

Management, LLC (the “Defendants”). The SEC alleges, in its First Amended Complaint filed on February 27, 2009, that Defendants perpetrated a multi-billion dollar fraud scheme by: (1) promising high return rates on “certificates of deposit” that exceeded those available through true certificates of deposit offered by traditional banks; and (2) selling a proprietary mutual fund wrap program known as Stanford Allocation Strategy using materially false and misleading historical performance data.

The Court found good cause to believe that the Defendants violated federal securities laws. Accordingly, on February 17, 2009, the Court entered an order appointing Ralph S. Janvey as Receiver over the assets worldwide of Stanford International Bank, Ltd, Stanford Group Company, Stanford Capital Management, LLC, Robert Allen Stanford, James M. Davis, Laura Pendergest-Holt, Stanford Financial Group and the Stanford Financial Group Building Inc and for all entities owned or controlled by any of them. On March 12, 2009, the Court entered an Amended Order Appointing Receiver that contained changes not material to this motion.

B. OWNERSHIP OF THE PANAMA BANK, BROKERAGE SERVICES AND REAL ESTATE

Defendants owned and controlled various international entities, including a bank and brokerage business in Panama City, Republic of Panama, known as Stanford Bank (Panama) S.A. (“SBP”) and Stanford *Casa de Valores, S.A.* (“SCV”). The offices for SBP and SCV are located on the 19th floor of the *Torre Generali*, a commercial building located on Samuel Lewis Avenue in Panama City.

SBP and SCV are owned by Stanford International Holdings (Panama) S.A., which is a corporation organized under the laws of the Republic of Panama, registered at Microjacket 44870, Document 559962, in the Public Registry of Panama, Mercantile

Section. The sole stockholder of Stanford International Holdings (Panama) S.A. is Defendant Robert Allen Stanford. Stanford International Holdings (Panama) S.A. is the owner of all shares of stock of SBP, which is a corporation organized under the laws of the Republic of Panama, registered at Microjacket 42708, Document 41999, in the Public Registry of Panama, Mercantile Section. In addition, Stanford International Holdings (Panama) S.A. is the sole shareholder of SCV, a corporation organized under the laws of the Republic of Panama, registered at Microjacket 528815, Document 965431, in the Public Registry of Panama, Mercantile Section.

In addition, Defendant Stanford is also the sole stockholder of Deygart Holdings, Ltd., a company organized under the laws of the British Virgin Islands (BVI), BVI Company Public Registry Number 1502946. Deygart Holdings owns all issued and outstanding shares of Pershore Investments, S.A., a Panamanian corporation, registered at Microjacket 631797, Document 1420780, Public Registrar of Panama, Mercantile Section. Pershore Investments, S.A., is the owner of the real property No.56389, Registered Code 8706, Document Redi 1444711, of the Horizontal Property Section, which consists of the 19th floor of *Torre Generali*.

SBP was constituted on December 23, 2002 under the laws of the Republic of Panama. On April 1, 2005, SBP was licensed by the *Superintendencia de Bancos de Panamá*, the Panamanian banking regulator, to carry out banking business and trust business in the Republic of Panama. On July 29, 2004, the *Superintendencia de Bancos de Panamá*, granted SBP a fiduciary license. The companion brokerage business, SCV, also received a license from the Panamanian regulator of securities, the *Comisión Nacional de Valores*.

C. PANAMANIAN GOVERNMENT EXERCISED CONTROL OVER SBP AND SCV AND DETERMINED TO SELL OR LIQUIDATE THE ENTITIES

Both the SBP and SCV operated until February 17, 2009. On that date, the *Superintendencia de Bancos de Panamá* and the *Comisión Nacional de Valores*, in reaction to the SEC enforcement action, intervened and took “administrative control and operation” of SBP and SCV, freezing all accounts. See March 18, 2009 Letter from Mr. Olegario Barrelier, President of the *Superintendencia de Bancos de Panamá*, to Mr. Ralph Janvey, Appendix to Receiver’s Motion To Approve Private Sale Of Assets In Panama City, Panama (“Appendix”), pp. 1-23. After two extensions of the intervention order, the *Superintendencia de Bancos de Panamá* and the *Comisión Nacional de Valores* converted the bank and brokerage house intervention into a bank and brokerage house reorganization and appointed a “re-organizer,” Mr. Jaime de Gamboa Gamboa, to manage the affairs of SBP and SCV until the entities could be sold or liquidated. See Resolution of the Superintendency of Banks No. 256-2009, Appendix, pp. 24-28.

