

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

<b>U.S. SECURITIES AND EXCHANGE COMMISSION,</b>	§	
	§	
Plaintiff,	§	
	§	<b>CIVIL ACTION NO. 3:09-CV-0298-N</b>
v.	§	
	§	
<b>STANFORD INTERNATIONAL BANK, LTD., ET AL.,</b>	§	
	§	
Defendants	§	

**DEFENDANTS R. ALLEN STANFORD, STANFORD INTERNATIONAL  
BANK, LTD., STANFORD GROUP COMPANY, AND STANFORD CAPITAL  
MANAGEMENT, LLC’S RESPONSE IN OPPOSITION TO  
JOINT MOTION OF THE RECEIVER AND THE EXAMINER REGARDING  
COIN AND BULLION CLAIMS AND ASSETS, DOC. 654**

TO THE HONORABLE JUDGE:

COME NOW, DEFENDANTS R. Allen Stanford, Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, (hereinafter collectively referred to as the “Defendants”) who respectfully request that this Court deny the Receiver and Examiner’s Joint Motion Regarding Coin and Bullion Claims and Assets as it pertains to assets not identified for distribution to customers of Stanford Coins and Bullion.<sup>1</sup>

**ARGUMENT**

Stanford Coins and Bullion, Inc. (“SCB”) and some of its assets are unquestionably untainted by alleged securities violations, therefore Defendants are entitled to those untainted assets. Additionally, the Receiver has no authority to liquidate any assets of SCB and should not be permitted to do so. In the event he is permitted to liquidate any of SCB’s assets, the safeguards specified in 28 U.S.C. § 2001(a) should be applied and the proceeds should be

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<sup>1</sup> See Rec. Doc. 654.

released to Defendants as untainted assets to be used to pay the fees, expense and other costs associated with defending this suit.

All parties, including the Receiver and Examiner, acknowledge that some SCB assets are untainted by alleged securities violations. The Receiver and Examiner's plan to release or liquidate the coins and bullion specified in Categories 1-5 of the Joint Motion rests on their belief that the various categories of assets held in the frozen accounts of SCB are unrelated to the CDs offered by Stanford International Bank ("SIB") and are untainted by alleged securities violations.<sup>2</sup> The Declaration of Joseph A. Frisard, President of SCB until the Receiver took control, avers that "Mr. Stanford and his other entities never exercised any control over SCB or the way it handled client assets. Everything SCB did strictly complied with client instructions."<sup>3</sup> That the Receiver and the Examiner plan to distribute the assets described in Categories 1 through 5 verifies their adoption of Mr. Frisard's statements. Moreover, the Receiver has jealously guarded all funds he believes to be within the scope of the alleged securities violations, as evinced by the claw-back claims he is pursuing under objection from the SEC and the Examiner.<sup>4</sup> He would not agree to release these coins and bullion if he believed that the receivership estate had a valid claim to them.

While the Receiver and Examiner assert the Category 6 assets are part of the receivership estate and request permission to liquidate the assets, Defendants contend that the assets listed in Category 6 of the Joint Motion are untainted by fraud, *because no fraud was committed*, and should therefore be distributed to them. Given the Receiver's obligation to protect the assets of the receivership estate, these assets must be preserved or, at minimum safeguards must be established to protect Defendants' interest in these assets. Therefore, with respect to the coins

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<sup>2</sup> See Rec. Docs. 477, 614, 615 and 653.

<sup>3</sup> See Rec. Docs. 614-2, 615-2 and 653-2, at ¶ 3.

<sup>4</sup> See Rec. Doc. 654 n. 2.

and bullion at issue in Category 6 of the Joint Motion, the Receiver should be ordered to release the assets to Defendants. If the Court permits liquidation of these assets, disposal must comply with the safeguards established by 28 U.S.C. § 2001(a) and proceeds from the sale of these assets should be distributed to Defendants.

