

# TAB 6

N J Hamilton Smith  
6<sup>th</sup> Affidavit  
Applicant  
August 2009  
Exhibit "NJHS7"

IN THE COURT OF APPEAL

NOS. A/2/2009/1565, A2/2009/1566, A/2/2009/1643,  
A2/2009/1643A

ON APPEAL FROM THE CENTRAL CRIMINAL COURT (HHJ Kramer OC)

IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL REQUESTS AND  
ORDERS) ORDER 2005

STANFORD INTERNATIONAL BANK LTD BY ITS LIQUIDATORS

Appellant

-AND-

THE DIRECTOR OF THE SERIOUS FRAUD OFFICE

Respondent

-AND-

(1) ROBERT ALLEN STANFORD  
(2) JAMES DAVIS  
(3) LAURA PENDERGAST-HOLT

Other affected parties

ON APPEAL FROM THE HIGH COURT OF JUSTICE, CHANCERY DIVISION  
COMPANIES COURT (Mr Justice Lewison)

IN THE MATTER OF STANFORD INTERNATIONAL BANK LTD

AND IN THE MATTER OF THE CROSS BORDER INSOLVENCY REGULATIONS 2006  
BETWEEN:

RALPH STEVEN JANVEY  
(as US Receiver of Stanford International Bank Ltd)

Appellant

-AND-

(1) PETER NICHOLAS WASTELL  
(2) NIGEL JOHN HAMILTON-SMITH  
(as joint liquidators of Stanford International Bank Ltd)

Respondents

AND BETWEEN:

THE SERIOUS FRAUD OFFICE

Appellant

-AND-

(1) PETER NICHOLAS WASTELL

(22815970.01)

(2) NIGEL JOHN HAMILTON-SMITH  
(as joint liquidators of Stanford International Bank Ltd)

Respondents

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SIXTH AFFIDAVIT  
OF NIGEL JOHN  
HAMILTON-SMITH

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

1. I make this affidavit in connection with the directions made by Waller, Jacobs and Stanley Burnton LJ in the Court of Appeal on 18 August 2009. In particular, I make it to particularise some of the items set out in my fifth affidavit regarding the necessary costs of the liquidation in Antigua.
2. 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 two joint liquidators (the "Liquidators") of Stanford International Bank Limited ("SIB"). Where such matters are not within my own personal knowledge, the source of my information and belief is set out herein and I believe such matters to be true.

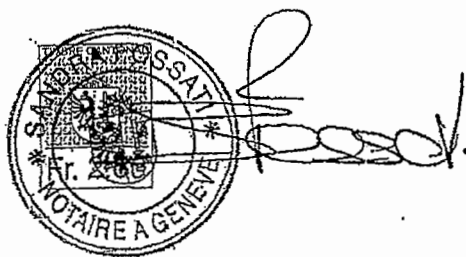
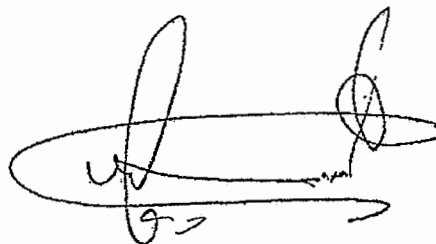
**Court of Appeal hearing 18 August 2009**

- 3.. The Court of Appeal ordered on 18 August 2009 that the restraint order obtained by the Serious Fraud Office on 7 April 2009 over the assets of, inter alia, SIB be varied to allow the payment of US\$889,800 to the Liquidators to fund the costs of the liquidation until all appeals on this matter can be heard in the week of 16 November 2009.
4. Prior to the hearing in the High Court before Lewison J on 3 July 2009, I provided the Court with a summary of the costs needed to sustain the liquidation in Antigua for the subsequent six months. This summary was exhibited to my fifth affidavit at Exhibit NJHS6, and is re-exhibited to this affidavit at NJHS7. It was requested at the Court of Appeal hearing on 18 August that this summary be explained further in a witness statement, to include the extra detail provided to the Court of Appeal orally by the Liquidators' counsel.

### Operational Costs of the Liquidation

5. The first box on the one page summary at NJHS7 refers to the fixed monthly costs of the liquidation. As can be seen from the table, this amount is principally made up of salaries for retained staff, IT support and general utilities bills. The Court of Appeal agreed that these sums should be paid to the Liquidators to cover payments for the next three months.
6. The second box refers, at lines one and two, to the costs of corresponding with creditors and advertising for creditor claims. It was agreed on behalf of the Liquidators at the Court of Appeal hearing on 18 August that these sums were not immediately essential for the continuation of the liquidation and that release of funds to cover them would not be sought by the Liquidators at this stage.
7. The third line of this box relates to payroll taxes for the retained staff (akin to UK income tax), including amounts that are in arrears and amounts that will be due going forwards over the subsequent six months. For the purpose of the hearing before the Court of Appeal on 18 August, this amount was split down to a monthly value of \$13,400 and multiplied by 4 to cover the amounts that are in arrears, and multiplied by 3 for the amounts that will fall due over the next three months, until the various appeals are heard in the UK. The Court of Appeal agreed that these sums (to cover seven months in total) should be released to the Liquidators to ensure the continuation of the liquidation until the appeals can be heard in November.
8. The final box in Exhibit NJHS7 is titled "Ransom Payments" and relates to debts due to utilities and service providers prior to the onset of the receiver-managership of SIB in Antigua (which predated the liquidation). Under s.233 Insolvency Act 1986 in England and Wales, service providers cannot cut off a liquidator of a company on the basis of outstanding debts prior to the start of the liquidation. However, in Antigua there is no equivalent statutory provision and the Liquidators have been in frequent negotiations with the service providers to avoid having services cut off for non-payment of this prior debt. The understanding has been that, when the Liquidators receive funds, they will pay off the outstanding service debts of SIB, and if they do not make payment of the outstanding arrears when cash becomes available to them, SIB will be cut off. The Liquidators have therefore included this sum in their calculation of the sum required for the continuation of the liquidation to ensure that services continue to be provided to SIB. The Court of Appeal agreed that these sums should be paid to the Liquidators.

Sworn by NIGEL JOHN HAMILTON-SMITH )  
at Geneva (Switzerland) )  
this 20th day of August 2009 )  
Before me Sandra FOSSATI )  
a Solicitor / Commissioner for Oaths )



The undersigned Notary assumes  
no responsibility as to the content  
of the present document.