The *Superintendencia de Bancos de Panamá* determined not to initiate a liquidation of SBP and SCV, but rather to reorganize and sell both SBP and SCV. As such, the *Superintendencia de Bancos de Panamá* solicited through public notice a series of offers for the purchase of SBP and SCV. The *Superintendencia de Bancos de Panamá* then conducted an investigation of those potential buyers to determine whether those potential buyers were “fit and proper” to purchase SBP and SCV. On June 23, 2009, the *Superintendencia de Bancos de Panamá* then relayed six investor groups to the Receiver and directed the Receiver to choose among those offers and complete the sale of SBP and SCV. Those certified companies were authorized by the *Superintendencia de Bancos de Panamá* to contact the Receiver. Importantly, the *Superintendencia de Bancos de*

Panamá and the *Comisión Nacional de Valores* agreed with the Receiver that the proceeds of the sale of SBP and SCV would go into the U.S. Receivership Estate.

The Receiver then began negotiations with these potential purchasers to arrive at a sales agreement. The interested parties executed non-disclosure agreements and completed a due diligence investigation of SBP and SCV. Substantial discussions and negotiations occurred with the bidders in order to determine the viability and contingencies of each offer, and their significance to the ultimate recovery to be had by the Receiver.

Of those bids to purchase SBP, SCV and the Pershore Investments, Strategic Investors Group Inc. actually presented the highest firm offer to purchase which totaled approximately \$15,500,000. (U.S. Dollars). The terms of the sale and Strategic Investors Group's established business background and ability to consummate the transaction are bona fide. The Strategic Investors Group offer presents the best opportunity to add value to the Receivership Estate. Importantly, the *Superintendencia de Bancos de Panamá* gave final approval to Strategic Investors Group and its stockholders and directors to purchase SBP.

The U.S. Receiver, therefore, entered into a sale contract with Strategic Investors Group Inc to purchase SBP, SCV and the Pershore Investments. This contract specifically conditioned the sale on the approval of the Court, and the unfreezing of SBP accounts in foreign countries, the United States, the Swiss Republic, the United Kingdom, and Ecuador. *See* executed sales contract and amendment to the sales contract, Appendix, pp. 29-62.

Efforts to secure orders from regulatory and prosecutorial authorities in these foreign countries to release freezes on SBP assets proved to be a very lengthy process. In addition, the financial institutions holding SBP assets in some of these foreign jurisdictions have required that SBP and the Receiver strictly comply with their statutes relating to disclosure and repatriation of these assets located in their banks. The Receiver has been working with officials in these countries, and the Department of Justice (DOJ) and the SEC to convince these countries to lift freeze orders placed on SBP accounts in these countries so that the sale may proceed. In light of this time-consuming process, the undersigned counsel was able to obtain several extensions of the deadline set by then President Barrelier for the re-organization period to end.

The Receiver believes that a liquidation would greatly diminish the value of any recovery for the U.S. Receivership estate. The Receiver has continued to work with the SEC and the *Superintendencia de Bancos de Panamá* to obtain the release of the international accounts. On October 7, 2009, President Barrelier informed the U.S. Receiver that he would be forced to order a liquidation of SBP if the sale were not completed by November 13, 2009. *See* October 7, 2009 letter by President Barrelier to the U.S. Receiver's undersigned counsel, Appendix, p. 63. Last month, the Receiver was successful in convincing the Ecuadorian authorities to release SBP accounts there. Also, the Receiver last month successfully petitioned a British Court to release an SBP account held in London. On November 11, 2009, the Attorney General's Office in the Swiss Confederation lifted the freeze of SBP accounts there.

Despite the October 7, 2009 communication, the *Superintendencia de Bancos de Panamá* has agreed to extend the reorganization period until the court decides the instant

motion. *See* Resolution of the Superintendency of Banks No. 256-2009, Appendix, pp. 24-28. If the sale is not approved, the *Superintendencia de Bancos de Panamá* will move forward with liquidation of the entities.