The justification for liquidating the assets of SCB rests on a flawed premise. The Motion states that the TRO<sup>5</sup> and the Receivership Order<sup>6</sup> mandate the cessation of business of SCB and that the Receiver's "primary task" is the "winding down [of] the business of SCB and the other Stanford entities."<sup>7</sup> In fact, the TRO only mandates the freezing of assets, the provision of an accounting, the prohibition of destruction of documents, the pulling of Defendants' passports, expedited discovery, and alternative service of process and notice.<sup>8</sup> The Amended Appointment Order explicitly addresses the Receiver's fiduciary obligations, commanding him to "conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate."<sup>9</sup> Contrary to the Receiver's assertions, these Orders do not mandate liquidation of assets of the receivership estate. It is indisputable that the purpose of court appointment of an equity receiver is to take custody and manage property involved in litigation in order to **preserve** the property pending the court's final disposition of the suit.<sup>10</sup> The Receiver has a duty to preserve estate property for the benefit of claimants, including Defendants, who claim a right to estate assets, and that duty must be undertaken

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<sup>5</sup> See Rec. Doc. 8.

<sup>6</sup> See Rec. Doc. 157.

<sup>7</sup> See Rec. Doc. 654 at 2, 8.

<sup>8</sup> See Rec. Doc. 8.

<sup>9</sup> See Rec. Doc. 157, at 5(g), p.5.

<sup>10</sup> See Wright & Miller, 12 *Fed. Prac. & Proc. Civ. 2d* §2981 (2005); *Sec. Exch. Comm'n v. TLC Investments and Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Ca.2001) (stating, "[i]t is only in rare cases that it is appropriate for a receiver, rather than a bankruptcy court and particularly before judgment has been entered, to liquidate, rather than manage, the assets of a receivership."); *Sec. Exch. Comm'n v. Current Fin. Services*, 783 F. Supp 1441, 1445-46 (D.D.C. 1992)(agreeing to appoint a receiver after TRO granted but refusing to grant receiver the right to liquidate assets, stating, "such drastic measures are [not] appropriate prior to the entry of final judgment. The SEC may renew its motion to encompass such relief if necessary in the future").

without bias to one side or the other.<sup>11</sup> Nevertheless, if the Court approves the liquidation of any SCB assets, any proceeds should be released to Defendants in accordance with the Court's July 1, 2009 Order authorizing Defendants' access to funds untainted by the alleged fraud for the payment of defense expenses and costs.

With respect to the coins and bullion at issue in Category 6 of the Motion, the Receiver should be required to comply with the safeguards established by 28 U.S.C. § 2001(a), which sets forth procedural safeguards for the sale of property. The Defendants were not consulted with regard to the proposed distribution of SCB assets contained in the Joint Motion. Taking into account the Court's July 1, 2009 Order, the Receiver should include Defendants in the negotiation of any proposed disbursement of any assets of SCB to the various claimants.<sup>12</sup> Transparency by the Receiver as to his agreements with claimants for disbursement of arguably non-Estate assets, as is the case here, is of paramount importance. Adherence to the requirements of § 2001(a) will provide such transparency.

### **CONCLUSION**

Given that SCB and some or all of its assets are outside of the scope of the alleged securities allegations, as conceded by the Receiver's actions with respect to asset Categories 1 through 5, any remaining business assets and brokerage fees of SCB should be released to the Defendants for the payment of defense expenses and costs in the instant litigation. In the alternative, if the Receiver is permitted to liquidate SCB or any of its assets, the proceeds of the liquidation should be distributed to Defendants for payment of defense expenses and costs of litigation.

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<sup>11</sup> See *Boothe v. Clarke*, 58 U.S. 322, 331 (1854) ("A receiver is an indifferent person...he is appointed on behalf of all parties.").

<sup>12</sup> See Rec. Doc. 544.

Defendants therefore respectfully request that the relief requested in the Receiver and Examiner's Joint Motion Regarding Coin and Bullion Claims and Assets be denied as it pertains to assets not identified for distribution to customers of Stanford Coins and Bullion, or in the alternative, modified to order SCB assets, or proceeds there from, be released to the Defendants for the payment of defense expense and costs in the instant litigation. Defendants further request an oral hearing on the matter.

Respectfully submitted,

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***ATTORNEY IN CHARGE for Defendants  
Stanford International Bank, Ltd., Stanford Group Company,  
Stanford Capital Management, LLC and R. Allen Stanford***

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent those indicated as non-registered participants on August 18, 2009.

/s/Ruth Brewer Schuster