of the monies invested or loaned to companies by SIB, as at 30 June 2008 was US$295 million. The majority of this sum relates to US corporations and funds.

(ii) The property assets for SIB in tier 3, excluding the Bank of Antigua property, comprised 2 holdings of land, both of which were in Antigua:

- Guiana Island and associated lands, which was acquired for a cost of US$63 million; and
- Pelican Island, which was purchased for US$17 million.

(iii) Mr Janvey refers to a shareholder loan of US$1.6 billion that had been made to Mr Stanford, which accords with my own enquiries. We have identified that, as of 31 July 2008, Allen Stanford had invested over US$510 million by way of capital in various Antiguan companies including:

- Stanford Development Company Ltd (property company)
- Sticky Wicket Ltd (restaurant)
- Sun Publishing Limited (newspaper publisher and printer)
- Maiden Islands Holdings Ltd (property company)
- Stanford Aviation Ltd (private air charter)
- The Islands Clubs Ltd (property company)
- Stanford Financial Group Ltd (financial services)

- Antigua Athletic Club Ltd (health club)

39. In addition, as of 31 July 2008, Mr Stanford had invested a further US$25 million by way of capital in Bank of Antigua, Stanford Trust Company Ltd and Stanford Group (Antigua) Limited.

40. As I have set out above, there are substantial property interests in the name of SIB in Antigua. There are also significant land holdings in the name of other Stanford companies in Antigua, though as the only source of income in the Stanford group, other than through management fees, was SIB, I consider this land was bought with SIB monies and that SIB has a claim for the return of this land for the benefit of its creditors.

41. The government of Antigua has not, as asserted by Mr Janvey, expropriated land owned by SIB (or indeed other Stanford companies), although it has passed legislation enabling it to do so. I am informed by members of the government that the intention behind this step was to ensure that the land could not be seized arbitrarily by interested parties or be sold before a proper structure had been put in place. Contrary to what Mr Janvey says about there being no compensation, the government is obliged under the Land Acquisition Act cap.233 to pay a market rate compensation for any land seized. I attach at pages 25-26 the statutory provision which so provides.

(q) **Investments resulted from sales outside Antigua (principally in the US)**

42. I have already dealt with the jurisdictions in which SIB's customers were located. I disagree with the statement that the investors were principally located in the US. As I indicate above, approximately 78% (by value) and approximately 85% (by number) of investments in SIB came from outside the US. Customer account relationships were principally with the financial advisers. Each customer had a financial adviser in his own jurisdiction and, as 85% of customers were from outside the US, their corresponding financial advisers were also outside the US.

43. The purchase of CDs by customers resulted in the injection of funds into SIB, and clients were instructed to pay their money into various banks located around the world, none of which was in the US. The banks were in Canada and England, and US$ cheques were directed to be sent to SIB in Antigua, which were forwarded onto Bank of Houston to be cashed. The other normal operating accounts of SIB were also located in the US, Antigua and Panama.

44. So far as redemptions are concerned, at the time of the maturity of a CD or upon a withdrawal by a client, in accordance with the terms of a CD, the client would notify SIB (in Antigua) in

writing of their desire to withdraw funds. The instruction was processed by the client transaction team which produced Swift payment transfers from Antigua for the Toronto Dominion bank account in Canada or the HSBC account in England, and upon being checked by a supervisor, these instructions were issued to the bank in question.

(r) **Administrative and other support for the operations of SIB was located in the US.**

45. I have dealt with these allegations above (see in particular paragraph 20 above). In summary, Mr Janvey overstates the importance of other Stanford entities in the operations of SIB, underplays the significance of the Antiguan staff to the operations of SIB, and in connection with the sales operation, ignores the fact that the financial advisors in the US spent the majority of their time selling brokerage accounts in SGC rather than CDs in SIB, which is borne out by the percentage of SIB customers situated in the US.

(s)&(t) **Stanford marketing emphasised the entire global Stanford family of companies**

46. It is true that some of the marketing materials provided to clients was about the Stanford group of companies, but I dispute that it was such as to cause investors to believe that SIB was itself based, or otherwise had its "centre of main interests", in the United States. Much of the marketing materials made clear that investors were investing in SIB in Antigua. I refer to the marketing materials Mr Janvey and Mr Van Tassel have exhibited at KVT7 (on which I provide comments at paragraph 32 above) and also to the Terms and Conditions, the Terms of Deposit and the Disclosure Statement I referred to in paragraph 45.9 of my first affidavit.

47. The terms and conditions were, as Mr Janvey says, in a separate document to the application form that people had to sign in order to open an account with SIB. However, the application form includes the following wording beneath the signature block:

"We hereby confirm that (i) the above given information is correct and we hereby acknowledge receipt of a copy of the Bank's General Terms and Conditions and agree with the contents thereof..."

At the bottom of the page the address of SIB is clearly stated as being in Antigua and the telephone and fax numbers are the numbers of SIB in Antigua. When investing monies in SIB, investors were likely to read the terms and conditions relating to the account given that the lowest permissible level of investment was set at US$50,000 for US investors and US$10,000 for investors elsewhere.

48. I have also been informed by a financial adviser in Venezuela that each customer was taken through the terms and conditions for the account line by line before completing the account opening forms. He indicated that it was always made clear to customers that SIB was an Antiguan bank. In certain jurisdictions, especially Venezuela, I am informed that it was considered an advantage that the Bank was offshore because it ensured greater confidentiality, which was important due to the risk of kidnapping and government investigations into holding money in US dollars.

(u) SIB incorporated in Antigua

49. For the many reasons set out in my first affidavit and in this affidavit I disagree that the only real connection between SIB and Antigua is that it was incorporated there. So far as SIB's premises are concerned, it is true that the building is rented, as Mr Janvey rightly asserts. However, SIB paid US$6 million as part of the consideration for obtaining a short-term lease. Given this very high advance rental payment, I intend to bring a claim for SIB's equitable ownership of that building in due course. SIB also owns its former premises at No. 1000 Airport Boulevard at Pavilion Drive, St John's, Antigua which is occupied by the Bank of Antigua and comprises roughly 15,000 square feet of office space on 3 acres of land.

(v)&(w) Operational decisions not made in Antigua

50. I have dealt with much of the matters in these sub-paragraphs elsewhere (see, in particular, paragraphs 20 and 45 above).

51. Juan Rodriguez-Tolentino, the President of SIB, worked full time in Antigua. He attended board meetings, some of which were in Antigua, though most were held by telephone. He hosted an annual visit by the investment committee to the Bank in Antigua. He also dealt with important investors as Mr Janvey sets out. These people were not *"typical SIB investors"*, but it would be unusual for a bank president to deal with typical customers. There were also a substantial number of such clients or potential clients who visited the Bank. The day-to-day management of the Bank, including its relationships with its 27,000 customers, was conducted by SIB employees in Antigua. I attach at page 27 a structure chart which shows all of the different employees of SIB, the departments and the job titles of each employee. As can be seen, the senior levels of management included the President, Juan Rodriguez-Tolentino, the Senior Vice President, Miguel Pacheco, the Vice President of Operations, Eugene Kipper, the Vice President of Client Support, Beverley Jacobs, the Human Resources Manager, Jennifer Roman, the Finance Manager, Omari Osbourne, the Internal Auditor, Trevor Bailey and Compliance Officer, Lisa-Ann Christian and the Quality Control Supervisor, Eloise Matthew.

Each of these employees worked from SIB's premises in Antigua and all bar two of them are Antiguan citizens.

52. I have been informed by Mr Rodriguez-Tolentino that he had been trying to change his pay structure for some time but it had not been processed. He was unable to explain why his salary was paid by a different group company.

(x) **SIB's employees in Antigua**

53. I have dealt with most of the points made in this paragraph at paragraph 20, 45 and 51 above. In addition to the points I make above:

(i) The employees in Antigua, contrary to Mr Janvey's understanding, corresponded with every customer by sending them monthly/quarterly account statements and CD confirmations. I am informed by Beverley Jacobs, Jennifer Roman and Omari Osbourne that they reported only to either the Vice President or President of SIB in Antigua.

(ii) As set out above, I am informed by Beverley Jacobs that the second level of customer checks carried out in Antigua was crucial to the opening of new accounts and those checks were diligently carried out; it was not an automatic rubber stamping process.

(iii) The roles of the employees at SIB can be seen from the structure chart exhibited at page 27.

(y) **Payments of interest and capital redemptions made from accounts outside Antigua**

54. It is true that the banks used by SIB for the purposes of receiving cash from, and making payments to, customers were its accounts with Toronto-Dominion Bank in Canada and HSBC in England. However, when redemption requests were made to financial advisers by SIB's customers, the requests were then forwarded to SIB in Antigua for processing. Instructions for the Swift payments were given from Antigua.

(z) **Copies of client files were maintained in the originating branch offices of the Stanford entities**

55. So far as I am aware, each originating branch would retain only the files of customers investing through that branch. If Mr Janvey is correct in asserting that client data was *"available by computer to Stanford offices in Houston and Montreal"*, this would be a criminal offence in Antigua if it related to customer specific information. Under Antiguan law it is an offence for

anyone to make available client specific information and if this information had been uploaded onto networks that were accessible outside Antigua then it would be a breach of that legislation.

(aa) **Accounting functions of SIB were a branch and function of the accounting and auditing functions of the Stanford groups**

56. SIB had its own accounts department that operated independently on the SIB accounts, although it had some interaction with other group companies as well. Each month, the management accounts were drawn up by the accounts team in Antigua. The only input from other parts of the group came directly from Mr Davis who provided the figures for the tier 2 and tier 3 investments.

57. I am told by Omari Osbourne, SIB's Finance Manager, that the auditing of SIB was also carried out in Antigua and employees from the Antiguan auditors would spend several weeks at the Bank's headquarters in Antigua each year to carry out their review. This was normally held during late January to early February each year. After all the major transactions had been included in the financial reporting system, all the necessary supporting schedules were prepared for review – firstly, by the internal audit team, and secondly, by the external auditors (C.A.S. Hewlett & Co). The audit team normally comprised a minimum of 6 persons who would visit SIB over a period of two weeks to review the supporting schedules, which were normally prepared by the Accounting Manager. In addition to the supporting schedules to the financials, each team was provided with a draft copy of the financials (Balance Sheet, Income Statement and Cashflow), trial balance and any other supporting documentation as evidence of the figures reported in the financials and supporting schedules. Of the persons reviewing the documentation, they were normally split into groups of 2 and they reviewed one section at a time. Any matters arising from their review were normally discussed for clarification or rectification. When all major issues had been resolved or discussed, each member of the team would affix their initials to the supporting schedules as evidence of their review. In some cases, minor changes to the schedules were left for the Accounting Manager to correct, after which, the file was copied and forwarded to C.A.S. Hewlett & Co where they would perform their own review. The C.A.S. Hewlett & Co review would take another 3 to 5 weeks to complete. During this time, any questions or issues arising would be addressed by way of providing additional documentation or verbal answers depending on the matter raised. Upon completion of their review, C.A.S. Hewlett & Co would issue their report and the figures would then be available for publishing, etc. The process was dealt with exclusively in Antigua.

(bb) **Loans made by SIB were minimal**

58. At the time SIB went into receivership, $100.4 million was outstanding in respect of loans granted by SIB to its customers, advanced against the CD balances held on their behalf. It is true that borrowers were not permitted to borrow more than 80% of the sums on deposit. It is not true that Mr Stanford or Mr Davis had any involvement in agreeing loans. Beverley Jacobs informs me that loan requests were sent to SIB in Antigua, where they were assessed and approved; there was no recourse to the US.

59. I disagree with the figures in sub-paragraph (bb)(ii). From my review of the accounts at the Bank, it is clear that as at the date of my appointment as SIB's receiver, there was $100.4 million in loans outstanding. Of this, $6.9 million was owed by US citizens, representing 6.88% of the total.

(cc) **Bank statements**

60. Irrespective of where duplicate bank statements may have been sent, each of the banking and financial institutions around the world, including in the United States, sent the official statements to Antigua, no doubt in recognition of the fact that the headquarters of SIB were in Antigua.

(dd) **Private banking**

61. The private banking activities offered to clients and carried out in Antigua cannot credibly be portrayed as insignificant. "Private banking" was not undertaken for all customers. Those that chose it were dealt with in Antigua, as set out in my first affidavit. Several hundred customers chose this service and the staff in Antigua were more than capable of carrying out the duties that this entailed, set out above. The other customers of SIB also received a high level of service, but, given that the majority of them were on fixed term deposits, their requirements were not such that they needed regular contact with the Bank.

62. Mr Janvey's paragraph 57 concludes that SIB's COMI is in the US. Based on the evidence set out in my earlier affidavit and above, which shows that all of the important documents and relationships point to SIB's day to day operations being carried out in Antigua, where customers would understand it to be and where 95% of its employees were based, I do not accept his conclusion.

63. In paragraphs 58-59 Mr Janvey deals with the COMI of STC. Whilst I am one of the joint receivers of STC appointed in Antigua, that company is not as yet in liquidation (although it is my intention to cause it to be put into liquidation in due course). So far as I am aware there are no assets of STC in this jurisdiction, and I do not therefore believe there is any need to seek

recognition of any foreign proceedings (assuming, contrary to my contention, that there are at present any "foreign proceedings" either in the United States or in Antigua within the meaning of the Cross Border Insolvency Regulations). Were it necessary to do so, however, I refute the suggestion that the COMI of STC is in the United States.

Mr Karyl Van Tassel's affidavit

64. I do not intend to deal specifically with all of Mr Van Tassel's evidence in this affidavit as the majority of the points that he makes are covered above, as his arguments and general evidence to support those arguments mirrors Mr Janvey's affidavit very closely. References to paragraphs in Mr Van Tassel's evidence will be preceded by "KVTp".

65. In KVTp11(b) Mr Van Tassel makes various assertions about sales to US citizens and the actions of brokers in the US. It is worth restating that only 15% of SIB customers were from the US and financial advisers in the US would not have dealt with investors from outside the US.

66. Mr Van Tassel states in KVTp18 that tier 1 was managed from Houston. In fact, SIB employees have informed me that they would manage the monies being paid into the accounts under tier 1 and would have a continued involvement in the management of those accounts until those monies were transferred for the purposes of onward investment in tier 2 or 3.