II. REQUEST

The Receiver now seeks permission to complete: (1) the sale by Stanford International Holdings (Panama), S.A., of Stanford Bank (Panama) S.A. and Stanford *Casa de Valores*, two assets held by Stanford International Holdings (Panama); and (2) the sale by Deygart Holdings, Ltd., a BVI entity, of Pershore Investments, S.A., a Panamanian Corporation, which holds title to the floor of the bank building where SBP and SCV are located. The proceeds received from the sale would be made a part of the Receivership Estate. As noted above, the Receiver has entered into a contract to sell SBP, SCV, and Pershore Investment. S.A., to Strategic Investors Group Inc. subject to the approval of the Court. *See* executed sales contract, Appendix, pp. 29-62. The Receiver seeks the authority to complete the sales process.

III. ARGUMENT & AUTHORITIES

Approval of this sale is both authorized by law and within the best interests of parties and Stanford investors.

A. THE RECEIVER HAS THE POWER TO SELL THIS PROPERTY OF THE RECEIVERSHIP ESTATE

A common-law equity receiver has the power to dispose of the property of the receivership estate when it appears that the entities it acts for are or were continuing an enterprise that does not show evident signs of working out for the benefit of creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver “should see that the business is liquidated as economically and speedily as

possible, unless its continuance is demonstrably beneficial to creditors.” *Id.* (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2nd Cir. 1931)). Moreover, the Court may exercise jurisdiction and authority over foreign assets so long as personal jurisdiction over the defendant is properly obtained. *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1187 (11th Cir. 1991); *see also United States v. Ross*, 302 F.2d 831, 834 (2d Cir. 1962) (district court had authority to order Bahamian resident to turn over stock certificates to court-appointed receiver since the personal jurisdiction gives the court power to order the defendant “to transfer property whether that property was within or without the limits of the court's territorial jurisdiction”); *Fleming v. Gray Mfg. Co.*, 352 F. Supp. 724, 726 (D. Conn. 1973) (where court has personal jurisdiction over defendant, it may order him to do certain acts in another state, including bringing in to the jurisdiction securities located outside of the jurisdiction). Thus, a receiver may be permitted to sell assets located in foreign countries “provided that his actions are taken in accord with or otherwise do not violate the law of that foreign nation.” *Citronelle-Mobile Gathering*, 934 F.2d at 1187-88.

The mechanism for the sale of property by a receiver, at least in the United States, is normally governed by 28 U.S.C. §§ 2001-2004. With respect to sales by a receiver of real property, 28 U.S.C. § 2001 provides for sale either by public auction, Section 2001(a), or private sale, Section 2001(b). As to a sale by public auction, Section 2001(a) appears designed to govern the sale of real estate exclusively in the United States, rather than international real estate. For instance, Section 2001 directs that the sale occur “at the courthouse of the county, parish, or city in which the greater part of the property is located.” 28 U.S.C. § 2001(a).

As to a private sale of real property, Section 2001(b) authorizes a “private sale” after: (1) a hearing on notice to interested parties; (2) three disinterested appraisals are obtained; and (3) ten-days’ newspaper publication of the terms of the sale before confirmation of any private sale. 28 U.S.C. § 2001(b). The statute further provides that no private sale shall be confirmed at a price less than two-thirds of the appraised value or if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a ten percent increase over the price offered in the private sale. 28 U.S.C. § 2001(b).

Importantly, no direct sale of real estate is contemplated in the instant proposed sale. Rather, the Receiver requests approval of the sale of stock of SBP and SCV, along with stock of Pershore Investments, S.A., which holds title to the 19th Floor of *Torre Generali*. Thus, the contemplated sale is of a bank and brokerage business and stock of a corporation, rather than real estate.

A receiver’s sale of non-real property assets, in the United States, is governed by 28 U.S.C. § 2004. Section 2004 provides that “[a]ny personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, *unless the court orders otherwise.*” 28 U.S.C. § 2004 (emphasis added). The language of Section 2004 expressly permits the Court wide latitude to determine the best method of sale and liquidation of assets to maximize value for the receivership estate. *See, e.g., Tanzer v. Huffines*, 412 F.2d 221, 222 (3d Cir.1969) (court permitted receiver to sell stock in corporation); *see also In re San Vicente Medical Partners Ltd.*, 962 F.2d 1402, 1406 (9th Cir.), *cert. denied*, 506 U.S. 873 (1992) (“[F]ederal courts enjoy wide discretion in fashioning relief and protective measures in SEC actions”).

