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

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	Case No.: 3-09-CV-0298-N
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
Defendants.	§	

RECEIVER'S RESPONSE TO KLS STANFORD VICTIMS' MOTION TO INTERVENE AND FOR APPOINTMENT TO THE OFFICIAL STANFORD INVESTORS COMMITTEE

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Receiver Ralph S. Janvey (the "Receiver") files this Response to KLS Stanford Victims' ("Movants") Motion to Intervene and for Appointment to the Official Stanford Investors Committee and respectfully shows the Court as follows:

SUMMARY

The entire premise of Movants' motion to intervene—that "the Receiver has generously expended $118.2 million upon attorneys and himself"—is patently false. As of the most recent status report filed with this Court, the Receivership had paid out a total of $93.6 million for all activities.[1] [Doc. 1237 at 5.] Over half of that amount—$47.4 million—constitutes expenses necessarily incurred in winding down Stanford's operations and preserving Receivership assets, including paying taxes, payroll obligations, lease obligations, maintenance fees for various personal and real property holdings, and other expenditures. The remaining amount—$46.2 million—represents payments for professional fees and expenses, including fees for attorneys, accountants, and forensic experts. [*Id*.]

And, contrary to Movants' allegation that the Receiver's efforts have only recovered $119.7 million for investors, the Receiver has in fact secured and collected $188.3 million in cash for the Receivership as of the most recent status report, [*id*.], and even more as of today. The Receiver has secured and collected these amounts while defending against attempts by parties both foreign and domestic who have sought to thwart the Receiver's efforts to secure and collect Receivership assets and who have attempted to recover such assets for themselves. As a result of the Receiver's actions, as of the most current status report, the Estate held $94.7 million in cash deposits, $26.5 million in other assets, and several hundred million dollars in litigation claims that are currently pending. [*Id*.]

[1] The dollar figures from the most recent status report are current as of January 31, 2011, as reported in the Receiver's Second Interim Report Regarding Status of Receivership, Asset Collection, and Ongoing Activities. [Docs. 1236-37.]

When the Receiver was appointed in February 2009, he faced the daunting task of winding down over 130 separate Stanford entities employing over 3,000 employees located across the U.S., Europe, the Caribbean, Canada, and Latin America. At that time, the Stanford fraudulent empire had operating expenses totaling over $33 million per *month*, while possessing merely $63.1 million in cash on hand. At that rate, the Receivership Estate would have been depleted by the end of April 2009. However, due to the extraordinary efforts of the Receiver and his team of professionals, who secured Receivership assets that had been spread, and in many cases, hidden, across North and South America and Europe, the Receivership Estate has not only not been depleted—it has grown.

In light of the complexity of this Receivership and the results obtained by the Receiver, the amounts that have been paid from the Estate are more than justified and are no evidence that the Receivership has been a failure. Indeed, the operating expenses associated with the Receivership, including lease obligations, payroll expenses, taxes, and other expenditures, were necessary to ensure that significant Stanford assets remained a part of the Receivership Estate. Further, the professional fees incurred in ensuring that the Receivership's operations were conducted properly and that valuable Receivership assets were secured were also necessary, as this Court recognized when it approved the Receiver's publicly-filed fee applications, all of which have been subject to the close scrutiny of the SEC and the Examiner. Thus, Movants' attempt to depict the Receivership's efforts as a mere ploy to enrich his attorneys is utterly meritless.

Further, allowing Movants to intervene would serve no useful purpose and would instead only impose unnecessary cost and delay. To date, this Court has entertained motions to intervene from scores of Stanford International Bank ("SIB") investors dating to the opening

days of the Receivership, each of which have made similar arguments challenging the adequacy of representation by the Receiver, the SEC, and most recently, the Investors Committee. This Court has not granted a single SIB investor's request to intervene in this action, and for good reason, as the investors' interests are perfectly aligned with those of the Receiver, the Examiner, the Investors Committee, and the SEC.

Movants' motion should be denied for the same reasons the Court has denied the intervention motions that have preceded it. Movants fail to describe what they would or could do to aid the goals of the Receivership. Adding more parties and more attorneys to the proceedings at this stage would only add cost and complexity to these proceedings, thus working at cross purposes with the Movants' stated purpose for intervening. In essence, the motion is little more than a belated, collateral attack on decisions that the Court has made over the past twenty-nine months. Movants, however, have not explained why their presence in the case at this stage, either through intervention or through participation on the Investors Committee, would resolve any of the "problems" they believe they have identified.