67. It is not true that most of the sales force for SIB CDs was in the US, as Mr Van Tassel states at KVTp31. Of all the brokers in the US, the majority worked on brokerage accounts, not SIB products, and this is supported by the percentage of investors who were located in the US. Also, regardless of the delivery addresses for STC trusts that Mr Van Tassel lists at KVTp37, I am informed by Grace Solomon, Finance Manager, Cicely Samuel, Filing Supervisor and Allison Briggs, Filing Manager (all former employees of STC) that STC also did not accept customers who were citizens of the US.

68. Mr Van Tassel contests at KVTp34 that SIB would "log the payment of monies into SIB". I have been informed by Omari Osbourne (the Finance Manager) that SIB employees did in fact carry out this task and would then provide daily details of the movements in and out of the accounts to other group companies for the purpose of onward investment and to ensure that the accounts remained in funds for redemption requests.

69. As regards KVTp38 and the location of STC customers, records indicate that STC had 3,087 customers with investments in the Stanford group, although not all of those investments were in SIB. SIB records show that it had 4,002 customers in Antigua, of who up to 3,087 could have

invested through STC. It therefore appears that at least 915 people resident in or originally from Antigua invested in SIB. It appears that the vast majority of these people are expatriates resident in Antigua.

Offshore Banking

70. At paragraph KVTp46, Mr Van Tassel refutes my previous statement that customers were attracted to SIB because it was outside their own jurisdiction and was based specifically in Antigua, as an offshore bank. Mr Van Tassel states that "this is not correct" and lists factors from some of the marketing materials as the real reasons why people wanted to invest in SIB. One of the other reasons in the same materials at page 10 of KVT7 that Mr Van Tassel failed to quote is:

"We are domiciled in a low tax jurisdiction, allowing us to reinvest more of our profit into the Bank's retained earnings, which has provided us a strong capital base from which to grow".

One of Mr Janvey's arguments is that SIB's COMI was actually in the US because its customers were led to believe that they were investing in a company that was based in the US. There are numerous references (set out above) to SIB being located in Antigua in the literature. One of the reasons for investing in SIB was also that it was offshore in a "low tax jurisdiction". I understand that the US is not a low tax jurisdiction and could not be confused with one.

C MISCELLANEOUS MATTERS RAISED IN MR JANVEY'S AFFIDAVIT

(1) US Court's receivership order

71. At paragraph 20, Mr Janvey refers to the petition that I have filed in the US Court for Chapter 15 recognition and to the application for the lifting of the injunction preventing any third party from filing any bankruptcy proceeding given by Judge Godbey on 12 March 2009. Mr Janvey states that the intention of these applications appears to be to:

"...transfer control, from the US court to the Antiguan court, of the winding up of SIB and the distribution of its assets to claimants."

To clarify, the purpose of this application is to seek recognition of the Antiguan liquidation as a main proceeding. I fully appreciate, given the manner in which Mr Stanford and his associates appear to have dealt with the assets of SIB and the other Stanford group companies incorporated in the US, that it is essential for there to be co-operation between the appropriate officeholders in Antigua and in the US. A first step in such co-operation is for the Antiguan liquidation to be

recognised in the US. To enable me to make that application, it was necessary to seek to lift the injunction obtained by Mr Janvey on 12 March 2009 preventing any party other than him from instigating bankruptcy proceedings in the US Courts. As the applications before this Court make perfectly clear, Mr Janvey and I do not agree as to which of the Antiguan liquidation and the US Receivership is the "main" SIB proceeding. I fully accept that my belief is that the assets of SIB worldwide should be repatriated to Antigua and distributed to SIB's creditors in the liquidation, and that my applications in this Court and in the US are designed to assist me to achieve that objective.

72. In the same paragraph, Mr Janvey says that the US Court is:

"...the only court in the world to have jurisdiction over all the relevant defendants and entities."

Whether or not Mr Janvey's view is correct, the central question which arises on the applications before this Court is which of the office holders (Mr Janvey or me) should be entrusted with the distribution of *SIB's* assets in this jurisdiction. SIB operated in its own right and is a legal entity distinct from the other Stanford entities. I have not seen any evidence to suggest that its assets are so commingled with the assets of any other Stanford entity or entities that they cannot be identified, gathered in and distributed amongst SIB's creditors.

(2) **Other foreign proceedings**

(a) **The Antiguan Receivership**

73. At paragraph 23, Mr Janvey suggests that my description of his first application before the Antiguan Court was "inaccurate". I do not accept that allegation. I was present at the hearing of 9 March 2009 (Mr Janvey was not) and Mr Janvey's application for time to file papers in the Antiguan Court did indeed centre on his intention to seek *"to establish the primacy of the US receivership over"* the Antiguan receivership.

(2) **Other foreign proceedings**

(b) **The Antiguan Liquidation**

74. At paragraphs 24, 25 and 26, Mr Janvey makes reference to the winding up petition of Mr Fundora and the lack of notice that he received. I was not involved in Mr Fundora's petition and am not able to comment on its substance or whether notice was given to Mr Janvey.

75. On 25 March 2009, the FSRC filed a separate petition for the winding up of SIB, as set out at paragraph 11 of my previous affidavit, which I supported. At paragraph 27, Mr Janvey says that

he was "*...surprised and disappointed...in light of the US Receivership Application...*" not to have been given any notice of that petition by me. The Court should be aware that:

(a) First, I did not file the petition (it was the FSRC's petition) and it was not, therefore, my choice whether to give notice of it to Mr Janvey.

(b) Second, the US Receivership Application had not resulted in Mr Janvey "filing" any documents in the Antiguan Court. Despite making an oral application for permission to serve papers on 9 March 2009 (for which he gave me no notice), Mr Janvey had made no filing in Antigua which would have given rise to an entitlement to be given notice of the FSRC's petition.

76. In paragraph 31 Mr Janvey states that I was wrong in my recollections of the hearing on 3 April 2009. This is incorrect. Mr Janvey's application was to postpone making an application for recognition which was due to have been made by 1 April 2009. The judge, in telling Mr Janvey to withdraw his application, was not just referring to the postponement application – this would have left Mr Janvey with no date by which to file his receivership application. In making his decision, the judge was passing judgement on Mr Janvey's ability to make an application for the recognition of the supremacy of his receivership i.e., he did not have locus to do so.

77. Mr Janvey refers at paragraphs 32 and 33 to an application that he made for recognition of his receivership as an "interested party" and, alternatively, as a defendant to the petitions. This application was dismissed, as Mr Janvey states and, contrary to what he says, the judge dealt with his argument to be joined as a defendant verbally at the hearing.

78. In paragraph 35 Mr Janvey states that the court did not afford him the opportunity to deal with the worldwide effect of his receivership order that was contested by the judge. Again, this was dealt with in verbal argument in the Court and submissions on the point were made by Mr Janvey's counsel, after which the judge's opinion remained unchanged.

79. In paragraphs 33b and 35 Mr Janvey notes that one of the grounds why the Antiguan court dismissed his application, was that the US Court order did not extend to Antigua. He goes on to quote the extra-territorial section of his appointment document to show why it should have been deemed to do so. However, Mr Janvey misunderstands the grounds that Harris J set out in paragraphs 41-44 of his judgement (see RSJ16A), which are that the US order by itself has no automatic standing in Antigua and the appropriate channels must be followed in order to have an order recognised.

80. Mr Janvey goes on to say in the same paragraph that he sought permission orally to make an application for recognition, which was granted, and yet he did not make that application despite having over 3 weeks to do so. Instead he sought to postpone his application and this was denied. Mr Janvey had ample opportunity to gain a status in Antigua which would have allowed him to be heard before the Courts but he did not take the opportunity to do so. In paragraph 36 Mr Janvey states that the Antiguan Court reached its conclusion to appoint me as liquidator of SIB without considering or hearing his recognition application. As I state above, other than seeking leave to do so, Mr Janvey never made a receivership recognition application and so the Court was not in a position to consider it.

81. In paragraph 42 Mr Janvey criticises the Antiguan Court for not considering certain "central" issues now before the English Court. Taking his points in turn:

(a) The Court did not consider whether Mr Janvey should be recognised as the representative of SIB because he did not make an application for such recognition;

(b) The Court did not consider the COMI of SIB because Antigua is not party to the Model Law and there is no such concept in Antiguan law; and

(c) For the same reason, there is no concept of main or non main proceedings in Antigua.

(2) Other foreign proceedings

(c) The Canadian Proceeding

82. Mr Janvey in paragraph 43 states that the "Antiguan Liquidators had...obtained...recognition". This is not true. Mr Janvey is in fact referring to my application for recognition of my *receivership* in paragraph 43. He also states that he was not provided with notice of my application for recognition of my receivership. I was advised by my Canadian counsel, Ogilvy Renault, that under the terms of the Canadian Bankruptcy and Insolvency Act ("**BIA**"), it was not necessary to provide such notice. The purpose of seeking recognition of the receivership in Canada was to ensure that I was in a position to protect SIB's assets located there. The application to court did not mention that a receiver had been appointed in the US, although it did mention the existence of the SEC's freezing injunction over SIB. Again, I was advised by my Canadian counsel that this was compliant with the BIA. I am informed by Julie Himo, a partner at Ogilvy Renault, that at the time of the application, effort was made to take the judge through all aspects of the motion in support of the application and the draft order in order to ensure that the BIA was fully complied with.

83. Since my receivership was recognised in Canada, SIB has moved into liquidation in Antigua. I have therefore filed a new application for the recognition of my liquidation in the Canadian courts and Mr Janvey was given full details of that application.

84. Mr Janvey, in the same paragraph 43, alleges that I acted improperly with regard to the computer servers that were utilised at SIB's offices in Montreal. This is not so, as I explain below:

- Shortly after my appointment, it came to my attention that the rent on the Canadian office of SIB was very shortly due to be paid. Realising that the employees in Canada could no longer continue to work given the effect of the SEC freezing order over the Stanford entities and the news circulating about SIB in the worldwide press, I arranged for members of my team to visit the Canadian office, accompanied by IT specialists.

- During this visit, we arranged for the staff to be sent home and for the fixtures and fittings to be valued with a view to selling the contents of the office. We were aware that there was a possibility that the landlord may change the locks on the property, or seek to distrain against SIB's property, including the computers, given the non-payment of rent. In light of this, we were concerned about leaving confidential information concerning SIB's affairs on the computers in the offices.

- Given that the office would be vacated, I instructed the IT specialists to preserve the information on the computer servers in the office by imaging them to a criminal evidential standard. This is standard practice in an insolvency situation as the computers must have the contents of their servers preserved before the information is deleted in advance of a sale of the computers.

- The images of the servers were then removed from the premises and returned to Antigua where they were secured. The deleted servers used in the Canadian office were left at the premises. Each of these steps was done in conjunction with Canadian legal advice from Ogilvy Renault. I informed Mr Janvey of my intention to carry out this plan on 26 February 2009 in a report I provided to him and he raised no objection at that stage.

(3) **Steps taken by me in relation to SIB and the Stanford entities**

85. Mr Janvey claims at paragraph 48 that he is unsure whether the statement of balances of customers, that I and my colleagues have fixed, is correct *"since many numbers generated by SIB seem to be incorrect"*. As justification for this Mr Janvey refers to comments I made in

Court in Antigua regarding the inaccuracy of investment figures. This confuses two different sets of figures, the first being the "value" of investments, which were largely in the control of Mr Stanford and Mr Davis and therefore liable to manipulation, and the second being the standing balances on deposit accounts. The latter is a matter of fact, not valuation, and can be established accurately. I therefore consider that the account balances we have confirmed to investors are correct.

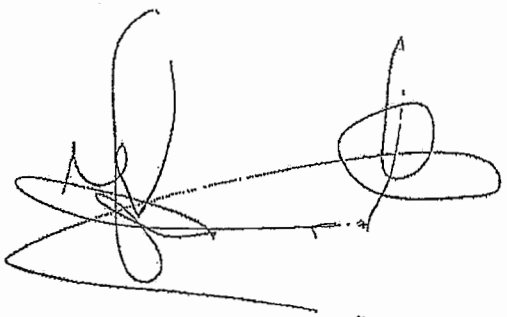
Sworn by NIGEL JOHN HAMILTON-SMITH)

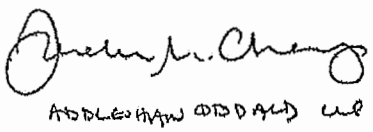
at 150 ALDERSGATE ST, LONDON EC1)

this 18th day of May 2009)

Before me JONATHAN CHENEY)

a Solicitor /~~Commissioner~~ for Oaths)





ADDLESHAW GODDARD LLP

N J Hamilton-Smith
2nd Affidavit
Applicant
15 May 2009
Exhibit "NJHS2"

No. 13338 and 13959 of 2009

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF STANFORD INTERNATIONAL BANK LIMITED (IN LIQUIDATION)

AND

IN THE MATTER of THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

SECOND AFFIDAVIT OF
NIGEL JOHN HAMILTON SMITH

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Ref: DAHE/RF/RWH/101248.00023

2nd Affidavit
Applicant
15 May 2009
Exhibit "NJHS2"

IN THE HIGH COURT OF JUSTICE Nos. 13338 and 13959 of 2009

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF STANFORD INTERNATIONAL BANK LIMITED (in liquidation in Antigua and Barbuda)

AND

IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

EXHIBIT "NJHS2"