Section 2004 is particularly applicable to the proposed sale here. First, the international character of the assets pose a unique set of issues with regard to liquidation. Second, the proposed sales processes have been continually moderated and effectively run by the Panamanian government's *Superintendencia de Bancos de Panamá*. The Receiver's role in this process was distinct from the role usually played by receivers in the marketing and liquidation of domestic assets, because the Panamanian liquidation is by necessity subject to the laws and regulations of the Republic of Panama. Given the cooperative relationship between the Receiver and the *Superintendencia de Bancos de Panamá*, the Receiver has been able to develop the instant sales agreement. Under the express language of Section 2004, the Court has the authority to approve the sale of stock of SBP, SCV and of Pershore Investments, S.A.

B. THE PROPOSED SALE OF ASSETS IS IN THE BEST INTEREST OF THE RECEIVERSHIP ESTATE

The Receiver submits that the proposed sale is within the best interest of the Receivership Estate.

1. PROPOSED SALE OF SBP AND SCV

The *Superintendencia de Bancos de Panamá* conducted a bid process for the Stanford assets in Panama, soliciting bids from the Panamanian financial and banking community. Interested parties signed a traditional non-disclosure agreement, and were thereafter invited to conduct due diligence. The *Superintendencia de Bancos de Panamá* determined that six groups of investors were "qualified" to purchase SBP and SCV. The Receiver met with the three highest bidders, attempting to finalize a contract. Out of the three highest bidders, Strategic Investors Group Inc. agreed to terms that represent the best value to the Receivership Estate, in light of the limitations inherent in such a sale.

The proposed contract between the parties is attached hereto, as pages 29 through 62 of the Appendix, and shows the purchase price proposed of the Bank, Brokerage Services, and real estate allocated in the following manner:

- (1) \$8,750,000.00 for purchase of the SBP shares;
- (2) \$650,000.00 for purchase of SCV shares;
- (3) \$1,100,000.00 for purchase of Pershore Investments S.A. (*Torre Generali* real estate); and
- (4) payment in kind of the full collection and monetary rights in respect of a Certificate of Deposit issued by Bank of Antigua for the original amount of \$5,000,000.00 plus accrued interest to the date of the transfer.

The sales contract further provides for withholding 5% of the total purchase price pursuant to the Tax Code of the Republic of Panama, for purposes of paying any capital gains tax resulting from the sale to Strategic Investors Group.

The SBP sales price of \$8,750,000.00 includes the assignment of a \$2,500,000.00 loan to SBP from a corporation known as Desca Holding LLC, a Delaware limited liability company. Desca Holding LLC, in turn, is owned by Elandia International, Inc., a Delaware corporation. The Receivership has a substantial equity holding in Elandia International, Inc., and will be able to realize a return on this loan and its equity holding in Elandia International, Inc. in the future.

The purchase of the SBP shares for \$8,750,000.00 is a fair price. The Receiver obtained three separate valuations of SBP. The first valuation was performed by Mann, Lee and Associates, Inc., a well-respected Panamanian accounting firm. The second

appraisal was performed by MMG Bank of Panama, a respected bank and brokerage business in Panama City. The third appraisal was performed by the government-appointed reorganizer of SBP, Mr. Jaime de Gamboa Gamboa. Mr. de Gamboa is a well-regarded financial expert in Latin America, administering distressed financial institutions at the request of Latin American regulators, including Panama, Columbia and Ecuador. All three appraisals place the value of the bank within \$7,800,000.00 and \$9,000,000.00. Importantly, Mr. de Gamboa opined that if the sale were not to be completed, and liquidation were to take place, that the most money that would be realized would be approximately \$3,000,000.00-\$4,000,000.00. Based on these three appraisals, the \$8,750,000.00 sales price is reasonable, especially when the Antigua CD of \$5,000,000.00 plus interest is included in this price.

Likewise, the offer to purchase SCV for \$650,000.00 is a reasonable price. The last balance sheet statement for September 2009 obtained from Mr. de Gamboa places the stock holder equity at \$837,747.00. In addition, Mr. de Gamboa values the brokerage business at \$700,000.00. However, SCV does not have a seat in the Panamanian stock exchange, requiring SCV to maintain clearing agreements with other brokerage firms. SCV had a relationship, through other Stanford entities, with Pershing LLC. Importantly, this relationship will terminate with the sale of SBP and SCV, greatly diminishing the value of SCV. Under these circumstances, the sale of SCV is reasonable.

This sale of the Panama Bank and Brokerage Services will benefit the Receivership Estate and increase the amount of money available to distribute to creditors of the Estate, including investors. Because the Receiver's influence and control over an international government's supervision of such a sale is limited, the Receiver asks the

Court to confirm the sale as conducted in order to maximize the value of the Receivership Estate at this time. Otherwise, SBP and SCV will be liquidated by the Panamanian Superintendent, and the Receivership Estate will ultimately receive substantially less money.