N J Hamilton-Smith  
 6th Affidavit  
 Applicant  
 August 2009  
 Exhibit "NJHS7"

NOS. A/2/2009/1565, A2/2009/1566, A/2/2009/1643,  
 A2/2009/1643A

IN THE COURT OF APPEAL

ON APPEAL FROM THE CENTRAL CRIMINAL  
 COURT

IN THE MATTER OF THE PROCEEDS OF CRIME  
 ACT 2002 (EXTERNAL REQUESTS AND  
 ORDERS) ORDER 2005

STANFORD INTERNATIONAL BANK LTD BY  
 ITS LIQUIDATORS

Appellant

-AND-

THE DIRECTOR OF THE SERIOUS FRAUD  
 OFFICE

Respondent

-AND-

(1) ROBERT ALLEN STANFORD  
 (2) JAMES DAVIS  
 (3) LAURA PENDERGAST-HOLT

Other affected parties

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SIXTH AFFIDAVIT OF  
 NIGEL JOHN HAMILTON SMITH

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N J Hamilton Smith  
6<sup>th</sup> Affidavit  
Applicant  
August 2009  
Exhibit "NJHS7"

NOS. A/2/2009/1565, A/2/2009/1566, A/2/2009/1643, A/2/2009/1643A

IN THE COURT OF APPEAL

ON AN APPLICATION FOR LEAVE TO APPEAL FROM THE CENTRAL CRIMINAL COURT

N THE MATTER OF THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL REQUESTS AND ORDERS) ORDER 2005

STANFORD INTERNATIONAL BANK LTD BY ITS LIQUIDATORS

Appellant

-AND-  
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EXHIBIT "NJHS7"

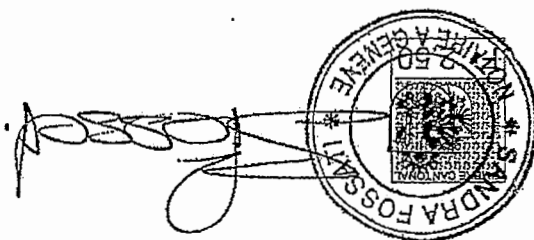
This is the Exhibit referred to as "NJHS7" in the Affidavit of

NIGEL JOHN HAMILTON-SMITH sworn this 20<sup>th</sup> day of August 2009

Before me Sandra FOSSATI

The undersigned Notary assumes no responsibility as to the content of the present document.

A solicitor of the Supreme Court



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Detail	US\$ 000's
Worldwide advertising for creditor claims	80
Mass circular to creditors using post & courier as appropriate	150
Payroll tax - Months of March till June, plus additional 6 months	134
Total other costs	364
Kainosom Payments	US\$ 000's
Telephone Provider	68
Water Provider	80
Electricity Provider	150
Total other costs	298

Please note that the above Operational Costs do not take into consideration any of the following costs:

>Others:

Total operational cost for 6 months is \$356,000 (\$155 x 6).

Detail	Per Month
Payroll	51
I.C.T Support	7
Security, building maintenance and storage	18
Telephone/Internet usage	20
Electric	15
Water	6
Postage	20
Paper/Stationery/Ink/Photocopier Maintenance	2
Sundries	7
Accommodation	20
Total cost per month	155

>Operational Cost Analysis:

The cash requirement to fund the current level of operations at SIB, excluding liquidator fees and legal costs, total \$1,658,000 for a six month period. A breakdown of this figure is provided in the analysis below.

>Summary:

(All amounts are expressed in United States Dollars - "\$")

Operational costs for 6 months

Stanford International Bank Limited (in Liquidation) ("SIBL")



This is **Exhibit "K"** referred to in the  
Second Affidavit of Peter R. Wiltshire  
sworn before me, this 16<sup>th</sup> day of January, 2015.

A. CARLTON

ALISTAIR CARLTON

---

A Commissioner, notary, etc.

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

No.: 500-11-036045-090

*IN THE MATTER OF THE  
LIQUIDATION OF:*

STANFORD INTERNATIONAL BANK  
LIMITED

-and-

STANFORD TRUST COMPANY  
LIMITED

Debtors

-and-

NIGEL JOHN HAMILTON-SMITH

-and-

PETER NICHOLAS WASTELL

Liquidators / Petitioners

-and-

RALPH S. JANVEY

American Receiver

AFFIDAVIT

I, the undersigned, NIGEL JOHN HAMILTON-SMITH, exercising my profession at Torrington House, 47 Holywell Hill, St Albans, Hertfordshire, solemnly declare:

A. Introduction

i. Professional qualifications of the Petitioners

1. My colleague Peter Nicholas Wastell and I are licensed insolvency practitioners and partners at the company Vantis Business Recovery Services ("Vantis") of the above

address. I file in support of this affidavit in bundle as Exhibit NHS-1 Peter Nicholas Wastell's and my biographies. As can be noted in Peter Nicholas Wastell's and my biographies, we have extensive experience in receivership and liquidations of companies under the *International Business Corporation Act*, Cap 222 Antigua and Barbuda.

ii. Purpose of this affidavit

2. My colleague Peter Nicholas Wastell and I have been appointed as joint liquidators of Stanford International Bank Limited (the "Bank") pursuant to an order of the High Court of Antigua and Barbuda dated April 15, 2009 (the "Winding-Up Order"). A certified copy of the Winding-Up Order has already been communicated as Exhibit P-7 of the *Motion Seeking the Appointment of a Foreign Representative, the Recognition of a Foreign Order and for Judicial Assistance* (the "Recognition Motion").
3. In our capacity as foreign representatives of the Bank, Peter Nicholas Wastell and I now seek recognition of the Antiguan liquidation proceedings in Canada and the further relief sought in the application, pursuant to Sections 267 and *seq.* of Part XIII, *International Insolvencies of the Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "BIA").
4. I make this affidavit in support of the Recognition Motion and am authorised by Peter Nicholas Wastell to make it on behalf of the joint liquidators of the Bank. 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, to the Bank. 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. This affidavit is also filed in response to the *Motion to Revoke and Rescind an Ex Parte Order, to Recognize a Foreign Proceeding and a Foreign Representative and Enforce a Foreign Decision, to Appoint an Interim Receiver and for Other Judicial Assistance and Interim and Final Relief* filed on April 16, 2009 by Mr Ralph Janvey (the "US Receiver

Motion”), the receiver appointed over the Bank and other Stanford group entities by a US Court on February 16, 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 the Bank.