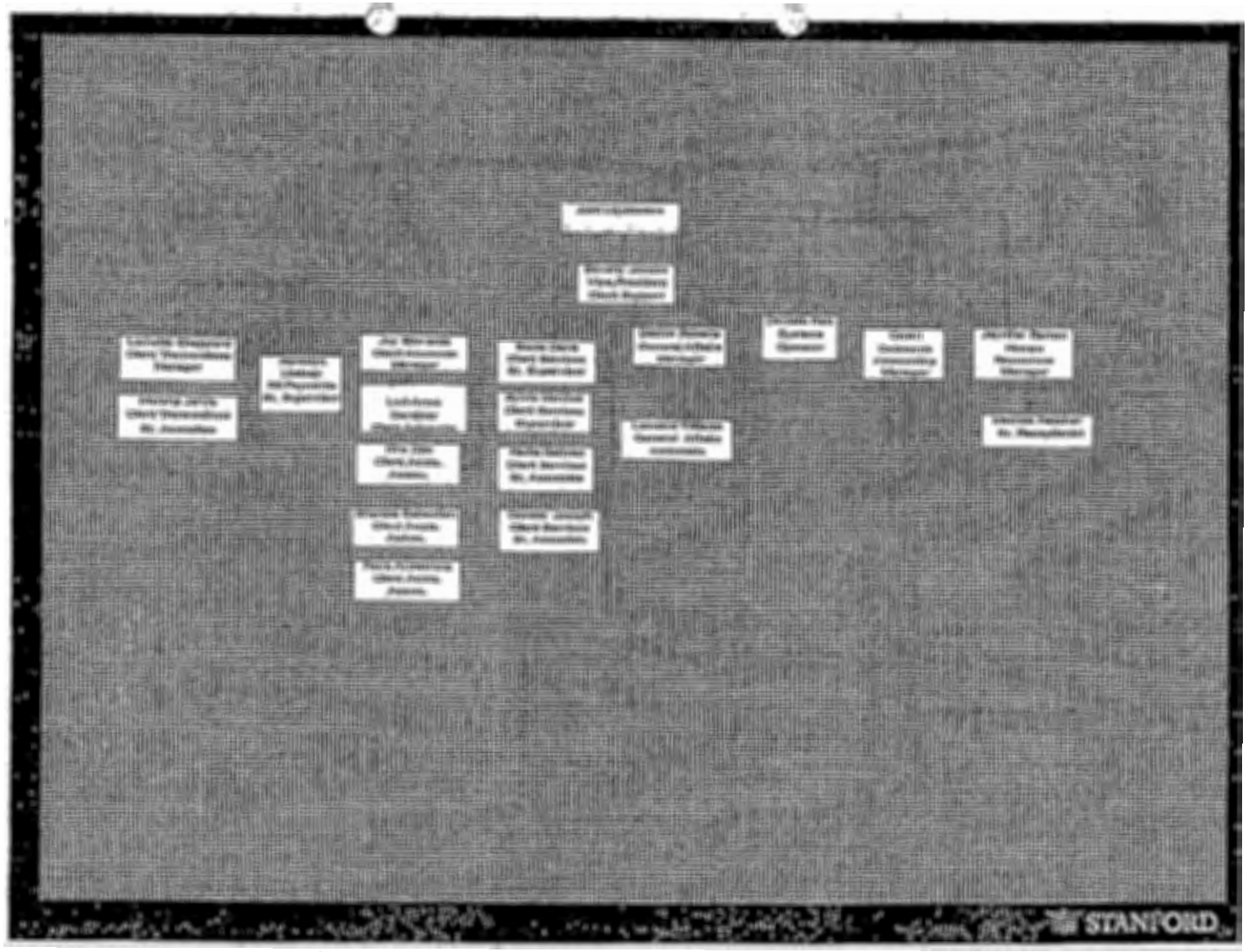
This is the Exhibit referred to as "NJHS2" in the Affidavit of

NIGEL JOHN HAMILTON-SMITH sworn this 18th day of May 2009

Before me

JONATHAN CHEVEN, ADDLESHAW GODDARD LLP

A Solicitor /~~Commissioner for~~ Oaths


STANFORD

TAB 3

N J Hamilton Smith
3rd Affidavit
Applicant
5 June 2009
Exhibit "NJHS3"

IN THE HIGH COURT OF JUSTICE

Nos. 13338 and 13959 of 2009

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER of STANFORD INTERNATIONAL BANK LIMITED (in liquidation in Antigua & Barbuda)

AND IN THE MATTER of THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

THIRD AFFIDAVIT
OF NIGEL JOHN
HAMILTON-SMITH

I, **Nigel John Hamilton-Smith**, of Torrington House, 47 Holywell Hill, St Albans, Hertfordshire, make oath and say as follows:

1. I make this, my third affidavit, in support of my application for recognition of the Antiguan liquidation proceedings, as a foreign main proceeding, in respect of Stanford International Bank Limited ("SIB" or "the Bank") which was issued on 21 April 2009. I refer to my previous two affidavits filed in support of that application, dated 21 April 2009 and 15 May 2009.

2. This affidavit is also filed in response to the application issued by Mr Janvey, the receiver appointed over SIB and other Stanford group entities by a US Court on 16 February 2009, on 8 May 2009, together with the two sets of affidavits filed in support of that application. Mr Janvey seeks recognition of his status as a foreign representative in relation to all of the Stanford group companies, including SIB.

3. Further to the directions given by Mr Justice Henderson on 30 April 2009, the two applications are to be heard together.

4. I am authorised by Mr Wastell, my joint liquidator, to make this affidavit on his behalf. Save as otherwise appears, the facts and matters stated herein are within my own personal knowledge, having been acquired by me in my capacity as one of the Receivers, and now one of the liquidators, of SIB. Where such facts and matters are not within my own personal knowledge, the source of my information and belief is set out herein and I believe such facts and matters to be true.

5. There is now shown to me marked Exhibit "NJHS3", which contains the documents I refer to in this affidavit. References to page numbers in this affidavit are references to pages in that Exhibit.

Mr Janvey's filing in the US Court of 1 June 2009

6. For the sake of completeness, I exhibit at pages 1-35 a document filed by Mr Janvey in the US Court on 1 June 2009.

Sworn by NIGEL JOHN HAMILTON-SMITH)

at High Court)

this 4th day of June 2009)

Before me Adelda Otto)

a Solicitor /Commissioner for Oaths)

COMMISSIONER FOR OATH
ANTIGUA & BARBUDA

N J Hamilton-Smith
3rd Affidavit
Applicant
5 June 2009
Exhibit "NJHS3"

No. 13338 and 13959 of 2009

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF STANFORD INTERNATIONAL BANK LIMITED (IN LIQUIDATION)

AND

IN THE MATTER of THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

THIRD AFFIDAVIT OF
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AND

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EXHIBIT "NJHS3"

This is the Exhibit referred to as "NJHS3" in the Affidavit of

NIGEL JOHN HAMILTON-SMITH sworn this 4th day of June 2009

Before me

Ethelda Otto

A Solicitor / Commissioner for Oaths

COMMISSIONER FOR OATH
ANTIGUA & BARBUDA

(22761967.01)

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.: 3-09-CV-0298-N

RECEIVER'S RESPONSE TO BUKRINSKY MOTION TO INTERVENE AND AMEND OR MODIFY CERTAIN PORTIONS OF THE COURT'S AMENDED RECEIVERSHIP ORDER

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STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
Defendants.	§	

RECEIVER'S RESPONSE TO BUKRINSKY MOTION TO INTERVENE AND AMEND OR MODIFY CERTAIN PORTIONS OF THE COURT'S AMENDED RECEIVERSHIP ORDER

The Bukrinsky Movants[1] ask this Court to amend its Receivership Order to permit them to intervene in the case and file an involuntary bankruptcy petition against Stanford International Bank, Ltd. ("SIB") or any of the other Defendants.[2] They seek, in essence, to wrest one or more of the Defendants from this Court's jurisdiction during what are still the early stages in this large and complicated fraud case.[3] Granting this relief would permit the Bukrinsky

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1 The "Bukrinsky Movants" are Dr. Samuel Bukrinsky, Jaime Alexis Arroyo Bornstein, and Mario Gebel. *See* Motion: (i) to Intervene; (ii) to Amend or Modify Certain Portions of this Court's Amended Receivership Order; (iii) in Support of the Antiguan Receivers-Liquidators' Request to Coordinate Proceedings Under Chapter 15 of the Bankruptcy Code; and (iv) in the Alternative, for Extension of Time to Appeal (the "Bukrinsky Motion").

2 Technically, the Bukrinsky Movants are seeking to lift the injunction contained in paragraph 11 of the Amended Receivership Order, which enjoins "[c]reditors and all other persons . . . from seeking relief from the injunction contained in paragraph 10(e) of this Order for a period of 180 days from the date of entry of this Order." Paragraph 10(e) enjoins all persons other than the Receiver from filing "any case, complaint, petition, or motion under the Bankruptcy Code (including, without limitation, the filing of an involuntary bankruptcy petition under chapter 7 or chapter 11 of the Bankruptcy Code, or a petition for recognition of foreign proceeding under chapter 15 of the Bankruptcy Code)." However, for all intents and purposes, the Bukrinsky Movants are asking this Court to lift the injunction so that they can file an involuntary bankruptcy petition against SIB. *See* Brief in Support of Bukrinsky Motion at 1 n.2.

3 On February 17, 2009, the Court entered an Order Appointing a Receiver, Ralph S. Janvey ("Receiver"), over the assets, monies, securities, properties of whatever kind and wherever located (the "Receivership Assets") and the books, account statements, computers, servers, and other informational sources of all entities owned or

Movants to file an involuntary bankruptcy petition, as to any or all of the Defendants, immediately upon entry of the order granting that relief, thereby putting an end to the Receivership as to those Defendants. Granting the relief also would run counter to the decades-long practice in virtually all circuits, including the Fifth Circuit, of using the vehicle of an equity receivership to accomplish the winding up of entities that were the subject of Ponzi schemes and other frauds.[4]

The Court previously decided—correctly—that the Receiver is in the best position to determine whether any of the Stanford entities should be placed into bankruptcy. That still holds true. The Receiver, by virtue of more than three months of direct management of the myriad entities in the Stanford enterprise, has more knowledge than the Bukrinsky Movants or anyone else about whether it is better to continue to administer this particular estate as a receivership or in bankruptcy. And the Receiver's best judgment is that a bankruptcy at this time would be counter-productive and not in the best interests of Stanford investors and creditors.

The following are among the reasons a bankruptcy at this time would be an inferior vehicle for addressing the many complex issues involved in untangling the massive fraud that lies at the heart of this case:

- Receivership generally is more efficient and cost-effective than bankruptcy. Although the administrative fees and expenses associated with a receivership dealing with a fraud such as the Stanford scheme can be substantial, the cost of administering bankruptcy cases for one or more of the Stanford entities would dwarf the administrative costs of the Receivership outside bankruptcy.

- The particular circumstances of this Receivership would add even more costs to a bankruptcy filed at this time. Bankruptcy now would result in substantial transition costs associated with the turnover of assets and information from the

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controlled by Defendants, or in the possession of their agents and employees (the "Receivership Records") (together with the Receivership Assets, the "Receivership Estate"). Docket No. 10. The Receiver was ordered to locate and take control of all Receivership Estate property, assets, and records.

[4] *See infra* notes 17 &18 and accompanying text.

Receiver to a potential superseding trustee. A bankruptcy filing now would delay or halt ongoing efforts to liquidate assets, increasing the estate's exposure to ongoing liabilities. In addition, depending on certain rulings made by the Bankruptcy Court after a bankruptcy is filed, such as whether to convert to a chapter 7 case, a bankruptcy now also would result in substantial additional costs associated with the potential need for retention of new counsel and professionals. In bankruptcy, it is likely that multiple committees would be formed, each with its own set of attorneys and other professionals whose fees and expenses would be charged to the bankruptcy estate as administrative expenses.

- The Receivership's cost and efficiency advantages over bankruptcy do not sacrifice the due process rights of investors and other creditors. Creditors will be given notice of, with an opportunity to object to, the distribution plan that the Receiver ultimately will propose. In the meantime, the Receiver, through his website, provides notice to creditors of actions that may materially affect them, and he takes their comments into account in determining what action to take. Additionally, the court-appointed Examiner reviews all of the Receiver's proposed actions that require Court approval, and this Court closely monitors the Receiver's actions to ensure that creditors' and investors' due process rights are respected and preserved.

- Receivership provides needed flexibility in formulating a plan of distribution that is fair and equitable for all stakeholders. Generally, equity receiverships distribute assets to creditors on a pro rata basis. Like the Bankruptcy Code, equity receiverships typically ensure that persons similarly situated receive similar treatment. In a case such as this involving massive deception, however, a searching evaluation of the facts is required to discern relevant differences between and among categories of creditors. The Receiver can take into account relative fault within a class of creditors, and fashion an equitable plan of distribution that does not treat all creditors within a class identically if they are not deserving of equal treatment. For example, the Receiver recently discovered the possibility that multiple investors had CDs purchased for them without their permission. The Bankruptcy Code's generally fixed, one-size-fits-all statutory priority scheme is less able to take such potentially relevant differences into account.

- Additionally, the Bankruptcy Code's rigidity can have negative consequences for investors, including the Bukrinsky Movants. Because their claims are related to the sale or purchase of a security, the Bankruptcy Code mandates that their claims be subordinated. 11 U.S.C. § 510(b). This likely would result in a much lower recovery for SIB CD investors in bankruptcy than they can achieve in a distribution by the Receiver outside of bankruptcy.

Public policy also strongly favors maintaining the injunction against involuntary bankruptcy filings. If the Bukrinsky Movants succeed in forcing SIB or the other Stanford

defendants into bankruptcy, it may have a chilling effect on equity receiverships in future securities fraud cases. The equity receivership has long been an effective tool used by the SEC and federal courts to administer securities fraud cases. A few creditors should not be allowed to force a company in receivership into bankruptcy against the best judgment of the Receiver, thereby wresting jurisdiction away from the court overseeing the SEC's civil action. Such a notion threatens to undermine the long-standing use of equity receiverships in securities fraud cases.

For these reasons, the Receiver respectfully asks the Court to deny the Bukrinsky Motion and keep intact the Amended Order Appointing Receiver, including the injunction against filing petitions in bankruptcy and seeking relief from that injunction for 180 days. The Bukrinsky Movants should not be permitted to intervene, as their interests in the case are adequately represented by the Receiver, the court-appointed Examiner, the SEC, and this Court.

I. Background

On March 12, 2009 the Court entered the Amended Order Appointing Receiver (Docket No. 157), which, among other things, granted the Receiver the sole and exclusive authority to seek bankruptcy protection on behalf of the Stanford defendants. The Amended Order Appointing Receiver ensured that the Receiver would have a full range of options available to administer the Receivership Estate. In his motion seeking entry of the amended order, the Receiver observed that while bankruptcy may turn out to be the best option for one or more of the Defendants, it was too early in the Receivership process for anyone to accurately assess the potential benefits a bankruptcy might provide for the Defendants. The requested relief was necessary at that time because, if bankruptcy petitions were permitted to be filed at this stage, any such filing would implicate the automatic stay under Bankruptcy Code section 362, adding an additional layer of complexity to an already extraordinarily complex undertaking.

Additionally, prohibiting involuntary bankruptcy filings and giving the Receiver the sole authority to file, should it become necessary, would allow for a smooth and orderly transition into bankruptcy. Permitting bankruptcy filings at that stage of the Receivership would have been unduly disruptive.