2. PROPOSED SALE OF DEYGART HOLDINGS, LTD. INCLUDING PANAMANIAN REAL ESTATE

The sale conducted by the Panamanian Superintendent resulted in a bid for *all* Stanford-owned assets in Panama, including the 19th floor of *Torre Generali*, the real estate where the Panama Bank and Brokerage Services are currently situated. This sale of stock, in the United States, would be governed by 28 U.S.C. § 2004. However, as previously discussed, a foreign sale is subject to the laws of the nation in which the property is situated, and the Receiver must comply with those requirements in liquidating foreign assets. *Watkins*, 934 F.2d at 1188. Here, the sale has been conducted under the supervision of the Panamanian authorities.

Nevertheless, practically all of the requirements of Section 2001(a) dealing with the sale of real estate have been met through the process developed and conducted by the Panamanian authorities. Notice of the sale of all bank assets, including the real estate, was published in order to locate potential buyers.

The Receiver has obtained three appraisals for the real estate. These appraisals were from three respected real estate appraisal companies in Panama City, Panama: *Mallol y Mallol Avaluos, S.A* , *Acetecnia, S.A.* and *Panamamerica de Avalous, S.A.* These three appraisals place the value of the real estate between \$1,100,000 and \$1,575,000. Strategic Investors Group Inc. allocates \$1,100,000 of its bid proposal for purchase of the real estate at the 19th floor of *Torre Generali*, currently housing the SBP

and SCV. This amount meets the United States' statutory requirement that the sales price of real property in the United States be at least two-thirds of its appraised value. 28 U.S.C. § 2001.

The protocol for the sale of SBP and SCV, including the real estate, was conducted by Panamanian authorities, and not within the full control of the Receiver. Nevertheless, the proposed sale maximizes value to the Receivership Estate by liquidating the property for its fair market value, permitting such funds to be retrieved to benefit distributions to investors.

IV. CONCLUSION

The Receiver requests that the Court grant this motion in all respects, and specifically to authorize the Receiver to complete: (1) the sale by Stanford International Holdings (Panama), S.A., of Stanford Bank (Panama) S.A. and Stanford *Casa de Valores*, two assets held by Stanford International Holdings (Panama); and (2) the sale by Deygart Holdings, Ltd., a British Virgin Islands entity, of Pershore Investments, S.A., a Panamanian Corporation, which holds title to the floor where SBP and SCV are located. Also, the Receiver requests that the Court grant such other relief as the Court may deem just and equitable.

Respectfully submitted,

THOMPSON & KNIGHT LLP

/s/ Richard B. Roper

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CERTIFICATE OF CONFERENCE

Counsel for the Receiver conferred with the parties to this case. Counsel for the Receiver conferred with Mr. David Reece, counsel for the SEC, who stated that the SEC does not oppose to this motion and the relief sought herein. Counsel for the Receiver conferred with Mr. Jeff Tillotson, counsel for Ms. Laura Pendergest-Holt, who stated that Ms. Pendergest-Holt is not opposed to this motion and the relief sought herein; but reserves the right to make a claim on the proceeds of the sale. Counsel for the Receiver conferred with Ms. Ruth Schuster and Mr. Alan Yee, counsel for Mr. R. Allen Stanford, who stated that Mr. Stanford is opposed to this motion and the relief sought herein. Counsel for the Receiver conferred with Mr. David Finn, counsel for Mr. James M. Davis, who stated that Mr. Davis is not opposed to this motion and the relief sought herein. Counsel for the Receiver conferred with Mr. John Little, court-appointed Examiner, who is not opposed to this motion and the relief sought herein. Counsel for the Receiver, conferred with Mr. Manuel P. Lena, Jr., counsel for the U.S. D.O.J. (IRS) who stated that the IRS is unopposed to this motion and the relief sought herein. Counsel for the Receiver conferred with Mr. Joe Kendall, counsel for Mrs. Stanford, who stated that Mrs. Stanford takes no position on this motion and the relief sought herein. The motion, therefore, is opposed by one of the defendants.

/s/ Richard B. Roper

Richard B. Roper

CERTIFICATE OF SERVICE

On January 22, 2010 I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Richard B. Roper

Richard B. Roper