6. Although my counsel and I refer to Mr Ralph Janvey in our proceedings and affidavits as being the US Receiver, for the reasons set out in our proceedings and affidavits, I do not accept the interest and status of Mr Janvey as receiver of the Bank or any alleged powers of Mr Janvey to deal with the liquidation of the estate of the Bank.
7. As more fully described below, I submit to this Court that the Winding-Up Order made in the jurisdiction where the Bank was duly incorporated and where the Bank has its registered address and head quarters, namely Antigua, is the main foreign insolvency proceeding with regard to the Bank that should be recognised as such under the BIA by this Court.

B. Proceedings to date concerning the Bank

*a) Events leading to the liquidation of the Bank in Antigua*

8. Prior to the Winding-Up Order, on February 19, 2009, Peter Nicholas Wastell and I were appointed by the Supervisor of International Banks and Trust Corporations of the Financial Services Regulatory Commission (“FSRC”) pursuant to the provisions of the International Business Corporation Act Cap. 222 of the Laws of Antigua and Barbuda (the “Act”) as the Receiver-Managers (“Receivers”) of the Bank and STC. A copy of the decision from the FSRC has already been communicated as Exhibit P-1 of the Recognition Motion. Our appointment as Receivers was subsequently ratified by the High Court of Justice in Antigua and Barbuda on February 26, 2009, as it appears from a copy of Court order communicated as Exhibit P-2 of the Recognition Motion.
9. I refer the Court to the report dated March 16, 2009 that Peter Nicholas Wastell and myself prepared pursuant to the Order of February 26, 2009 (the “Report”) a copy of

~~which has already~~ been communicated as Exhibit P-4 of the Recognition Motion and to ~~paragraphs 10 to 13~~ of the Recognition Motion.

10. ~~In the circumstances,~~ pursuant to its powers under section 300 of the Act, on March 25, 2009, the FSRC filed a petition for the liquidation of the Bank in the High Court in Antigua. A copy of the Petition for liquidation and dissolution of the Bank, the affidavits ~~and evidence~~ in support thereof have been filed in support of the Motion *en liasse* as Exhibit P-6 of the Recognition Motion.

*11. The liquidation of the Bank*

11. ~~After a hearing from April 6 to 9 and April 14 and 15, 2009,~~ the Bank was placed into liquidation and the Winding-Up Order was issued on April 15, 2009 (Exhibit P-7 of the Recognition Motion).
12. I am advised by Antiguan Counsel, namely Charlesworth O. D. Brown and Jasmine Wade, attorneys at law practising in Antigua, that the liquidation of the Bank constitutes collective proceedings for the reasons set out below.
13. I refer to paragraph 2 of the Winding-Up Order which provides that Peter Nicholas Wassell and I are appointed liquidators with all of the powers and duties of a liquidator as ~~contained~~ in the Act or any other legislation related thereto and with the further powers, ~~duties and responsibilities~~ as conferred by the Winding-Up Order. I refer to the powers provided by the Winding-Up Order, in particular paragraphs 4-7, which refer to the liquidators' powers of collection and realisation of assets for the general benefit of the creditors.
14. I further refer the Court to excerpts of the Act, communicated as Exhibit P-12 of the Recognition Motion and exhibited to Jasmine Wade's affidavit dated June 19, 2009, which set out the liquidators' powers under the relevant Antiguan legislation.

15. For the reasons set out above, I am advised by the UK law firm acting for the liquidators, CMS Cameron McKenna LLP and by Daniel Glosband, a US attorney who has filed an affidavit in this matter, that the liquidation of the Bank is a "foreign proceeding" within the meaning of Article 2(i) of the UNCITRAL Model Law on Cross-Border Insolvency (the "Model Law") and that Peter Nicholas Wastell's and my appointment as liquidators under the Act constitutes us as "foreign representatives" of the Bank within the meaning of Article 2(i) of the Model Law.
16. I submit to this court that the Winding-Up Order and the liquidation of the Bank constitute a "foreign proceeding" within the meaning of Section 267 and *seq.* of the BIA and that Peter Nicholas Wastell's and my appointment as liquidators constitutes us as "foreign representatives" of the Bank within the meaning of Section 267 and *seq.* of the BIA.
17. At paragraph 21 of the Winding-Up Order, the liquidators are empowered to apply for orders recognising our appointment in any other jurisdiction.

*c) Other court actions in Antigua*

18. I should mention, for completeness, that a different winding-up petition in relation to the Bank and an application for the appointment of provisional liquidators were filed in the High Court of Antigua and Barbuda on March 9, 2009 by a Mr Fundora, a creditor of the Bank. Further details are set out in my affidavit for the Antiguan Court dated March 25, 2009 at paragraphs 25 to 33 (Exhibit P-6 of the Recognition Motion).
19. On March 23, 2009, the Antiguan Court dismissed Mr Fundora's application for provisional liquidation and adjourned and consolidated the hearing of the full winding-up petitions filed by Mr Fundora and the FSRC to April 6, 2009.
20. As mentioned at paragraph 26 and following of the Recognition Motion, on Monday February 16, 2009, pursuant to an order of the United States District Court in Dallas, Mr Ralph Janvey was appointed as receiver over the Bank and all other Stanford group

companies (the "US Receiver"). A copy of that order (and the subsequently amended order of March 12, 2009) (the "US Receivership Order") has been communicated by the US Receiver as Exhibits R-3 and RSJ-1.

21. Under the terms of this US Receivership Order, which the US Receiver seeks to have recognized as a foreign proceeding under the BIA, the Court in Dallas purported to assume exclusive world wide jurisdiction over, and to take possession of the assets of, the Bank as well as Stanford Group Company, Stanford Capital Management LLC, Mr R. Allen Stanford, Mr James M. Davis and Ms Laura Pendergest-Holt (the "US Defendants").
  22. On April 1, 2009, Mr Ralph Janvey, the US Receiver, also filed an application in the Antiguan High Court requesting that both petitions for the winding up of the Bank be struck out, or, alternatively, if a winding up order was made, that Mr Janvey be appointed as liquidator of the Bank.
  23. After hearing the case and the arguments for and against liquidation over five days, the judge decided that the petition of Mr Fundora was unsuccessful and that Mr Janvey had no locus to make his application to intervene as he had not even applied for recognition of his receivership before seeking to intervene, let alone been recognised by the Antiguan High Court. The FSRC's petition was granted and Peter Nicholas Wastell and I were appointed as joint liquidators of the Bank (Exhibit P-7 of the Recognition Motion).
  24. Mr Janvey applied for leave to appeal against this decision and such application will be heard on July 22, 2009. On this day, the Court will also decide whether to grant the stay of the liquidation which Mr Janvey has sought. Mr Fundora has also appealed against this decision.
- C. Steps taken in the US in relation to the Bank
25. On February 16, 2009, the same US Court issued a temporary restraining order, an order freezing assets, an order requiring an accounting, an order requiring preservation of

documents, and an order authorising expedited discovery against the US Defendants. A copy of that restraining order has been communicated as Exhibit P-3 of the Recognition Motion (and by the US Receiver as Exhibits R-4 and RSJ-4).