One of the provisions requested by the Receiver, and approved by this Court, was a 180-day moratorium on challenges to the injunction against bankruptcy filings by anyone other than the Receiver. The Receiver sought 180 days to carry out his many duties to "conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate," Amended Order Appointing Receiver ¶ 5, without having to fend off bankruptcy filings and to have enough time to gather the information and perform the analysis necessary to determine whether filing bankruptcy would be in the best interest of one or more of the Stanford entities.

On April 20, 2009, the Court issued an order appointing John J. Little as examiner in the case (the "Examiner"). The order directs the Examiner to convey to the Court such information as the Examiner, in his sole discretion, shall determine is 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 of the Defendants.

II. Argument & Authorities

A. The law and facts support preserving the Court's stay of bankruptcy filings.

In factual circumstances similar to this case, the Southern District of New York recently enjoined the filing of bankruptcy petitions and denied a challenge to an injunction against bankruptcy filings. The court held that the injunction was proper and should not be lifted because doing so would interfere with a receivership established in connection with a securities fraud case brought by the SEC. *SEC v. Byers*, 592 F. Supp. 2d 532, 536 (S.D.N.Y. 2008).

In *Byers*, the court held that the equitable power to fashion an appropriate remedy for a securities law violation included the authority to enjoin the filing of a bankruptcy petition. *Id.* The SEC had filed a complaint alleging defendants participated in a Ponzi scheme that involved 240 affiliates on three continents. *Id.* at 534. The receivership order enjoined any person, except the receiver, from filing a bankruptcy petition. *Id.* at 534-35. The court observed that if the court lacked this authority, it would undermine the purpose of a receivership and disrupt the receiver's efforts to discharge his duties. *Id.* at 535-36.[5]

Having concluded that it had the power to enter the stay, the court considered whether the movants had demonstrated the stay nonetheless should be lifted. Applying a three-factor test, the court held that it should not be lifted because: (1) maintaining the stay would maintain the status quo; (2) it was early in the receivership and filing bankruptcy petitions would hinder the receiver's ongoing investigation; and (3) the court did not have enough information regarding the merits of the movants' underlying claim to outweigh the first two factors. *Id.* at 536-37.

The same is true in this case. "It is especially appropriate in an action like this one that the federal courts have the power, if necessary, to take control over an entity and impose a receivership free from interference in other court proceedings." *SEC v. Wencke*, 622 F.2d 1363, 1372 (9th Cir. 1980). The law allows, and the unique facts and circumstances of this case justify, maintaining the injunction against any bankruptcy filings that would prematurely wrest

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[5] *Byers* cited two Circuit-level cases in support of its decision to maintain an injunction against bankruptcy filings that would have interfered with a receivership. As the Sixth Circuit explained in the *Liberte Capital* case, because "[t]he receivership court has a valid interest in both the value of the claims themselves and the costs of defending *any* suit as a drain on receivership assets," the court "may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained." *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) (emphasis added). And as the Ninth Circuit held in the *Wencke* case, such an injunction can even bind all non-parties who have notice, far exceeding normal limits on the scope of injunctions. *See SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). Furthermore, the power to enjoin "extends to the institution of *any* suit." *Liberte Capital*, 462 F.3d at 551 (emphasis added).

jurisdiction away from this Court at the expense of the creditors and investors the Receiver is working diligently to protect. Claimants are amply protected by the Receivership and by this Court's continuing oversight, and the Bukrinsky Movants should not be permitted to disturb the status quo.

B. Receivership is well suited for investigating fraudulent schemes and formulating a fair and equitable distribution in a cost-efficient manner.

Contrary to what the Bukrinsky Movants argue, bankruptcy does not provide a superior vehicle for addressing the numerous complex issues associated with investigating the Stanford fraudulent enterprise and developing a plan for the liquidation of assets and subsequent distribution to stakeholders. Though bankruptcy might be appropriate in some fraud cases (and, if circumstances change dramatically, at some point in this case might become a viable option for certain entities eligible to be bankruptcy debtors), maintaining the status quo and staying out of bankruptcy for the time being is, in the best judgment of the Receiver, preferable. The Receiver believes that the Receivership's cost savings, efficiencies, and flexibility to develop a plan of distribution that is fair and equitable to all make it superior to bankruptcy. Bankruptcy offers no advantages over the Receivership that justify the increased costs and inefficiencies that bankruptcy would entail. Outside of bankruptcy, the Receiver and the Court can tailor remedies that are fair to all in an expeditious manner. Bankruptcy simply does not offer the same flexibility to work out a plan that is fair and equitable to all in a cost-effective and efficient manner.

1. Receivership is more efficient and cost-effective than bankruptcy.

Allowing the Receiver to continue to function outside of bankruptcy most likely will save the Receivership Estate money and preserve more assets for distribution to investors and creditors. Receiverships are generally less expensive than bankruptcies. *See Scholes v.*

Lehmann, 56 F.3d 750, 755 (7th Cir. 1995) (noting that "[c]orporate bankruptcy proceedings are not famous for expedition"); *SEC v. Wang*, 944 F.2d 80, 86-87 (2d Cir. 1991); *SEC v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir. 1992).[6] Statutory mandates and complex procedural rules contribute to the high administrative expenses generated in large bankruptcies. Receiverships, on the other hand, can employ abbreviated summary processes and procedures. *See SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001) (finding that the broad powers and wide discretion derived from the inherent powers of an equity court make the use of abbreviated summary processes possible); *SEC v. Hardy*, 803 F.2d 1034, 1040 (9th Cir. 1986) (holding that "the use of summary proceedings to determine appropriate relief in equity receiverships, as opposed to plenary proceedings under the Federal Rules, is within the jurisdictional authority of a district court").[7]

The summary procedures of a receivership are more efficient and cost-effective than bankruptcy procedures. *See Elliott*, 953 F.2d at 1566-67 ("A summary proceeding reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets."); *Basic Energy*, 273 F.3d at 668 (noting that the abbreviated procedures, including the use of a single receivership to resolve all claims, "advance the government's

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[6] *See also SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1036-37 (C.D. Cal. 2001) (concluding that (1) liquidation by the receiver, rather than by a bankruptcy court, was proper because evidence demonstrated that the entities' liabilities were greater than their assets and that "ongoing management alone [would] drain money out of the estate, money that otherwise could be returned to investors"; (2) the receiver should not follow bankruptcy procedures because opening up the process would lead to lower sale prices and delayed approval of transactions, which would not benefit investors; and (3) appointment of a creditors' committee, as allowed in bankruptcy, would be duplicative and wasteful because the receiver already represented the interests of all investors).

[7] *United States v. Ariz. Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984) (finding that a receiver "may proceed summarily to recover money belonging to the receivership" and that receivership courts have the power to use summary procedure "in allowing, disallowing, and subordinating the claims of creditors"); *United States v. Fairway Capital Corp.*, 433 F. Supp. 2d 226, 241 (D.R.I. 2006) ("Federal district courts have wide discretion in granting relief in an equity receivership and may use summary proceedings in fashioning such relief.").

interest in judicial efficacy by reducing the time needed to resolve disputes, decreasing the costs of litigation, and preventing the dissipation of receivership assets").[8]

Additionally, in this case, a bankruptcy filing almost certainly would result in multiple committees being formed, each with its own retained counsel and professionals. Creditors' committees and various other committees of interested parties are a staple of bankruptcy cases. Creditors' committees play no role in receiverships, presenting a substantial cost savings to the administered estate.[9]

Generally, expenses incurred by committees are entitled to priority treatment as administrative claims of the bankruptcy estate. 11 U.S.C. § 503(b); *see also In re Am. 3001 Telecomm., Inc.*, 79 B.R. 271 (N.D. Tex. 1987). Even individual committee members, in some circumstances, can have their expenses reimbursed. *See* 11 U.S.C. § 503(b); *In re White Motor Credit Corp.*, 50 B.R. 885 (N.D. Ohio 1985).[10] Such fees and expenses, likely to be incurred by multiple committees and their respective legal counsel and other retained professionals, would present a substantial cost to the administration of a Stanford bankruptcy case. None of these fees and expenses will be required if the Stanford entities remain outside of bankruptcy.

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[8] *See also Hardy*, 803 F.2d at 1040 (upholding summary proceedings because they avoid formalities that slow down dispute resolution, promote judicial efficacy, and reduce litigation costs to the receivership); *SEC v. Wencke*, 783 F.2d 829, 837 n.9 (9th Cir. 1986) ("The primary purpose of allowing courts to establish receiverships in securities fraud actions is to prevent further dissipation of the assets of the defrauded investors; the use of summary post-judgment proceedings helps to effectuate this."); *Fairway Capital Corp.*, 433 F. Supp. 2d at 241 ("Summary proceedings allow for the consolidation of all litigation concerning the receivership before a single district court and the efficient resolution of disputes.").

[9] Under the Bankruptcy Code, committees of creditors holding unsecured claims may be appointed in both chapter 7 and chapter 11 cases. *See* 11 U.S.C. §§ 705 & 1102. Recent cases also have seen appointment of a number of "special interest" committees, including landlord committees, employee committees, and ratepayer committees. A committee of creditors appointed by the United States Trustee ordinarily consists of persons willing to serve and who hold the seven largest claims against the debtor. *See* 11 U.S.C. § 1102(b)(1). In a large case, committees can be expected to play an active role in the reorganization process. Upon the creation and selection of a committee, the committee, with court approval, may select and authorize the employment of attorneys, accountants, or other agents to represent the committee in the bankruptcy case. *See* 11 U.S.C. § 1103(a).

[10] *See also* Thomas Fusco, *Reimbursement of Expenses, Other than for Professional Services, to Official Creditors' Committees, or Members Thereof, in Chapter 11 Bankruptcy Proceedings, under Bankruptcy Reform Act of 1978 (11 U.S.C.A. § 101 et seq.)*, 109 A.L.R. Fed. 842 (1992).

Finally, a bankruptcy at this time would cost the estate both time and money unnecessarily. The Receiver is in the midst of negotiating settlements with creditors and engaging in the sale of assets, including aircraft and real estate, in accordance with procedures approved by this Court. Converting the Receivership to a bankruptcy at this time would slow the progress that has been made and result in substantial transition costs associated with the turnover of property and information.[11]

2. *Receivership protects the due process rights of creditors and investors.*

The efficiencies and resulting cost savings of an equity receivership do not come at the sacrifice of anyone's due process rights. Indeed, receiverships are required to and do protect the due process rights of creditors and investors. *See Basic Energy*, 273 F.3d at 670 (holding that the district court's procedures—considering evidence and arguments along with providing ample opportunity to rebut—"were well within the limits of . . . equitable discretion"); *Elliott*, 953 F.2d at 1566-67 (determining that (1) even though the term "summary" connotes brevity, it does not mean the parties received improper procedure, and (2) "[s]ummary procedures are inappropriate when parties would be deprived of a full and fair opportunity to present their claims and defenses");[12] *Hardy*, 803 F.2d at 1040 (determining that the procedures, including enforcement of an objection deadline, "were a reasonable and practicable attempt to

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11 Depending on certain rulings made by the Bankruptcy Court after a bankruptcy is filed, such as whether to convert to a chapter 7 case, significant additional costs would be incurred if the Receiver and his team of attorneys and professionals were replaced by a superseding trustee and new team of professionals. A superseding trustee and a new team of professionals would have an extremely steep "learning curve" compared to the institutional knowledge of the Receiver and his professionals.

12 The court also held that the objecting party "must show how they would have been better able to defend their interests in a plenary proceeding." *Elliott*, 953 F.2d at 1567. Also, the court concluded that "a district court does not generally abuse its discretion if its summary procedures permit parties to present evidence when the facts are in dispute and to make arguments regarding those facts." *Id.*

administer the receivership without depriving the creditors of fair notice and a reasonable opportunity to respond.").[13]

Courts have broad power to fashion equitable relief to the particular circumstances of each case. *Fed. Savings & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 563 (5th Cir. 1987) (finding that because the receiver is concerned "with the savings of many depositors [and] the investments of numerous stockholders . . . equity's powers to aid [the receiver] in its endeavors are even broader than for private claims"). These powers include the ability to enjoin non-parties to protect the public interest. *SEC v. Hickey*, 322 F.3d 1123, 1131 (9th Cir. 2003) (authorizing the district court to freeze the assets of a non-party "so long as doing so was necessary to protect and give life to" other orders entered against the defendants).

The Bukrinsky Movants rely on *Jordan v. Independent Energy Corp.*, 446 F. Supp. 516 (N.D. Tex. 1978) for the proposition that the injunction against the filing of a bankruptcy petition violates their due process rights. But in *Jordan* the court actually stated that "[i]n the absence of specific Congressional guidance to the contrary, a federal district court may theoretically restrain voluntary or involuntary access to the bankruptcy court by issuing a blanket receivership injunction." *Id.* at 529. The court stated that a broad litigation stay in a receivership order should be evaluated in light of the following factors:

> (1) a substantial likelihood that the plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable

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[13] The court also noted that a "district judge supervising an equity receivership faces a myriad of complicated problems in dealing with the various parties and issues involved in administering [a] receivership" and that "reasonable administrative procedures, crafted to deal with the complex circumstances of each case, will be upheld." *Hardy*, 803 F.2d at 1038. *See also Fairway Capital Corp.*, 433 F. Supp. 2d at 241 (stating that summary proceedings "should afford creditors fair notice and an opportunity to be heard" and "allow parties to present evidence when the facts are in dispute and to make arguments regarding those facts"); *TLC Invs. & Trade Co.*, 147 F. Supp. 2d at 1034-35 (finding that summary procedures satisfy due process as long as there is adequate notice and an opportunity to be heard); *FDIC v. Bernstein*, 786 F. Supp. 170, 177-78 (E.D.N.Y. 1992) (noting that "[a]lthough the use of summary proceedings, in some cases, would deprive parties of a full and fair opportunity to prepare their claims and defenses, such a danger is not present here as both parties have been given an ample opportunity to prepare and present their contentions).

> injury if the injunction is not granted, (3) a threatened injury to plaintiff that outweighs the threatened harm the injunction may do to defendant, and (4) granting of the preliminary injunction will not disserve the public interest.

Id.