26. I am advised by CMS Cameron McKenna LLP, Jones Day and by Daniel Glosband, my legal advisers in the US, that the appointment of the US Receiver is not the appointment of a "foreign representative" within the meaning of Article 2(j) of the Model Law as the receivership is not a "foreign proceeding" within the meaning of Article 2(i) of the Model Law.
27. This is on the basis that a US receivership, and in particular the receivership over the Bank as ordered by the US District Court for the Northern District of Texas, is not a "foreign proceeding" within the meaning of that legislative provision, in that it is not "a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign Court, for the purpose of reorganization or liquidation".
- D. **Conflicting duties of the US Receiver and the Antiguan liquidators**
28. The terms of the order by which the US Receiver was appointed require Mr Janvey, *inter alia*, to:

"maintain full control of the Receivership Estate [defined as the assets and records of the US defendants]" (paragraph 5(a) of the order dated February 16, 2009 (the "US Receivership Order"), (Exhibits R-3 and RSI-1)).

and to:

"collect, marshal, and take custody, control, and possession of all the funds, accounts, mail and other assets of, or in the possession or under



the control of, the Receivership Estate" (paragraph 5(e) of the order dated February 16, 2009, (Exhibits R-3 and RSJ-1)).

29. There is clear potential for a conflict between the terms of the US Receivership Order and the terms of the Winding-Up Order under which my colleague Peter Nicholas Wastell and I were appointed as liquidators, which requires us to:

"take possession of, gather in and realise all the present and future assets and property of the Bank" (paragraph 4 of the Winding-Up Order (Exhibit P-7 of the Recognition Motion)).

30. As explained in more detail at paragraphs 31 to 38 of the Recognition Motion, since our appointment as Receivers, my colleague Peter Nicholas Wastell and I have been attempting, without success, to reach an agreement with the US Receiver, to establish a protocol to be put in place so as to enable co-operation between the US Receiver and us.

E. Foreign proceedings with regard to the Bank

31. The various petitions and proceedings submitted to the High Court of Antigua and referred to in paragraphs 18, 22, 23 and 24 above, were commenced in relation to the Bank in the High Court in Antigua and were resolved with the appointment of Peter Nicholas Wastell and myself as joint liquidators of the Bank. As set out above, this decision is currently subject to appeal.
32. Peter Nicholas Wastell and myself have also instigated Chapter 15 of the US Bankruptcy Code recognition proceedings in the U.S and have issued similar recognition application in the United Kingdom and in Switzerland, as more fully appears from a copy of these proceedings filed as Exhibits NHS-2 and NHS-3.
33. I am not aware of any other insolvency proceedings having been commenced against the Bank anywhere else in the world, although regulators have become involved in the running of other Stanford entities in Panama, Mexico, Peru, Colombia and Venezuela.

However, one should note that a freezing order has also been obtained over the assets of all Stanford entities in the United Kingdom by the Securities and Exchange Commission (the "SEC").

F. Centre of Main Interests

34. The Bank's joint liquidators' contention to this court is that the concept of COMI as defined in the Model Law is not yet a concept forming part of the BIA.

35. However, should COMI, as defined in the Model Law, be relevant for the determination by the Court of the foreign representative under the BIA, for the reasons set out below, I submit to this Court that the Bank's centre of main interests is located in Antigua on the basis that it conducted the administration of its interests from Antigua and that this was ascertainable by third parties dealing with the bank.

36. In addition to our allegations found at paragraphs 66 to 103 of the Recognition Motion, the liquidators submit the following:

36.1. The Bank was licensed and regulated in Antigua by the FSRC under the Act. Attached hereto as Exhibit NHS-4 is a copy of the Bank's banking licence. The Bank was required to submit quarterly reports to the FSRC containing the details set out in the Report, at pages 19 to 30;

37. As an introduction to this section, I should advise this Court that, as part of my investigations, I have interviewed or spoken to the following former representatives of the Bank: 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 the Bank's business and operations which supplements that which I have derived from the Bank'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 the Bank and to assist in the claims handling process which is being developed. A chart showing who these people are and what their previous job titles were is attached hereto as Exhibit NHS-5.

38. 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 the Bank.

G. The US Receiver's position on COMI

39. Mr Janvey deals with the COMI of the Bank at paragraphs 49 to 53 of his affidavit dated May 22, 2009 (the "Janvey Affidavit"). I respond to those paragraphs (except to the extent that the response consists of legal submissions) in this section of my affidavit and have reproduced the same sub-titles as those used by the US Receiver in his affidavit although I disagree with these sub-titles as statements of fact.

a) The Bank was just one part of a large fraudulent empire

40. It is suggested in paragraph 51 of the Janvey Affidavit that the COMI of the Bank should be assessed on the basis of all the Stanford group companies because "...they were all a single entity used to perpetrate a fraud...".
41. Whilst I also consider that the Bank 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 the Bank is concerned. I submit to this court that the fact that the Bank was probably a complice in a fraud involving also many other companies in the Stanford group is not a reason to treat the Bank and all the Stanford group companies as a single entity for the purposes of establishing its COMI.

42. By way of example, as well as the Bank, Stanford Group Company ("SGC") also operated as an independent company and held itself out as a separate, identifiable company to customers. This was clearly a separate business with over 30,000 clients for its broker-dealer services and several billion dollars under management. Mr Janvey's statement that all the group companies were a "single entity used to perpetrate a fraud" is contradicted by his own reports regarding the release of the SGC accounts on his receivership website. Of the 32,440 accounts held with SGC, the number that have not been released to date due to being potentially associated with the proceeds of the alleged fraud is 2,020 - 6% of the total. This means that 94% of the business of SGC was therefore unconnected with and not involved in the alleged fraud. Attached hereto as Exhibit NHS-6 is a copy of the relevant webpage from the website maintained by the US Receiver.
43. I will deal with each of the sub-paragraphs of paragraph 51 of the Janvey Affidavit in turn:
- 43.1. As to sub-paragraph a. of paragraph 51 of the Janvey Affidavit, I do not dispute that the findings of the US Receiver to date are consistent with the SEC's allegation that the Bank and other Stanford group companies were involved in a massive "Ponzi" scheme. My own findings to date are also consistent with that allegation. However, it is not possible to tell at this stage whether the Bank was set up as a Ponzi scheme or whether it later began using money from new customers to pay the redemptions and interests of older customers due to lower than expected returns on its investments. It is too early to assess this situation.
- 43.2. As to sub-paragraph b. of paragraph 51 of the Janvey Affidavit, I agree that Allen Stanford was the sole owner, directly or indirectly, of more than 100 separate entities, including the Bank and STC. According to the organisational chart the US Receiver has communicated as RSJ-10, of these companies, 40 were US entities, 38 were Antigua entities, 28 were other Caribbean entities and 25 were

Latin American entities. I have prepared a table, attached hereto as Exhibit NHS-7, 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 the Bank from the United States. So far as the marketing of CDs were concerned:

43.2.1. CDs were sold all over the world;

43.2.2. Of the total worldwide sales (as at the date of the receivership of the Bank), 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; The rest of the Bank's clients were based in 113 different countries around the world, with the top 10 countries by value of deposits and number being:

Country of Depositor	Number of Clients	% of Total clients	Amount US\$	% of Total Deposits
United States of America	4,380	15.66%	1,574,389,287	21.85%
Venezuela	10,432	37.29%	1,511,898,916	20.98%
Antigua and Barbuda	4,011	14.34%	1,402,094,191	19.46%
Mexico	3,865	13.82%	932,241,682	12.94%
Canada	224	0.80%	308,349,645	4.28%
Haiti	412	1.47%	219,667,759	3.05%
Peru	553	1.98%	120,767,660	1.68%

Country of Depositor	Number of Clients	% of Total clients	Amount US\$	% of Total Deposits
Colombia	580	2.07%	110,245,322	1.53%
Panama	171	0.61%	89,540,559	1.24%
British Virgin Islands	132	0.47%	84,632,344	1.17%
<b>TOTALS</b>	24,760	88.51%	6,353,827,370	88.18%

43.2.3. 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 the Bank for the opening of accounts. There was also a number of independent financial advisers located in, inter alia, Canada, Peru and Panama. (A selection of pages from an example referral agreement with such an independent financial services provider is attached hereto as **Exhibit NHS-8**). All of the financial advisers marketed the CDs but none had authority to contract on behalf of the Bank.

43.2.4. CDs were sold to investors by the Bank directly from its headquarters in Antigua. The Bank 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 the Bank, the paperwork would be completed by the financial advisers and sent to the Bank for further checks to be carried out. The financial

advisers and their clients would then wait to see whether the Bank would approve their applications for the opening of an account.

- 43.3. As to sub-paragraph c. of paragraph 51 of the Janvey Affidavit, I agree that Antiguan law does not permit the Bank or STC to accept deposits from Antiguan.
- 43.4. As to sub-paragraph d. of paragraph 51 of the Janvey Affidavit, Investors paying monies to the Bank by cheque were instructed to send those cheques to the Bank'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.
- 43.5. As to sub-paragraph e. of paragraph 51 of the Janvey Affidavit, the Bank of Houston account was the account to which funds were sent for the purpose of investing monies deposited with the Bank. 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. The Bank 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 the Bank 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.
- 43.6. I agree with the allegation contained in sub-paragraph f. of paragraph 51 of the Janvey Affidavit.



43.7. I agree with the allegation contained in sub-paragraph g. of paragraph 51 of the Janvey Affidavit.

43.8. As to sub-paragraph h. of paragraph 51 of the Janvey Affidavit, whilst it is true that the Bank 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 the Bank since my appointment, that Mr Janvey overstates the importance of other Stanford group companies in the US to the operations of the Bank. I expand on this when responding to specific points made later in Mr Janvey's affidavit.

43.9. As to sub-paragraph i. of paragraph 51 of the Janvey Affidavit, the actions of the FSRC and the SEC in regulating the Bank and investigating reports about the Bank's actions are not something that I can, or feel it appropriate to, comment on at this stage.

**b) The COMI of the Bank was in the United States**

44. I deal with each of the sub-paragraphs of paragraph 52 of Mr. Janvey's affidavit 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).

45. The Bank was controlled by Allen Stanford, a US citizen (sub-paragraph a of paragraph 52)

46. I am advised that the citizenship of Mr Stanford and his place of residence are not relevant to establishing where the COMI of the Bank 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.



- (ii) The Bank was part of a single global financial services network (sub-paragraph b of paragraph 52)
46. I believe that Mr Janvey underplays the significance of the Bank 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.
- (iii) The Bank's central role in the fraud perpetrated by the Stanford group (sub-paragraph c of paragraph 52)
47. My investigations undertaken as receiver, and now liquidator, of the Bank support the points made in this sub-paragraph.
- (iv) Allen Stanford's "accomplices" are also US citizens (sub-paragraph d of paragraph 52)
48. I am advised that this is not relevant to the COMI of the Bank.
- (v) Allen Stanford and his associates have made appearances in the US Court (sub-paragraph e of paragraph 52)
49. Similarly, I am advised that this is not relevant to the COMI of the Bank.
- (vi) The entire operation was a single economic unit & the Bank relied heavily on the work of the other US local entities and employees of the Stanford enterprise (sub-paragraph f of paragraph 52)
50. 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.
51. There was a clear distinction – particularly so far as customers were concerned – between the Bank and other principal group companies such as Stanford Group Company ("SGC"). SGC (a US company) provided broker-dealer services, whilst the Bank 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.

52. The other point made in this paragraph by Mr Janvey is that the Bank 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 of paragraph 52 of the Janvey Affidavit. My response to these points is as follows:

52.1. As an offshore bank, offering international private banking facilities, it is inevitable that the Bank 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 C.A. In the same way, investors in the US were sought and dealt with by financial advisors in the US employed by SGC. Attached hereto as Exhibit NHS-9 is an example of a "referral agreement" with a financial advisor, in this case with a financial advisor in Colombia. This agreement clearly identifies the Bank 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 the Bank outside the US and the provisions as to the Bank's address and the governing law being Antiguan would usually apply.

52.2. 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 the Bank 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).