This Court has already found that the SEC has shown a substantial likelihood that it will prevail on the merits of its case. In the absence of the litigation stay, including the injunction on filing a petition in bankruptcy, anyone could file a petition at any time—even one day after the Receiver was appointed in any SEC fraud case. This would irreparably disrupt the Receivership and fracture the SEC's case. The public interest is better served, as discussed *infra*, by this Court and this Receiver than by segregating SIB, its assets, records, and claimants and subjecting them to an involuntary bankruptcy petition. Indeed, it is not even possible to factually separate SIB from the remaining entities and an attempt to do so would be extremely costly and ineffective in the end.

Jordan is also distinguishable in at least three fundamental, factual respects. First, *Jordan* arose out of a suit by private investors, not an SEC civil enforcement action. Case law makes it clear that a receivership established in connection with an SEC civil enforcement action, such as this one, is subject to different policy considerations. "There is a strong federal interest in insuring effective relief in SEC actions brought to enforce the securities laws." *SEC v. Wencke*, 622 F.2d 1363, 1372 (9th Cir. 1980). "The appointment of a receiver is a well-established equitable remedy available to the SEC in its civil enforcement proceedings for injunctive relief," and is often necessary "to insure complete enforcement of the federal securities laws." *SEC v. First Fin. Group of Tex.*, 645 F.2d 429, 438 (5th Cir. 1981).

Second, the scope of both the fraud and the receivership here are vastly different than in *Jordan*. *Jordan* involved the allegedly fraudulent sale of fractional interests in oil wells.

A receiver was appointed to operate the oil leases until conclusion of the case. Here, the SEC filed suit to halt a more than $8 billion fraud spanning five continents and involving more than 100 separate entities. Continued operations depended upon the continued sale of the fraudulent CDs issued by SIB. When the Court enjoined the Stanford fraud, there was no longer a going concern to operate, as there had been in *Jordan*. Instead, the task was, and remains, shutting down massive, far-flung operations and identifying and taking control of assets for eventual liquidation and distribution to claimants under the Court's direction and supervision. Given the enormity of the task assigned to the Receiver and the difficulties posed by flawed and deceptive record-keeping, a stay of litigation, including the Bukrinsky Motion, is vital.

Third, the *Jordan* case did not address issues like those in this case, in which liquidators appointed by an offshore tax-haven jurisdiction seek to fracture an SEC receivership. The *Jordan* holding simply did not consider, and is therefore not applicable to, a case like this one involving an injunction designed to preserve the status quo to allow the Receiver to fulfill his duties free from outside interference.

*3. **Receivership is the best vehicle for providing a fair and equitable plan of liquidation and distribution for all stakeholders.***

Outside of bankruptcy, equity receiverships—under close judicial supervision—enjoy broad flexibility in determining the most equitable distribution scheme. Overall, a distribution plan developed in an equitable receivership provides a more flexible option for achieving equitable distribution. In an SEC receivership, a plan need only be reasonable and approved by the court as equitable. *See SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (stating that a court acts pursuant to its inherent equitable powers when approving a plan); *Wang*, 944 F.2d at 85 (holding that "once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is

at an end"). Before determining that a proposed plan is fair and equitable, of course, the Court would address any objections and consider the interests of affected interested parties.

Such a malleable standard allows a distribution plan to be adapted to the results of a receiver's investigation, including situations where the parties involved have varying degrees of fault or knowledge. A court can approve a plan that provides for strict pro rata distribution to all creditors or a plan that grants certain creditors a higher percentage recovery based on less fault. *See Hardy*, 803 F.2d at 1037-38 (finding that (1) a district court has extremely broad power when supervising an equity receivership, determining the appropriate administrative actions, and granting appropriate relief, and (2) "[r]easonable administrative procedures, crafted to deal with the complex circumstances of each case, will be upheld").[14]

Unlike the Bankruptcy Code, which imposes a rigid classification and priority scheme, a distribution plan in an equity receivership may provide for dissimilar reimbursement payments (including exclusion) among claimants. *Basic Energy*, 273 F.3d at 657-71 (upholding a plan that (1) classified certain investors as defendants and excluded them from recovery of disgorgement proceeds and (2) classified other investors as "marketers" and granted them only a fractional recovery from the disgorgement proceeds); *Wang*, 944 F.2d at 88 ("This kind of line-drawing—which inevitably leaves out some potential claimants—is, unless commanded otherwise by the terms of a consent decree, appropriately left to the experience and expertise of the SEC in the first instance.").[15]

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[14] Additionally, the court noted that "[a] district judge supervising an equity receivership faces a myriad of complicated problems in dealing with the various parties and issues involved in administering the receivership." *Hardy*, 803 F.2d at 1038.

[15] *See also SEC v. Levine*, 881 F.2d 1165, 1173 (2d Cir. 1989) (upholding the exclusion of some claimants from participation in disgorged funds); *SEC v. Certain Unknown Purchasers of the Common Stock of and Call Options for the Common Stock of Santa Fe Int'l Corp.*, 817 F.2d 1018, 1020-21 (2d Cir. 1987) (approving a plan that distributed funds to two separate groups unevenly).

In addition, a plan of distribution in receivership is likely to produce a better outcome for most purchasers of SIB CDs than a plan of distribution approved under the Bankruptcy Code's strict rules because under section 510(b) of the Bankruptcy Code claims of the holders of such securities could be subordinated. Section 510(b) provides that "a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security . . . shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security." 11 U.S.C. § 510(b).

Outside of bankruptcy, however, the Receiver in this case can devise and propose a plan that is fair and equitable without being hamstrung by the rigid priority scheme mandated by the Bankruptcy Code. It is true that bankruptcy generally is designed to provide for an equitable distribution of an insolvent company's assets. But in cases involving massive fraudulent schemes, such as this one, an equity receivership's flexibility makes it better suited to provide an ultimately more fair and equitable distribution. The Bankruptcy Code's subordination provisions and priority scheme simply were not crafted with the amount of flexibility that is useful in addressing the complexities involved in administering the estate of a large fraudulent enterprise.

4. The Madoff *case cited by the Bukrinsky Movants is inapplicable.*

The Bukrinsky Movants make much of the fact that the Southern District of New York recently allowed an involuntary bankruptcy petition to be filed in the case against Bernard L. Madoff ("Madoff"). *See* Brief in Support of Bukrinsky Motion, at 5-6. But the factual circumstances of the Madoff case differ significantly from the circumstances of this case. In *Madoff*, the holdings only apply to property that was never subject to a receivership order.

Moreover, the benefits of bankruptcy highlighted by the *Madoff* court can also be obtained in a receivership like the one already in place here.

In *SEC v. Madoff*, No. 08-10791, 2009 U.S. Dist. LEXIS 30712 (S.D.N.Y. April 10, 2009), the movants sought to modify the Order on Consent Imposing Preliminary Injunction, Freezing Assets and Granting Other Relief Against Defendants (the "Madoff Preliminary Injunction")[16] to allow the filing of an involuntary bankruptcy petition against Madoff. Previously, a trustee had been appointed to liquidate Bernard L. Madoff Investment Securities LLC ("BLMIS"), a registered broker dealer, under the Securities Investor Protection Act of 1970 ("SIPA"). A receiver also had been appointed for certain entities, but that receiver had no authority over the personal assets of Madoff or BLMIS. Madoff Preliminary Injunction at 8-9. Significantly, then, Madoff's personal assets (the subject of *Madoff*), though frozen, had not been subject to any form of receivership. The involuntary petition was aimed only at that personal property.

The court in *Madoff* did not have before it, and thus did not address, the issue of whether bankruptcy was preferable to the receivership created in the case. The court instead discussed the involuntary petition aimed at "those of Mr. Madoff's assets which are not the proceeds of his crime or forfeitable substitute property . . . but should be deployed to meet obligations to his creditors" (the "Madoff Proceeds"). *Madoff*, 2009 U.S. Dist. LEXIS 30712, at *2. The Madoff Proceeds were Madoff's "property that [was] neither forfeitable criminally nor subject to the liquidation of BLMIS under SIPA . . . ." *Id.* at *5. The Madoff Proceeds were not subject to the receivership. Therefore, the court decided that the "movants should be able to seek

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16 *SEC v. Madoff*, 08-10791 (S.D.N.Y. Dec. 18, 2008) (order granting Madoff Preliminary Injunction). The Madoff Preliminary Injunction was incorporated into the February 9, 2009 Partial Judgment on Consent Imposing Permanent Injunction and Continuing Other Relief. *SEC v. Madoff*, 08-10791 (S.D.N.Y. Feb. 9, 2009)

the familiar and established relief set by Congress in the Bankruptcy Code, with its automatic stay of individual suits by platoons of individual litigants." *Id.* at *5-6.

In contrast, the movants in this case are seeking to file an involuntary petition against one or more of the Defendants that are subject to an existing receivership. The Bukrinsky Movants are not targeting the assets of a non-receivership entity or individual, so their reliance on *Madoff* is misplaced. Furthermore, unlike in *Madoff*, the Receiver in this case has been appointed over not just the corporate entities but also the individuals who controlled and managed the fraudulent enterprise.

Moreover, the bankruptcy advantages discussed in *Madoff* (as compared to a SIPC liquidation and criminal forfeiture) do not necessarily transfer to a comparison with an equity receivership. The general advantages of bankruptcy described by the court in the *Madoff* case include: (1) direct rights over an individual's property; (2) the authority to locate assets; (3) the ability to preserve or increase the value of assets through investment or sale; (4) provisions requiring notice to creditors; (5) the claims process; and (6) the transparent manner of distributions made pursuant to the procedures and preferences established by Congress. *Id.* at *4. Though all of these bankruptcy characteristics might be advantages when compared to a SIPA liquidation and criminal forfeiture, they are inapplicable in any comparison to the equity receivership currently imposed over the Stanford entities. All six bankruptcy advantages noted by the court in *Madoff* apply with equal force to the Receivership in this case but, notably, none of the cost disadvantages of bankruptcy do.

C. Public policy favors continuing the Receivership outside of bankruptcy.

The Court should not permit the Bukrinsky Movants' to set aside decades of precedent in which courts have approved the use of receivership to liquidate and distribute recovered assets to claimants in cases like this one. The Court should deny the Bukrinsky

Movants' efforts to wrest the authority to oversee the administration of the Receivership Estate from this Court.

Distribution of a defendant's assets by a receiver is a common remedy, especially in cases like this one, where the overwhelming majority of claimants would be classified in the same class in bankruptcy. *See, e.g., SEC v. Ross*, 504 F.3d 1130, 1133 (9th Cir. 2007) (observing that "the district court appointed a receiver . . . to manage the corporation and preserve its assets for eventual distribution to the injured investors"); *In re SEC*, 296 Fed. App'x. 637, 640 (10th Cir. 2008) (unpublished opinion) (noting that the receiver had been "carrying out his duties of marshaling and liquidating assets for the benefit of defrauded investors and creditors"); *SEC v. Cobalt Multifamily Investors I, Inc.*, 542 F. Supp. 2d 277, 282–83 (S.D.N.Y. 2008) (adopting a distribution plan proposed by the SEC); *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-CV-1188-D, 2008 WL 919546, at *6 (N.D. Tex. Mar. 13, 2008) (approving receiver's interim distribution plan, under which over $25 million would be disbursed to investors); *SEC v. Megafund Corp.*, No. 3:05-CV1328-L, 2008 WL 2856460, at *1, 3 (N.D. Tex. June 24, 2008) (approving receiver's proposed distribution plan, under which over $1.5 million would be disbursed to claimants on a pro rata basis); *SEC v. Funding Res. Group*, No. 3:98-CV-2689-M, 2004 WL 2964992, at *1 (N.D. Tex. 2004) (approving receiver's proposed distribution plan, under which over $1.6 million would be disbursed to claimants on a pro rata basis). Indeed, district courts have frequently ordered liquidation by receivers.[17]

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[17] *See, e.g., SEC v. Merrill Scott & Assoc., Ltd.*, 2008 WL 2787401, *3–5 (D. Utah 2008) (unpublished opinion) (noting that the court had "approved SEC's proposed Plan of Partial Distribution" of the receivership estate, and predicting that "the interim distribution under the Plan likely will not be the last"); *SEC v. Tanner*, 2007 WL 2013606, *3 (D. Kan. 2007) (unpublished opinion) (approving receiver's "general distribution plan," under which several million dollars would be distributed to claimants); *SEC v. Alanar, Inc.*, 2007 WL 2479318, *11–12 (S.D. Ind. 2007) (unpublished opinion) (approving receiver's proposed distribution plan subject to minor modifications); *SEC v. Lewis*, 173 Fed. Appx. 565, 566 (9th Cir. 2006) (unpublished opinion) (noting that the district court had approved a distribution plan for the receivership estate); *SEC v. Euro Sec. Fund*, 2006 WL 1461776, *1 (S.D.N.Y. 2006) (unpublished opinion) (noting that the court had approved a distribution plan for

The large number of cases involving liquidation by a receiver demonstrates that the procedure is proper. An equity receivership often involves an insolvent receivership estate and the need for a receiver, under court supervision, to take control of assets for the benefit of claimants and ultimately distribute them equitably pursuant to a court-approved distribution scheme:

> The receiver's role, and the district court's purpose in the appointment, is to safeguard the disputed assets, administer

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disgorged funds and the appointment of a receiver to implement the plan); *Marwil v. Grubbs*, 2004 WL 2278751, *1, 5 (S.D. Ind. 2004) (unpublished opinion) (noting that, "under supervision by this court and [the receiver]," the defendant has "undertaken a plan to liquidate its assets to meet as many obligations to creditors as possible"); *SEC v. TLC Inv. & Trade Co.*, 147 F. Supp. 2d 1031, 1034–36 (C.D. Cal. 2001) (declining to adopt the bankruptcy code's procedures for a receivership liquidation); *SEC v. The Better Life Club of Am., Inc.*, 1998 WL 101727, *2 (D.D.C. 1998) (unpublished opinion) (directing that the defendants' "assets shall be distributed to defrauded investors pursuant to a plan of distribution to be proposed by the Commission subject to approval by this Court"); *SEC v. Custable*, 1996 WL 745372, *6 (N.D. Ill. 1996) (unpublished opinion) (granting "SEC's Motion for an Order Requiring the Receiver to Distribute Disgorgement Funds to Investors," and granting "the Receiver's Motion for Approval of the Plan of Distribution"); *SEC v. Parkersburg Wireless LLC*, 1995 WL 79775, *4 (D.D.C. 1995) (unpublished opinion) (adopting distribution plan under which over $3 million would be disbursed to claimants, largely on a pro rata basis); *SEC v. Vision Comme'ns, Inc.*, 1994 WL 326868, *2–3 (D.D.C. 1994) (unpublished opinion) (ordering receiver to "marshal the assets of [defendants] at the maximum value attainable, through liquidation or otherwise, and distribute them in accordance with a Plan of Distribution to be submitted by the [SEC] and approved by the Court"); *SEC v. Alpine Mut. Fund Trust*, 824 F. Supp. 987, 989 (D. Colo. 1993) (noting that "[t]he Receiver was empowered to . . . take whatever actions were necessary, subject to approval of the Court, for the protection of shareholders of the Funds and their assets, and to liquidate the Funds' assets"); *SEC v. Sunco Res. & Energy, Ltd.*, 1990 WL 128232, *2 (S.D. Fla. 1990) (unpublished opinion) (approving receiver's proposed distribution plan, under which roughly $87,000 would be disbursed to claimants, largely on a pro rata basis); *In re Dennis Greenman Sec. Litig.*, 829 F.2d 1539, 1540 (11th Cir. 1987) (noting that receiver in SEC fraud suit had made two interim distributions of assets); *SEC v. Elliot*, 1987 WL 46231, *1 (S.D. Fla. 1987) (unpublished opinion) (denying motion to permit filing of bankruptcy petition where "the receivership is in the process of filing a plan of partial distribution and is approaching completion of such plan"); *SEC v. Martin*, 1983 WL 1364, *2 (W.D. Wash. 1983) (unpublished opinion) (ordering individual defendant to turn over all his assets, except those protected under bankruptcy laws, to a receiver charged with proposing a distribution plan); *SEC v. United Fin. Group, Inc.*, 404 F. Supp. 908, 910 (D. Or. 1975) (noting that, in a related SEC fraud suit, "the receivership estate was ordered to be liquidated and distributed as if the entire estate were in bankruptcy" (internal quotation omitted)); *SEC v. Moody*, 374 F. Supp. 465 (S.D. Tex. 1974) (observing that receiver was appointed "to marshal and liquidate Bank's assets to the extent necessary in order to pay its depositors"); *SEC v. Gray Line Corp.*, 1972 WL 3981, *2 (S.D.N.Y. 1972) (unpublished opinion) (approving receiver's proposed distribution plan); *SEC v. Raffer*, 1970 WL 248, *4 (S.D.N.Y. 1970) (unpublished opinion) (granting SEC's motion for appointment of receiver because a receiver "is needed . . . to locate, preserve, and distribute the remaining assets"); *SEC v. Ark. Loan & Thrift Corp.*, 294 F. Supp. 1233, 1247 (W.D. Ark. 1969) (refusing to transfer case to bankruptcy court for liquidation where receivership already pending); *SEC v. Gulf Intecont'l Fin. Corp.*, 223 F. Supp. 987, 996 (S.D. Fla. 1963) (granting SEC's motion for appointment of receiver because "the best interests of public investors is served by the appointment of a receiver and the prompt liquidation of all assets within the jurisdiction of the court, and through proper legal procedure the pro-rata return of monies to the public investors, wherever situated"); *SEC v. Fiscal Fund, Inc.*, 48 F. Supp. 712, 715–16 (D. Del. 1943) (appointing a receiver to "wind up and liquidate" the defendant based on the "well-established power in the Federal Court sitting as a court of equity to order liquidation of a solvent corporation where there is no other course available to remedy a situation which is inequitable to the stockholders").

> the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary. . . . The district court may require all . . . claims to be brought before the receivership court for disposition pursuant to a summary process consistent with the equity purpose of the court. . . . The inability of a receivership estate to meet all of its obligations is typically the *sine qua non* of the receivership.

Liberte Capital, 462 F.3d at 551-53.

Where "rightful claims to assets exceed the assets available, the court, with the help of the receiver, must determine how to distribute the assets equitably, . . . [D]istributing . . . assets [of the entity placed in receivership] equitably is one of the central purposes of the receivership." *SEC v. Capital Consultants LLC*, 453 F.3d 1166, 1172 (9th Cir. 2006).

The Fifth Circuit repeatedly has affirmed orders providing for liquidation by receivers. *See, e.g.*, *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 327 (5th Cir. 2001) (affirming district court's distribution plan, under which over $1.1 million would be disbursed on a pro rata basis); *SEC v. Funding Res. Group*, No. 99-10980, 2000 WL 1468823, at *4 n.9 (5th Cir. 2000) (suggesting that claims can be presented in a future liquidation proceeding in the receivership court); *SEC v. Tipco, Inc.*, 554 F.2d 710, 710–11 (5th Cir. 1977) (noting that "[t]his case arises from the receivership proceedings against and liquidation of [the defendant corporation]").

Likewise, courts of appeals from other circuits also have frequently affirmed the distribution of assets of companies liquidated by receivers outside of bankruptcy. *See, e.g.*, *SEC v. Enter. Trust Co.*, 559 F.3d 649, 650 (7th Cir. 2009) (affirming district court's distribution plan, under which over $30 million would be disbursed to claimants); *SEC v. Infinity Group Co.*, 226 Fed. Appx. 217, 218–19 (3rd Cir. 2007) (unpublished opinion) (affirming district court's distribution plan, under which disbursements would be made to investors on a pro rata basis);

SEC v. Capital Consultants, LLC, 397 F.3d 733, 737 (9th Cir. 2005) (affirming district court's distribution plan, under which over $250 million would be disbursed to claimants, with investors compensated on a pro rata basis).[18]

The Bukrinsky Movants cite to a few cases from the Second Circuit—where there is no clear agreement among the courts that have addressed the issue—as purportedly supporting their argument that liquidations and distributions to investors and creditors should only occur in bankruptcy. But the cases the Bukrinsky Movants cite do not stand for such a sweeping proposition. To the contrary, even the cases expressing skepticism about the propriety of distributions outside bankruptcy in certain circumstances do not establish a per se rule against it. Indeed, the Receiver has found no case in which a court overturned a receiver's liquidation and distribution on the basis that such liquidation and distribution could only be accomplished in bankruptcy court. This case is similar to the many cases in which courts have approved the liquidation and distribution of assets by receivers outside of bankruptcy. Given the numerous cases in which liquidations and distributions in receiverships outside of bankruptcy have been

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[18] *See also United States v. Payne*, 62 Fed. Appx. 648, 649 (7th Cir. 2003) (unpublished opinion) (reciting that "a receiver was appointed by the court [in an civil enforcement action brought by the SEC] to oversee the liquidation of [the defendant's company's] inventory/assets and to make distributions to the company's investors and creditors"); *SEC v. First Choice Mgmt. Serv., Inc.*, 66 Fed. Appx. 652, 653 (7th Cir. 2003) (unpublished opinion) (noting that "the district court authorized the receiver to marshal and liquidate all available assets and present a plan of distribution"); *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 82 (2nd Cir. 2002) (affirming district court's distribution plan, under which funds would be disbursed on a pro rata basis); *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 660 (6th Cir. 2001) (observing that "[t]he district court appointed [a receiver] and charged him with marshaling [the defendant's] assets and devising a plan for the disgorgement of the proceeds to [the defendant's] investors"); *SEC v. Elliott*, 953 F.2d 1560, 1565, 1584 (11th Cir. 1992) (affirming vast majority of district court's distribution plan); *SEC v. Hardy*, 803 F.2d 1034, 1035–36 (9th Cir. 1986) (reciting that "[t]he district court appointed an equity receiver . . . to take ownership and liquidate the assets of the [defendant] entities to satisfy the claims of investors"); *SEC v. First Sec. Co. of Chicago*, 507 F.2d 417, 419 (7th Cir. 1974) (reviewing classifications made by receivership court "in anticipation of the [defendant's] liquidation"); *SEC v. Bartlett*, 422 F.2d 475, 478–79 (8th Cir. 1970) (affirming district court's denial of a motion to vacate the receivership of three insolvent corporations and refer interested parties to bankruptcy court); *SEC v. Charles Plohn & Co.*, 433 F.2d 376, 379 (2nd Cir. 1970) (affirming district court's appointment of receiver because New York Stock Exchange had ceased to oversee defendant's liquidation and receivership was necessary to protect the property of defendant's customers).

approved, the Bukrinsky Movants reliance on dicta from a few cases critical of such a process is misplaced.

Furthermore, granting the Bukrinsky Movants' request to lift the injunction against involuntary bankruptcy filings effectively would put an end to the long-used effective and efficient tool of equity receiverships. If granted, it is possible that in future securities fraud cases, the SEC would be wary of seeking an equity receivership, fearing that the receivership would quickly be converted to a bankruptcy proceeding. Public policy considerations cannot countenance such a result.

D. The Receiver does not have a conflict of interest.

The Receiver has no conflict of interest in this case. The Bukrinsky Movants contend that the Receiver has an inherent conflict of interest in representing all of the Stanford entities. Bukrinsky Motion at 3. But receivers are often appointed for multiple entities involved in a single fraudulent scheme. *See, e.g., United States v. Setser*, No. 07-10199, 2009 WL 1299562, at *1 (5th Cir. May 12, 2009); *SEC v. Megafund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at *1-2 (N.D. Tex. June 24, 2008); *SEC v. Ross*, 504 F.3d 1130 (9th Cir. 2007) (stating that a receiver was appointed for multiple entities involved in a Ponzi scheme); *SEC v. Credit Bancorp, Ltd.*, 297 F.3d 127, 129-30 (2d Cir. 2002) (noting that a single receiver was appointed over multiple entities involved in a Ponzi scheme).

A recent case, in fact, contradicts the Bukrinsky Movants' argument. The court in *In re Petters* decided that no conflict of interest precluded a pre-bankruptcy receiver, appointed for multiple entities, from serving as bankruptcy trustee for the same entities. *In re Petters Co., Inc.*, 401 B.R. 391 (Bankr. D. Minn. 2009). The objecting parties argued that (1) the receiver, because of his status as receiver, could not become trustee for any debtor (an "external conflict"

outside of the bankruptcy cases) and (2) the receiver could not serve as trustee for all the debtors simultaneously (an "internal conflict" within the bankruptcy cases).

First, the court disagreed with the external conflict argument because the receiver—along with the district court—had no interest in the disposition of assets and did not advocate for any party. The receiver's only interest was preventing further losses and maintaining the status quo. *Id.* at 407. Next, the court found that no internal conflict existed. Installing the receiver as trustee was deemed both economical and efficient because of his knowledge of the case. *Id.* at 413. The court also determined that no conflict between the debtors would arise while the trustee sought to recover assets. *Id.*

Similar to *In re Petters*, the Receiver has no inherent conflict of interest representing the Stanford entities in receivership or bankruptcy. The Receiver's knowledge base regarding the Receivership Estate could not be attained by an additional receiver or trustee without considerable delay and cost. Further, if the Bukrinsky Movants believe a future distribution plan is inequitable, they can raise their objection at that time. Finally, because the Stanford entities comprised one inseparable aggregate fraudulent scheme, and should be treated as a single economic enterprise, no conflict of interest is possible from serving as Receiver over multiple Defendants in this case.

E. The Bukrinsky Movants fail to satisfy Rule 24's requirements.

Before a party can intervene in an action, it must establish the right to intervene under Federal Rule of Civil Procedure 24(a) or (b) ("Rule 24"). Rule 24(a) *requires* an applicant for intervention to meet four requirements:

> (1) the application for intervention must be timely;
> (2) the applicant must have an interest relating to the property or transaction which is the subject of the action;
> (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and]

(4) the applicant's interest must be inadequately represented by the existing parties to the suit.

FED. R. CIV. P. 24(a); *Haspel & Davis Milling & Planting Co. Ltd. v. Bd. of Levee Comm'rs of the Orleans Levee Dist.*, 493 F.3d 570, 578 (5th Cir. 2007) (citing *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984)). Failure to establish any of the four requirements precludes intervention under Rule 24(a). *Id.* (citing *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)).

As with previous rounds of putative intervenors, the Bukrinsky Movants do not establish all four requirements. Though the Bukrinsky Movants allege that the Receiver does not represent their interests, they fail to rebut the presumption of adequate representation that applies in cases like this. *See Baker v. Wade*, 743 F.2d 236, 241 (5th Cir. 1984) (holding that "[a] presumption of adequate representation . . . arises when the representative is a governmental body or officer charged by law with representing the interests of the absentee"); *Johnson v. City of Dallas*, 155 F.R.D. 581, 586 (N.D. Tex. 1994) (holding that "where . . . the existing representative in the suit is the government, there is a presumption of adequate representation which may be overcome by the intervenor only upon a showing of adversity of interest, the representative's collusion with the opposing party, or nonfeasance by the representative"); *see also SEC v. Qualified Pensions, Inc.*, No. 95-1746, 1998 WL 29496, at *4 (D.D.C. Jan. 16, 1998) (holding that the SEC adequately represented putative intervenors' interests because, "[a]fter all, the SEC exposed the fraud at the core of . . . this suit . . . [and] is statutorily commissioned to represent the interests of individual investors in the public at large, such as applicants").

Intervention under Rule 24(b) also has not been established. Rule 24(b) allows a court to deny intervention if it would cause undue delay or prejudice to the existing parties. *Stallworth v. Monsanto Co.*, 558 F.2d 257, 269 (5th Cir. 1977); *see also Kneeland v. Nat'l*

Collegiate Athletic Ass'n, 806 F.2d 1285, 1289-90 (5th Cir. 1987), *cert. denied*, 484 U.S. 817 (1987). The Receiver represents the interests of all who have a stake in the Receivership Estate assets. He does not favor one interest over another. He is not an interested party with any interest adverse to any creditor, investor, or group of creditors or investors. As such, he has no "conflict of interest" that prohibits him from serving as Receiver for multiple entities. The Receiver is in the best position to determine whether bankruptcy is an appropriate option for the Receivership estates. That decision-making authority should not be ceded to a few creditors or a single constituency acting in its own best interest.

III. Conclusion & Prayer

For these reasons, the Bukrinsky Motion to Intervene and to Amend or Modify Certain Portions of the Court's Amended Receivership Order should be denied. The Receiver also requests any further relief to which he is entitled.