- 52.3. It is true that the Bank delegated significant investment decision-making to Stanford entities in the US. Mr Janvey exhibits (Exhibit RSJ-32, pages 36-39, 40-44 and 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 the Bank 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 the Bank 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.
- 52.4. Mr Janvey also exhibits marketing and management support agreements between the Bank and SFGGML (Exhibit RSJ-32, p. 7-10 and 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 January 1, 2008 (Exhibit RSJ-32, 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. The Bank also entered into a Management Support Agreement in September 2008 with Stanford Caribbean Limited ("SCL") to provide "corporate direction, governance and other services" to the Bank. For the last four months of 2008 it was paid \$1.4 million. A copy of the Management Support Agreement entered into in September 2008 is attached hereto as Exhibit NHS-10.

52.5. From my investigations of the records of the Bank, and from my conversations with former staff of the Bank, 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 the Bank itself. For example, the Bank 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 the Bank 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 the Bank from persons outside Antigua. I have found nothing in the Bank's books and records (or elsewhere) to suggest that their information is other than correct. Given that the evidence I have set out in these paragraphs indicates that the Bank received very little by way of advice or services in return for the substantial payments it made to these other group companies, I consider that the Bank may have considerable claims against those companies to be reimbursed for the payments made.

52.6. Contrary to what Mr Janvey says in sub-paragraph (r) of paragraph 52, the Antiguan headquarters of the Bank 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 5,300 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.

- 52.7. SFGGML was paid for the administrative services it purported to provide, as set out in paragraph 52.4 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 the Bank 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 the Bank, 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 the Bank.
- 52.8. In sub-paragraph (v) of paragraph 52, Mr Janvey compares the amount (said to be \$268 million) which the Bank paid in 2008 to other Stanford entities, predominantly in the US, and the \$3 million the Bank 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 the Bank and the fact that most of these services were carried out in-house at the Bank.

(vii) Number and value of investors from US (sub-paragraphs h, i and j of paragraph 52)

53. Mr Janvey notes that more US citizens than Antiguan investors made deposits in the Bank and that the aggregate deposits made by US depositors exceeded the aggregate deposits in the Bank made by Antiguan investors.

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

55. I never claimed in my affidavit filed in the UK on April 21, 2009 that 19.46% of depositors were Antiguan but instead informed the Court at paragraph 45.6 of that affidavit, repeated at paragraph 73 of the Recognition Motion, 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.

(viii) Virtually all decisions concerning the Bank were made in the US or otherwise outside Antigua and Barbuda (sub-paragraph k of paragraph 52)

56. 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 the Bank), the implementation of those strategic decisions was undertaken to a large extent within Antigua.



57. So far as Mr Stanford himself is concerned, according to the former staff of the Bank 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 U.S. St Croix, Antigua and Europe.

(ix) Most sales activity occurred outside Antigua (sub-paragraph 1 of paragraph 52)

58. 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.
59. 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 the Bank in Antigua. The Bank, 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 the Bank'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.

60. Much of the Bank marketing material also listed a telephone number for the Bank, 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.
61. The Bank's marketing materials did indeed refer to the other aspects of the Stanford group, but they did not "emphasize that the Bank was part of the larger Stanford group of companies, which was founded in Texas and headquartered in Houston". The independence of the Bank 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), as it appears from page 13 of some of the Bank's marketing material which has been communicated by the US Receiver as Exhibit KVT-9 (due to the poor quality of that page, I exhibit it again as Exhibit NHS-11). In addition, according to the financial advisers who I have spoken to, the Bank'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) (page 8 of Exhibit KVT-9).



62. 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 the Bank in Antigua for approval first. Unlike Mr Janvey, I am aware of examples where the Bank 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 an example of such a rejected application is attached hereto as Exhibit NHS-12. 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.

(x) The Bank held itself out to creditors, borrowers and other obligees, as having its location in the United States (sub-paragraph m of paragraph 52)

63. Mr Janvey bases this assertion on certain contracts entered into by the Bank, and related documents, in connection with investments that it was making in the US (Exhibit RSJ-30). The most that these documents show is that the Bank 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:

63.1. The contracts at pages 1, 21 and 27 of Exhibit RSJ-30 identify on their first page that the Bank is "an Antiguan banking corporation", and the reference to an address in Memphis on page 2 of Exhibit RSJ-30 is for service of notices;

63.2. The agreements at pages 6-12, 19-20 and 30-31 of Exhibit RSJ-30, and the UCC financing statements at pages 13 and 15 of RSJ-30, make it clear that the address within the US is a "care of" address, being the address of a different Stanford entity. Also, the UCC financing statements at pages 14 and 17 give the address of the Bank as being in Antigua;

63.3. In relation to the contract at pages 6-12 of Exhibit RSJ-30, I attach hereto as Exhibit NHS-13 further pages of that contract (which Mr Janvey has not

exhibited), which specify at page 1 that the Bank 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 3, that the Bank's address is No.11 Pavilion Drive, St John's, Antigua;

- 63.4. The promissory notes at pages 3 and 4 of Exhibit RSJ-30 between Rob Westfall, Inc and the Bank are provided without any context and presumably have a similar contractual relationship behind them to the contract at page 1 of Exhibit RSJ-30, which is not included in the affidavit;
  - 63.5. The contracts between at page 5 of Exhibit RSJ-30 is between the Bank and another Stanford group company which would have been aware that the Bank was an Antiguan based bank – it was a major institution in the Stanford empire;
  - 63.6. The certificate of foreign status at pages 25-26 of Exhibit RSJ-30 similarly contrasts the Bank's permanent address in Antigua with a "mailing address" in the United States.
64. As against this, the vast majority of the Bank's contracts were with its customers (roughly 27,000 immediately prior to its collapse). These contracts strongly suggest that the Bank was headquartered, and third parties would consider it to be headquartered, in Antigua:
- 64.1. The Stanford International Private Banking marketing brochure (see Exhibit KVT-9), on its first page (page 15 of Exhibit KVT-9) states, "Stanford International Bank Ltd conducts business with the world from its headquarters in Antigua".
  - 64.2. The Stanford International Bank Ltd 20 Year Investment Philosophy brochure (pages 1-11 of Exhibit KVT-9) shows on its second page (page 4 of Exhibit KVT-9) a picture of the Bank offices in Antigua and states, "SIB Headquarters, Antigua".

- 64.3. All of the evidence provided in paragraphs 79 and following of the Recognition Motion (Client acceptance procedures and account openings) from the Terms and Conditions and other documents that investors received when opening an account with the Bank also indicate that the Bank's customers, and other third parties, would have viewed the Bank as being an Antiguan company, not a US company.
- 64.4. The Bank'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 80 of the Recognition Motion which sets out this clause in full.
- 64.5. The Bank'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.
65. Attached hereto as Exhibit NHS-14 is a copy of a standard form of CD. This clearly identifies the Bank as being located in Antigua, and states that it is executed in Antigua.
66. Further, all bank statements and investment portfolios issued to the Bank 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 (the Bank) to be an Antiguan company.
- (xi) The assets of the Bank are located principally in jurisdictions other than Antigua and Barbuda (sub-paragraphs n, o and p of paragraph 52)
67. It is true that the Bank invested the funds it received from customers in many jurisdictions around the world. The Bank recorded its investments in three tiers, which I deal with separately below.