Dated: June 1, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

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ATTORNEYS FOR RECEIVER
RALPH S. JANVEY

Certificate of Service

On June 1, 2009, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the Court-appointed Examiner, 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

TAB 4

N J Hamilton Smith
4th Affidavit
Applicant
8 June 2009
Exhibit "NJHS4"-"NJHS6"

IN THE HIGH COURT OF JUSTICE — Nos. 13338 and 13959 of 2009

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER of STANFORD INTERNATIONAL BANK LIMITED (in liquidation in Antigua & Barbuda)

AND IN THE MATTER of THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

FOURTH AFFIDAVIT OF NIGEL JOHN HAMILTON-SMITH

I, **Nigel John Hamilton-Smith**, of Torrington House, 47 Holywell Hill, St Albans, Hertfordshire, make oath and say as follows:

1. I make this, my fourth affidavit, in support of my application for recognition of the Antiguan liquidation proceedings, as a foreign main proceeding, in respect of Stanford International Bank Limited ("**SIB**" or "**the Bank**") which was issued on 21 April 2009. I refer to my previous three affidavits filed in support of that application, dated 21 April 2009, 15 May 2009 and 5 June 2008.

2. This affidavit is also filed in response to the application issued by Mr Janvey, the receiver appointed over SIB and other Stanford group entities by a US Court on 16 February 2009, on 8 May 2009, together with the two sets of affidavits filed in support of that application. Mr Janvey seeks recognition of his status as a foreign representative in relation to all of the Stanford group companies, including SIB.

3. Further to the directions given by Mr Justice Henderson on 30 April 2009, the two applications are to be heard together.

4. I am authorised by Mr Wastell, my joint liquidator, to make this affidavit on his behalf. Save as otherwise appears, the facts and matters stated herein are within my own personal knowledge, having been acquired by me in my capacity as one of the Receivers, and now one of the liquidators, of SIB. Where such facts and matters are not within my own personal knowledge, the source of my information and belief is set out herein and I believe such facts and matters to be true.

5. There is now shown to me marked Exhibits "NJHS4"-"NJHS6", which contain true copies of the application on which the appointment of Mr Wastell and me as Receiver-Managers of SIB was ratified by the Antiguan Court and the evidence filed in support of that application. References to page numbers in this affidavit are references to pages in that Exhibit.

Application for the appointment of Receiver-Managers in the Antiguan Court

6. I exhibit at NJHS4, NJHS5 and NJHS6 the documents referred to in paragraph 5 above which were filed in the Antiguan Court on 26 February 2009.

Sworn by NIGEL JOHN HAMILTON-SMITH)

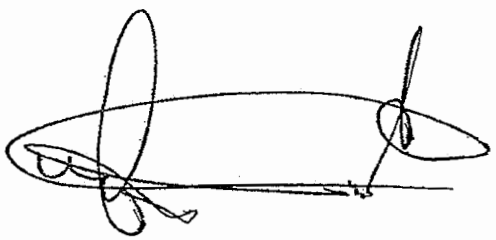
at High Court)

this 8th day of June 2009)

Before me)

a Solicitor /Commissioner for Oath)

COMMISSIONER FOR OATH
ANTIGUA & BARBUDA



N J Hamilton-Smith
4th Affidavit
Applicant
8 June 2009
Exhibit "NJHS4"

No. 13338 and 13959 of 2009

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF STANFORD INTERNATIONAL BANK LIMITED (IN LIQUIDATION)

AND

IN THE MATTER of THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

FOURTH AFFIDAVIT OF NIGEL JOHN HAMILTON SMITH

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4th Affidavit
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8 June 2009
Exhibit "NJHS4"

IN THE HIGH COURT OF JUSTICE Nos. 13338 and 13959 of 2009

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF STANFORD INTERNATIONAL BANK LIMITED (in liquidation in Antigua and Barbuda)

AND

IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

EXHIBIT "NJHS4"

This is the Exhibit referred to as "NJHS4" in the Affidavit of

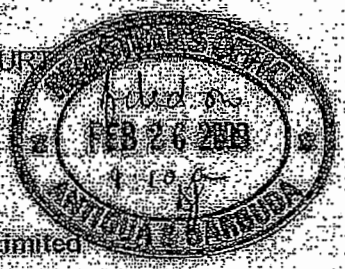
NIGEL JOHN HAMILTON-SMITH sworn this 8th day of June 2009

Before me

A Solicitor / Commissioner for Oaths

COMMISSIONER FOR OATH
ANTIGUA & BARBUDA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA



Claim No. ANUHCV2009/

In the Matter of Stanford International Bank Limited
-And-
In the Matter of Stanford Trust Company Limited
-And-
In the Matter of the International Business Corporations Act, 1982, CAP 222 of the Laws of Antigua and Barbuda
-And-
In the Matter of an Application for the Appointment of Receivers Managers of Stanford International Bank Limited and Stanford Trust Company Limited

BETWEEN:

THE FINANCIAL SERVICES REGULATORY COMMISSION
Applicant /Claimant

-And-

STANFORD INTERNATIONAL BANK LIMITED
STANFORD TRUST COMPANY LIMITED
Respondents/ Defendants

APPLICATION WITHOUT NOTICE

The Applicant/Claimant, The Financial Services Regulatory Commission of Old Parham Road in the Parish of St. John in Antigua and Barbuda, a statutory body established under the International Business Corporations Act, Cap. 222 of the Laws of Antigua and Barbuda (the Act) hereby applies to the Court for an Order that:-

1. The Respondents/Defendants be restrained by themselves, their agents, servants or otherwise from:

   a. disposing of or otherwise dealing with any of their assets.
   b. entering into any agreement or arrangement to sell, transfer or otherwise dispose of any of their assets.
   c. carrying on or transacting business of any kind whatsoever under the licence granted by the Applicant/Claimant without the consent, management and supervision of the Applicant/Claimant.

2. The Respondents/Defendants do account for all their assets now or previously in their possession or under the control of any entity on their behalf.

3. The Respondents/Defendants do provide the Applicant/Claimant with –

a. a comprehensive list of all transactions, agreements, arrangements and undertakings and copies of documents evidencing the same.

b. All accounts, documents and information to enable the Applicant/Claimant to trace, if necessary, any or all of the assets of the Respondents/Defendants.

c. A comprehensive list of all its creditors, customers, employers, employees and other persons or entities to whom they have outstanding obligations and the extent of their obligations in respect of any or all of their assets.

4. Messrs Peter Nicholas Wastell and Nigel Hamilton-Smith be appointed Joint Receivers-Managers of the respondents/Defendants pursuant to Section 320 of the Act with such powers as the Court may determine.

5. The Joint Receivers-Managers do take immediate steps to stabilize the operations of the Respondents/Defendants unless ordered to do otherwise by further order of the Court.

6. The Joint Receivers-Managers do execute their duties in accordance with the Act and otherwise only in accordance with this order and the directions of the Court.

7. The Joint Receivers-Managers do prepare and file in Court a Monthly Interim Report and Financial Statement in respect of the affairs of the Respondents/Defendants within 30 days of the date of this order and thereafter at regular intervals on the fifth day of each ensuing month.

8. The Joint Receivers-Managers upon the completion of their duties do prepare and file Final accounts including a Financial Statement with recommendations as to the further conduct of the affairs, if any, of the Respondents/Defendants.

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9. The Joint Receivers-Managers do take into their custody and control all the property, undertakings and other assets of the Respondents/Defendants pursuant to Section 221 of the Act and comply with all the other parts of the Section.

10. The Joint Receivers-Managers do open and maintain bank accounts within the jurisdiction or in such jurisdictions as they consider appropriate in their names as Joint Receiver-Managers of the Respondents/Defendants for the monies of the corporations coming under their control.

11. Subject to Section 220 of the Act, the Receivers-Managers do exercise, perform and discharge their duties independently or jointly and in so doing they shall be deemed to act as agents for the Respondents/Defendants without personal liability.

12. Without prejudice to the provisions of Section 373 of the Act, the Joint Receiver-Managers be and are hereby authorized to disclose information concerning the management, operations, and financial situation of the Respondents/Defendants as they consider appropriate in the performance of their functions PROVIDED ALWAYS THAT:

(1) no disclosure of customer specific information is authorized without further or other order of the Court; and

(2) no disclosure of information is permitted under this Order to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations.

For the purposes of this Order, customer specific information means information of sufficient detail to enable a recipient of the information to identify the customer in question, the customer's address or other location, and/or the amount of such customer's credit balances or other investments in the Respondents/Defendants.

13. The remuneration of the Joint Receivers-Managers be fixed on a time- cost basis at the rates agreed between the Applicant/Claimant and the Joint Receivers-Managers.

14. The Joint Receivers-Managers be reimbursed for all reasonable and necessary expenses as may be incurred by them during the course of the receivership from the assets of the Respondents/Defendants.

15. The costs of this Application and all related proceedings be met from the assets of the Respondents/Defendants.

16. The Joint Receivers-Managers be directed from time to time on matters relating to their duties as the Court may determine on the application of the Applicant/Claimant or on the application of the Joint Receivers-Managers or on the application of the Respondents/Defendants.

A Draft of the order sought is attached.

The grounds for the Application are as follows:

1. The Respondents/Defendants are members of the Stanford Group of Companies all of which are under the control of R. Allen Stanford, their sole shareholder and sole incorporator.

2. The Second Respondent/Defendant maintains the majority of its deposits and accounts with the First Respondent/Defendant.

3. By a Temporary Restraining Order made in the United States District Court for the Northern District of Texas, Dallas Division, entered on February 16, 2009 all of the assets of, inter alia, the First Respondent/Defendant, The Stanford Group Company and R. Allen Stanford in the United States of America were frozen and the principals were restrained from conducting any further business.

4. The Respondents/Defendants are subject to the control and supervision of the Applicant/Claimant.

5. Because of the said Restraining Order there has been a run on the assets of the Respondents/Defendants to the extent that the realisable value of the assets of the Respondents/Defendants are or will shortly be less than the aggregate of their respective liabilities.

6. The state of affairs resulting from the Restraining Order has compromised the integrity and reputation of and investor confidence in the financial sector in Antigua and Barbuda.

7. The Applicant/Claimant is desirous of protecting the interests of the depositors and creditors of the Respondents/Defendants and restoring confidence and integrity of this jurisdiction.

Affidavits in support accompany this application.

DATED this 25th day of February, 2009

Chadesworth O. D. Brown
Attorney at Law for the Claimant

NOTICE:

This application will be heard by [the Judge in Chambers] [a Master] on the day of 2009 at a.m. /p.m. **If you do not attend this hearing an order may be made in your absence.**

OR

The Judge in Chambers or a Master will deal with this application by –

The Court Office is at Parliament Drive, St. John's, Antigua Telephone number 462-0669, FAX 462-3929. The office is open between 8a.m. and 4p.m. Mondays to Thursdays and 8am to 3pm on Fridays except public holidays and court holidays.

NB. **This notice of application must be served as quickly as possible on the respondents to the application.**

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THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

Claim No. ANUHCV2009/

In the Matter of Stanford International Bank Limited
And-
In the Matter of Stanford Trust Company Limited
And-
In the Matter of the International Business Corporations Act, 1982, CAP 222 of the Laws of Antigua and Barbuda
And-
In the Matter of an Application for the Appointment of a Receiver-Manager of Stanford International Bank Limited and Stanford Trust Company Limited

BETWEEN:

THE FINANCIAL SERVICES REGULATORY COMMISSION
Applicant/Claimant

-And-

STANFORD INTERNATIONAL BANK LIMITED
STANFORD TRUST COMPANY LIMITED
Respondent/Defendants

++

APPLICATION WITHOUT NOTICE

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CHARLESWORTH O. D. BROWN
Attorney-at-Law

4th Affidavit
Applicant
8 June 2009
Exhibit "NJHS5"

IN THE HIGH COURT OF JUSTICE Nos. 13338 and 13959 of 2009

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF STANFORD INTERNATIONAL BANK LIMITED (in liquidation in Antigua and Barbuda)

AND

IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

EXHIBIT "NJHS5"

This is the Exhibit referred to as "NJHS5" in the Affidavit of

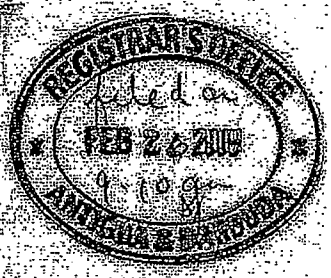
NIGEL JOHN HAMILTON-SMITH sworn this 8th day of June 2009

Before me

A Solicitor /Commissioner for Oaths

COMMISSIONER FOR OATH
ANTIGUA & BARBUDA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA



Claim No. ANUHCV2009/

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BETWEEN:

THE FINANCIAL SERVICES REGULATORY COMMISSION
Applicant

-And-

STANFORD INTERNATIONAL BANK LIMITED
STANFORD TRUST COMPANY LIMITED
Respondents

AFFIDAVIT OF PAUL A. ASHE IN SUPPORT OF APPLICATION

I, PAUL A ASHE of 2002 Arnold Williams Street, Upper Friars Hill Road in the Parish of St. John in the State of Antigua and Barbuda, Supervisor of International Banks and Trusts, of The Financial Services Regulatory Commission, make oath and say as follows:-

1. I am the Supervisor of International Banks and Trusts at the Financial Services Regulatory Commission (the Commission) pursuant the International Business

Corporations Act, Cap. 222 (the Act). I have acted in this position since February, 2008.

2. The Claimant was established under the Act with statutory powers to, inter alia, regulate and supervise International business corporations incorporated and licensed under the Act.

3. The Respondents are international business corporations incorporated and granted licences to conduct international banking and trust businesses respectively under the Act. Copies of the Certificates of the Incorporation and licences are exhibited hereto and marked "PAA1" and "PAA2" respectively.

4. Based on a Report that has been presented to me by SIBL, I have observed that the deposits of SIBL have been reducing steadily over the last (6) month period. At the same time there has been an increase in creditors demanding repayment and depositors seeking withdrawals of funds.

5. The current realisable value of the assets of the Respondents will shortly be less than the aggregate of their liabilities. A copy of the Respondents' management accounts for the year ended 31 December, 2008 are exhibited hereto and marked "PAA4". It can be seen for these accounts that both Respondents were incurring losses and the First Respondent, in light of the United States Court proceedings begun on the 16 February, 2009, freezing its assets, suffered a run on the First Respondent by depositors in the days thereafter which left the First Respondent unable to meet withdrawal requests. Since the Second Respondent has invested the majority of its funds in the First Respondent, this clearly has significant implications for the Second Respondent to continue to trade.

6. In the circumstances, by instrument dated February 19 2009, I have appointed Mr. Nigel Hamilton-Smith and Peter Nicholas Wastell of the accounting firm Vantis Business Recovery Services ("Vantis") of Torrington House, 47 Holywell Hill, St. Albans, Hertforshire, England as Joint Receivers/Mangers of the Respondents upon the terms and with all the powers, duties and liabilities conferred and imposed by the Act in addition to those powers expressed in the instrument of appointment.

7. By an agreement between the Applicant and the Receivers Managers the rates for the joint service of the Receivers Managers were agreed.

8. The Applicant is desirous of obtaining an order from this Court, inter alia, appointing Messrs Hamilton, Smith and Wastell as Joint Receivers – Managers to ratify and supersede the earlier appointment made by me and better protect the interests of Depositors and Creditors of the Respondents.

9. In the circumstances, I humbly request that this Honouable Court grant the Applicant's application.

Sworn at the High Court of Justice, Parliament Drive, St. John's, Antigua this 25th day of February, 2009 in the presence of :-

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X .....

COMMISSIONER FOR OATH
ANTIGUA & BARBUDA

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PAA1"

PAA2"

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

Claim No. ANUHCV2009/

In the Matter of Stanford International Bank Ltd.

-And-

In the Matter of Stanford Trust Company Ltd.

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In the Matter of the International Business Corporations Act, 1982, CAP 222 of the Laws of Antigua and Barbuda

-And-

In the Matter of an Application for the Appointment of a Receiver-Manager of Stanford International Bank Limited and Stanford Trust Company Ltd.

BETWEEN:

THE FINANCIAL SERVICES REGULATORY COMMISSION
Applicant / Claimant

-And-

STANFORD INTERNATIONAL BANK LTD.
STANFORD TRUST COMPANY LTD.
Respondents / Defendant

EXHIBIT CERTIFICATE

Copies of exhibits marked 'PAA1' AND 'PAA2' referred to in paragraph 4 of the Affidavit.

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GOVERNMENT OF ANTIGUA AND BARBUDA

CERTIFICATE

OF

CHANGE OF NAME

Pursuant to Section 164 and 327 of the International Business Corporation Act, 1982, No. 28 of 1982 the undersigned hereby certifies that GUARDIAN INTERNATIONAL BANK LIMITED by special resolution of the Company dated the 20th day of December, 1994 changed its name to STANFORD INTERNATIONAL BANK LIMITED.

REGISTRAR

Director,
International Business Corporations

Issued at St. Johns Antigua
this 29th of December, 1994

5

GOVERNMENT OF ANTIGUA AND BARBUDA

LICENSE TO CONDUCT AN INTERNATIONAL BANKING, TRUST OR INSURANCE BUSINESS

Pursuant to Section 230 of the International Business Corporations Act, 1982, No. 28 of 1982, the undersigned hereby grants a license to conduct an International banking ~~, trust~~ business to:

GUARDIAN INTERNATIONAL BANK LIMITED

subject to all the terms and conditions of said Act.

REGISTERED

(For Banking)

Supervisor
International Banks and Trust
Corporations

(For Insurance)

Superintendent
International Insurance Corporations

Issued at St. Johns, Antigua,
this 7th day of December 1990

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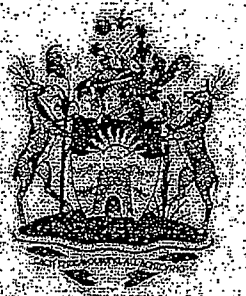
#945



GOVERNMENT OF ANTIGUA AND BARBUDA

LICENSE TO CONDUCT AN INTERNATIONAL BANKING, TRUST OR INSURANCE BUSINESS

DUPLICATE ORIGINAL

Pursuant to Section 230 of the International Business Corporations Act, 1982, No. 25 of 1982, the undersigned hereby grants a license to conduct an international banking business to:

STANFORD INTERNATIONAL BANK LIMITED

subject to all the terms and conditions of said Act.

REGISTERED

(For Bank/Trust)

Supervisor,
International Banks and Trust
Corporations

(For Insurance)

Superintendent,
International Insurance Corporations

Issued at St. John's, Antigua
this 24th day of FEBRUARY, 1990

7

GOVERNMENT OF ANTIGUA AND BARBUDA

CERTIFICATE

OF

CHANGE OF NAME

Pursuant to Section 164 and 327 of the International Business Corporation Act, 1982, No. 28 of 1982 the undersigned hereby certifies that GUARDIAN TRUST COMPANY LIMITED by special resolution of the Company dated the 20th day of December, 1994 changed its name to STANFORD TRUST COMPANY LIMITED.

REGISTERED

Director,
International Business Corporations

Issued at St. Johns, Antigua,
this 27th day of January 1995.

GOVERNMENT OF ANTIGUA AND BARBUDA

CERTIFICATE OF INCORPORATION AND GOOD STANDING

Pursuant to Section 9 of the International Business Corporations Act, 1982, No. 28 of 1982, the undersigned hereby certifies that

GUARDIAN TRUST COMPANY LIMITED

was incorporated under the laws of Antigua and Barbuda on the 7th day of December, 1976 is in good standing and enjoys all the rights, powers and privileges conferred by law consistent with the attached Articles of Incorporation.

REGISTERED

Director,
International Business Corporations

Registered at St. John's, Antigua
this 7th of December, 1990.

9

GOVERNMENT OF ANTIGUA AND BARBUDA

LICENSE TO CONDUCT AN INTERNATIONAL BANKING, TRUST OR INSURANCE BUSINESS

Pursuant to Section 280 of the International Business Corporations Act, 1982, No. 28 of 1982, the undersigned hereby grants a license to conduct an international trust business to

GUARDIAN TRUST COMPANY LIMITED

subject to all the terms and conditions of said Act.

REGISTERED

(Foreign Trust)

Supervisor
International Banks and Trust Corporations

(Insurance)

Superintendent
International Insurance Corporations

Issued at St. John's, Antigua, this 7th day of December, 1990.

"PAA3"

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

Claim No. ANUHCV2009/

In the Matter of Stanford International Bank Ltd.

-And-

In the Matter of Stanford Trust Company Ltd.

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BETWEEN:

THE FINANCIAL SERVICES REGULATORY COMMISSION
Applicant / Claimant

-And-

STANFORD INTERNATIONAL BANK LTD.
STANFORD TRUST COMPANY LTD.
Respondents / Defendant

EXHIBIT CERTIFICATE

Copy of exhibit marked "PAA3" referred to in paragraph 5 of the Affidavit Urgency

[illegible]
COMMISSIONER OF OATHS
ANTIGUA AND BARBUDA

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STANFORD INTERNATIONAL BANK LIMITED

2008 ANNUAL REPORT

BALANCE SHEET

(Expressed in United States dollars)

Year Ended 31 December 2008

	NOTE		2008	2007
		ASSETS		
	11	Cash and Balances with Other Banks	$ 719,405,070	$ 627,932,483
	12	Financial Assets at Fair Value	5,671,576	5,947,631,574
	13	Loans and Advances to Clients	179,249	69,732,601
	14	Property and Equipment	6,347,631	6,910,778
	15	Other Assets	5,830,773	5,785,277
		TOTAL ASSETS	$ 8,434,793,930	$ 7,057,882,743
		LIABILITIES AND SHAREHOLDER'S EQUITY		
	16	Deposits from Clients (see Figure 5)	7,491,630,564	6,689,964,303
	17	Other Liabilities and Provisions	4,088,365	12,996,649
		TOTAL LIABILITIES	$ 7,455,718,727	$ 6,702,960,952
	18	Share Capital	10,000,000	10,000,000
	18	Share Premium	879,500,000	103,500,000
	19	Retained Earnings (see Figure 6)	109,575,212	241,421,791
		TOTAL SHAREHOLDER'S EQUITY (see Figure 6)	$ 999,075,212	$ 354,921,791
		TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY	$ 8,434,793,939	$ 7,057,882,743

The notes on pages 20 to 49 are an integral part of these financial statements.

Figure 5: DEPOSITS FROM CLIENTS
Dollars in (millions)

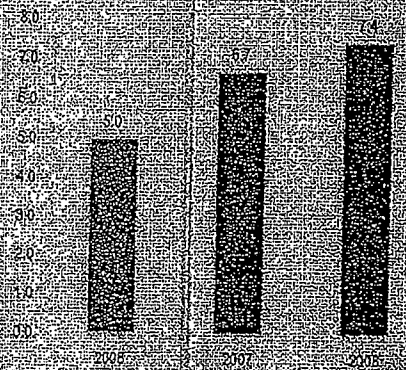
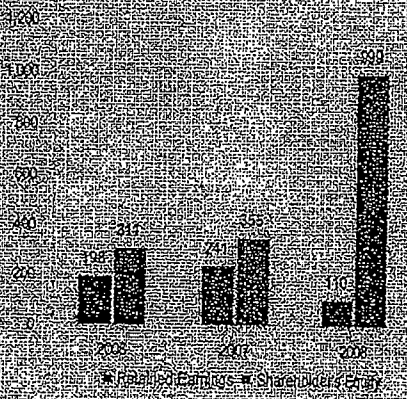


Figure 6: EARNINGS AND EQUITY
Dollars in (millions)



STANFORD INTERNATIONAL BANK LIMITED

2008 ANNUAL REPORT

INCOME STATEMENT

(Expressed in United States dollars)
Year Ended 31 December 2008

NOTE		2008	2007
	OPERATING INCOME:		
5	NET INVESTMENT INCOME:	$ 510,652,690	$ 641,275,995
	Interest Income	197,455,372	164,843,390
	Interest Expense	548,322,295	437,192,793
5	NET INTEREST INCOME/(EXPENSE)	(350,866,918)	(272,349,403)
	Fee Income	12,957,046	3,030,799
	Fee Expense	139,135,581	150,075,660
7	NET FEE INCOME/(EXPENSE)	(126,178,535)	(147,044,861)
8	Other Income	81,623,129	(20,177,473)
	TOTAL OPERATING INCOME (see Figure 3)	$ 65,211,372	$ 202,210,259
	OPERATING EXPENSES:		
9	Personnel Expenses	3,384,084	3,312,747
10	General and Administrative Expenses	192,558,087	154,226,063
14	Depreciation of Property and Equipment	910,946	852,885
	TOTAL OPERATING EXPENSES	$ 197,057,921	$ 158,591,695
	OPERATING PROFIT (see Figure 4)	$ (131,846,549)	$ 43,618,564

The notes on pages 28 to 45 are an integral part of these financial statements.

Figure 3: OPERATING INCOME
Dollars in millions

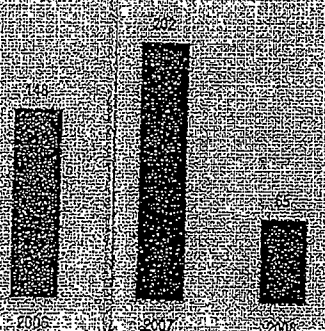
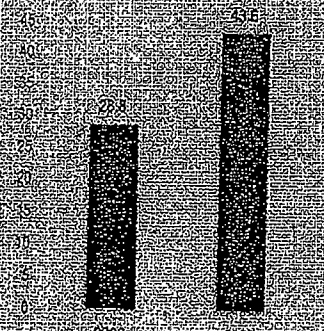


Figure 4: OPERATING PROFIT
Dollars in millions



STANFORD INTERNATIONAL BANK LIMITED

2006 ANNUAL REPORT

STATEMENT OF CHANGES IN EQUITY

(Expressed in United States dollars)

	Share Capital	Share Premium	Retained Earnings	Total Shareholder's Equity
At December 31, 2006	$ 10,000,000	$ 103,500,000	$ 197,803,197	$ 311,303,197
Additional Contributions	0	0	0	0
Net Income for the Year	0	0	43,618,564	43,618,564
At December 31, 2007	$ 10,000,000	$ 103,500,000	$ 241,421,761	$ 354,921,761
Additional Contributions	0	776,000,000		776,000,000
Net Income for the Year	0	0	(137,846,549)	(137,846,549)
At December 31, 2008	$ 10,000,000	$ 879,500,000	$ 103,575,212	$ 993,075,212

The notes on pages 28 to 49 are an integral part of these financial statements.

STANFORD INTERNATIONAL BANK LIMITED

2008 ANNUAL REPORT

STATEMENT OF CASH FLOWS

(Expressed in United States dollars)

Year Ended 31 December 2008

NOTE		2008	2007
	CASH FLOWS FROM OPERATING ACTIVITIES		
5	Investment Income	$ 510,632,696	$ 641,775,956
6	Interest Received	197,155,577	164,849,390
6	Interest Paid	(5,323,295)	(437,192,793)
7	Fees Received	12,957,016	3,030,799
8	Other Income	5,624,120	(20,171,473)
	Cash Payments to Employees and Suppliers	(355,263,150)	(307,814,470)
	Cash Flows From Operating Profits	$ (30,936,281)	$ 44,471,449
	Changes in Operating Assets and Liabilities		
12	Net Increase in Financial Instruments at Fair Value	$ (1,917,059,804)	$ (1,411,980,477)
13	Net Increase in Loans and Advances to Clients	(102,646,644)	(5,106,127)
15	Net Increase in Other Assets	323,316	2,812,519
16	Net Increase in Deposits from Clients	2,041,666,061	679,880,537
17	Net Increase in Other Liabilities	(8,340,286)	(1,922,838)
	Net Cash Flows from Operating Activities	$ (17,012,638)	$ 308,144,063
	CASH FLOWS FROM INVESTING ACTIVITIES		
14	Purchase of Property and Equipment	$ (2,406,284)	$ (3,260,285)
15	Proceeds from Sale of Property and Equipment	1,879,652	51,966
	Net Cash Used in Investing Activities	$ (526,632)	$ (3,208,319)
	CASH FLOWS FROM FINANCING ACTIVITIES		
18	Contribution to Share Premium Account	$ 776,000,000	$ 0
	Net Cash Flows from Financing Activities	$ 776,000,000	$ 0
	Net Increase/(Decrease) in Cash and Cash Equivalents	$ 758,460,730	$ 304,935,744
	CASH AND EQUIVALENTS AT BEGINNING OF YEAR	$ 627,322,483	$ 322,386,739
11	CASH AND EQUIVALENTS AT END OF YEAR	$ 1,385,783,213	$ 627,322,483

The notes on pages 28 to 48 are an integral part of these financial statements.

Figure 7: CASH AND EQUIVALENTS
2008 $ in (millions)