68. Tier 1 covered cash balances held by the Bank and the cash balance analysis as at February 18, 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	9	20%
	Bank of Houston		
	Comerica		
United Kingdom	HSBC Bank Plc	5	11%
Panama	HSBC Bank Panama SA	3	6%
TOTALS		46	100%

69. 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	117	50%
	Banque Franck Galland		
	RBS Coutts		
	Bank Julius Baer		
United Kingdom	Credit Suisse	105	45%
	Marex		
United States	Barclays Wealth	12	5%
	Charles Schwab		
	Northern Trust		
<b>TOTALS</b>		<b>234</b>	<b>100%</b>

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

70.1. Equity and loan advances to corporations – as per Mr Janvey's and Ms Van Tassel's evidence communicated as Exhibit KVT-4 [NTD: to confirm], the value of the monies invested or loaned to companies by the Bank, as at June 30, 2008 was US\$295 million. The majority of this sum relates to US corporations and funds.

70.2. The property assets for the Bank in tier 3, excluding the Bank of Antigua property, comprised 2 holdings of land, both of which were in Antigua:

70.2.1. Guiana Island and associated lands, which was acquired for a cost of US\$63 million; and

70.2.2. Pelican Island, which was purchased for US\$17 million.

70.3. 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 July 31, 2008, Allen Stanford had invested over US\$510 million by way of capital in various Antiguan companies including:

70.3.1. Stanford Development Company Ltd (property company)

70.3.2. Sticky Wicket Ltd (restaurant)

70.3.3. Sun Publishing Limited (newspaper publisher and printer)

70.3.4. Maiden Islands Holdings Ltd (property company)

70.3.5. Stanford Aviation Ltd (private air charter)

70.3.6. The Islands Clubs Ltd (property company)

70.3.7. Stanford Financial Group Ltd (financial services)

70.3.8. Antigua Athletic Club Ltd (health club)

71. 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.

72. As I have set out above, there are substantial property interests in the name of the Bank 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 the Bank, I consider this land was bought with the

Bank monies and that the Bank has a claim for the return of this land for the benefit of its creditors.

73. The government of Antigua has not, as asserted by Mr Janvey, expropriated land owned by the Bank (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, as more fully appears from excerpts from the *Land Acquisition Act*, attached hereto as Exhibit NHS-15.

(xii) Investments resulted from sales outside Antigua (principally in the US) (sub-paragraph q of paragraph 52)

74. I have already dealt with the jurisdictions in which the Bank'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 the Bank 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.
75. The purchase of CDs by customers resulted in the injection of funds into the Bank, 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 the Bank in Antigua, which were forwarded onto Bank of Houston to be cashed. The other normal operating accounts of the Bank were also located in the US, Antigua and Panama.

76. 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 the Bank (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.

(iii) Administrative and other support for the operations of the Bank was located in the US. (sub-paragraph r of paragraph 52)

77. I have dealt with these allegations above (see in particular paragraph 52 above). In summary, Mr Janvey overstates the importance of other Stanford entities in the operations of the Bank, underplays the significance of the Antiguan staff to the operations of the Bank, 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 the Bank, which is borne out by the percentage of the Bank customers resident in the US.

(iv) Stanford marketing emphasised the entire global Stanford family of companies (sub-paragraphs s and t of paragraph 52)

78. 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 the Bank 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 the Bank in Antigua. I refer to the marketing materials Mr Janvey and Ms Van Tassel have exhibited at KVT-9 (on which I provide comments at paragraph 64 above) and also to the Terms and Conditions, the Terms of Deposit and the Disclosure Statement I referred to in paragraphs 79 and following of the Recognition Motion.



79. 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 the Bank. 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..."

80. At the bottom of the page the address of the Bank is clearly stated as being in Antigua and the telephone and fax numbers are the numbers of the Bank in Antigua. When investing monies in the Bank, 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.

81. 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 the Bank 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.

(xv) The Bank incorporated in Antigua (sub-paragraph u of paragraph 52)

82. For the many reasons set out in this affidavit, I disagree that the only real connection between the Bank and Antigua is that it was incorporated there. So far as the Bank's premises are concerned, it is true that the building is rented, as Mr Janvey rightly asserts. However, the Bank 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 the Bank's equitable ownership of that building in due course. The Bank 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.

(xiv) Operational decisions not made in Antigua (sub-paragraphs v and w of paragraph 52)

83. I have dealt with much of the matters in these sub-paragraphs elsewhere (see, in particular, paragraphs 52 and 77 above).
84. Juan Rodriguez-Tolentino, the President of the Bank, 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 the Bank employees in Antigua. Attached hereto as Exhibit NHS-16 is a structure chart which shows all of the different employees of the Bank. As can be seen from the structure chart, 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 the Bank's premises in Antigua and all bar two of them are Antiguan citizens.
85. 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.

(xvii) The Bank's employees in Antigua (sub-paragraph x of paragraph 52)

86. I have dealt with most of the points made in this paragraph at paragraphs 52, 77 and 84 above. In addition to the points I make above:

86.1. 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 the Bank in Antigua.

86.2. 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.

86.3. The roles of the employees at the Bank can be seen from the structure chart (Exhibit NHS-16).

(xviii) Payments of interest and capital redemptions made from accounts outside Antigua (sub-paragraph y of paragraph 52)

87. It is true that the banks used by the Bank 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 the Bank's customers, the requests were then forwarded to the Bank in Antigua for processing. Instructions for the Swift payments were given from Antigua.

(xix) Copies of client files were maintained in the originating branch offices of the Stanford entities (sub-paragraph z of paragraph 52)

88. 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.

(ix) Accounting functions of the Bank were a branch and function of the accounting and auditing functions of the Stanford groups (sub-paragraph aa of paragraph 52)

89. The Bank had its own accounts department that operated independently on the Bank's 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.
90. I am told by Omari Osbourne, the Bank's Finance Manager, that the auditing of the Bank 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 the Bank 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.

(ixi) Loans made by the Bank were minimal (sub-paragraph bb of paragraph 52)

91. At the time the Bank went into receivership, \$100.4 million was outstanding in respect of loans granted by the Bank 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 sum 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 the Bank in Antigua, where they were assessed and approved; there was no recourse to the US.

92. 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 the Bank'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.

(xii) Bank statements (sub-paragraph cc of paragraph 52)

93. 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 the Bank were in Antigua.

(ciii) Private banking (sub-paragraph dd of paragraph 52)

94. 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. 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 the Bank 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.

95. Mr Janvey's paragraph 53 concludes that the Bank'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 the Bank'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.

96. In paragraphs 54-55 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). Were it necessary to do so, however, I refute the suggestion that the COMI of STC is in the United States.

(b) Ms Karyl Van Tassel's affidavit

97. I do not intend to deal specifically with all of Ms 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 Ms Van Tassel's evidence will be preceded by "KVTp".

98. In KVTp11(b) Ms 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 the Bank customers

were from the US and financial advisers in the US would not have dealt with investors from outside the US.

99. Ms Van Tassel states in KVTp18 that tier 1 was managed from Houston. In fact, the Bank 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.
100. It is not true that most of the sales force for the Bank CDs was in the US, as Ms Van Tassel states at KVTp32. Of all the brokers in the US, the majority worked on brokerage accounts, not the Bank 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 Ms Van Tassel lists at KVTp38, I am informed by Grace Solomon, Finance Manager, Cicely Sarauel, 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.
101. Ms Van Tassel contests at KVTp35 that the Bank would "log the payment of monies into SIB". I have been informed by Omari Osbourne (the Finance Manager) that the Bank 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.
102. As regards KVTp39 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 the Bank. The Bank's 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 the Bank. It appears that the vast majority of these people are expatriates resident in Antigua.



## **I. Offshore Banking**

103. At paragraph KVTp45, Ms Van Tassel refutes my statement that customers were attracted to the Bank because it was outside their own jurisdiction and was based specifically in Antigua, as an offshore bank. Ms 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 the Bank. One of the other reasons in the same materials at page 10 of Exhibit KVT-9 that Ms 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 the Bank'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 the Bank being located in Antigua in the literature. One of the reasons for investing in the Bank 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.

## **J. Miscellaneous matters raised in Mr Janvey's affidavit**

### **(a) US Court's receivership order**

104. At paragraph 19, 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 March 12, 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."



105. 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 the Bank 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 March 12, 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" the Bank proceeding. I fully accept that my belief is that the assets of the Bank worldwide should be repatriated to Antigua and distributed to the Bank'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.

106. 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."

107. 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 the Bank's assets in this jurisdiction. The Bank 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 the Bank's creditors.

(10) Other foreign proceedings

(11) The Antiguan Receivership

108. At paragraph 22, Mr Janvey suggests that my description of his first application before the Antiguan Court is "inaccurate". I do not accept that allegation. I was present at the hearing of March 9, 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.

(ii) The Antiguan Liquidation

109. At paragraphs 23, 24 and 25, 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.

110. On March 25, 2009, the FSRC filed a separate petition for the winding-up of the Bank, as set out at paragraph 10 above. At paragraph 26, 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:

110.1. 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.

110.2. 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 March 9, 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.

111. In paragraph 30, Mr Janvey states that I am wrong in my recollections of the hearing on April 3, 2009. This is incorrect. Mr Janvey's application was to postpone making an application for recognition which was due to have been made by April 1, 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 since he had not made an application for recognition and therefore the issue of supremacy could not be addressed.

112. Mr Janvey refers at paragraphs 31 and 32 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.
113. In paragraph 34, 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.
114. In paragraphs 32b and 34, 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, 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. A copy of the decision dismissing the application of the US Receiver to be heard as an interested party has been communicated by the US Receiver as Exhibit RSJ-16A.
115. 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 35 Mr Janvey states that the Antiguan Court

~~reached its conclusion~~ to appoint me as liquidator of the Bank 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.

116. In paragraph 41, Mr Janvey criticises the Antiguan Court for not considering certain "certain" issues now before the English Court. Taking his points in turn:

116.1. The Court did not consider whether Mr Janvey should be recognised as the representative of the Bank because he did not make an application for such recognition:

116.2. The Court did not consider the COMI of the Bank because Antigua is not party to the Model Law and there is no such concept in Antiguan law; and

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

(c) The Canadian Proceeding

117. Mr Janvey in paragraph 42 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. At the time of the application for recognition of the receivership order, effort was made to take the registrar 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.

118 ~~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.

119 ~~Mr Janvey~~ in the same paragraph 42, 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. 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.

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

130. Mr Janvey claims at paragraph 45 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.

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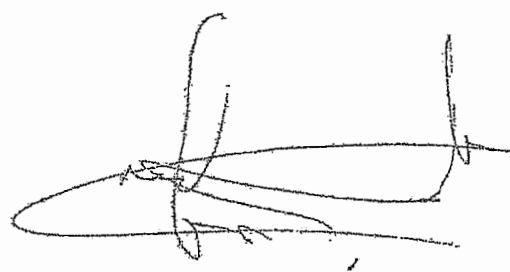
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at 400000000 HOTEL, OFFICE 448 )

the 2nd day of June 2009 )

Before me TAYLOR H. GARDNER )

a Solicitor/Commissioner for Oaths )



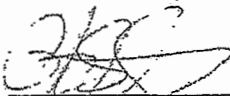

TAYLOR H. GARDNER

ATTESTATION OF AUTHENTICITY  
(Article 82.1 C.C.P.)

The undersigned, Philippe G. Giraldeau, lawyer, of the firm Ogilvy Renault, carrying on business at 1 Place Ville Marie, Suite 2500, in the City and District of Montreal, Province of Quebec, under my oath of office, declare:

1. On June 24, 2009 7:11 A.M., Montreal time, Ogilvy Renault LLP received by electronic mail the affidavit of Nigel John Hamilton-Smith in support of the *Motion Seeking the Appointment of a Foreign Representative, the Recognition of a Foreign Order and for Judicial Assistance* dated April 22, 2009;
2. The copy of the affidavit attached hereto is a true copy of the affidavit of Nigel John Hamilton-Smith received by electronic mail from Mr. Hamilton-Smith and whose electronic mail address is Nigel.Hamilton-Smith@vantisplc.com;
3. The facts alleged herein are true.

MONTREAL, June 24, 2009



Philippe G. Giraldeau  
OGILVY RENAULT LLP  
Attorneys for Nigel John Hamilton-Smith  
and Peter Nicholas Wastell