Additionally, the actions that Movants challenge—the events leading to the formation of the Investors Committee, the proposed structure of the Investors Committee, this Court's approval of the formation of the Investors Committee and subsequent approval of the Investors Committee's fee arrangement—have all taken place in the public record, under the watchful eye of this Court, the Examiner, and the SEC. And all of these activities happened several months before Movants filed their motion to intervene. Movants could have sought to intervene at any of these stages, but they did not. Permitting Movants to intervene now, after months of sitting on the sidelines, would work considerable hardship on the Receivership and

would serve no purpose that is not already being served by the Receiver, the Examiner, the Investors Committee, the SEC, and this Court.

FACTUAL BACKGROUND

On February 17, 2009, this Court entered its order appointing Ralph Janvey as Receiver over the assets of all entities owned or controlled by Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, R. Allen Stanford, James M. Davis and Laura Pendergest-Holt. [*See* Doc. 1130 at 1-2.] Among other things, the order directed the Receiver to "[p]erform all acts necessary 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." [*Id.* at 6.] In furtherance of this directive, the Receiver retained a team of professionals who fanned out across the globe, closing more than 100 discrete Stanford locations spanning fifteen states in the U.S. and thirteen countries in Europe, the Caribbean, Canada, and Latin America. [Doc. 384 at 7.]

By the time this Court appointed the Receiver, the Stanford fraudulent enterprise was burning through cash at a rate of $33.3 million per month, [Doc. 1236 at 15], and only had $63.1 million in cash on hand, [Doc. 1237 at 5]. Thus, when the Receiver assumed control of the Stanford fraudulent enterprise in February 2009, the Receivership Estate was on track to be completely devoid of assets by that April. Through the efforts of the Receiver and his team, however, this scenario did not play out. Instead, the Receiver, as of the most recent status report, had successfully secured and collected $188.3 million in cash flow for the Receivership Estate, and the Receivership held $94.7 million in cash and $26.5 million in other assets. [Doc. 1237 at 5.] And, monthly operating expenses have been reduced from the pre-Receivership rate of $33.3 million per month to $250,000 for December 2010 and $280,000 for January 2011. [Doc. 1236 at 15.] The Receiver has achieved these results through a combination of controlling the

necessary expenditures of the Receivership and securing valuable Receivership assets for the Estate.

The task of winding down the $8 billion Stanford Ponzi scheme while preserving the Receivership assets, though undeniably necessary, has been complicated and costly, as the Court is well aware. In the opening weeks and months of the Receivership, the Receiver faced the daunting task of terminating the employment of over 3,000 Stanford employees, accounting for over 50,000 separate customer brokerage accounts, and sorting through the approximately 200 separate accounting, financial, and operational systems, most of which did not centrally report. The Receiver also had to take action to maintain and preserve valuable physical assets, such as multiple Stanford yachts and airplanes, as well as extensive real property holdings all over the world. The expenses necessarily incurred in winding down these operations and preserving these assets, including paying taxes, payroll obligations, lease obligations, maintenance fees for various personal and real property holdings, and other expenditures, totaled $47.4 million, representing over half of the $93.6 million the Receivership had paid out as of the most recent status report. [Doc. 1237 at 5.]

The professional fees the Receivership has incurred in protecting the assets of the Receivership Estate have also been substantial, but necessary. Because of the Receiver's success in securing significant assets for the Estate, the Receivership faces challenges on many fronts. For example, when the Receiver was appointed, Stanford companies possessed substantial investments in private equity holdings in various corporations. The Receiver's professionals managed these holdings and successfully disposed of them, preventing loss of these assets to other stakeholders in these companies. Moreover, receivers and liquidators appointed by foreign nations, such as Antigua and Canada, have claimed a stake in the Stanford assets, and the

Receiver has been required to both negotiate and litigate when necessary to address disputes concerning such claims. The Receiver has also faced significant difficulties in securing frozen funds in Switzerland, Venezuela, and the United Kingdom, where others have laid claim to Stanford assets totaling approximately $336 million. Had the Receiver failed to address these attacks on the Receivership Estate, valuable Receivership assets certainly would have been lost. And while the Receiver's efforts continue to this day, these activities were particularly complex and time-consuming in the initial weeks and months of the Receivership.

In addition to the $188.3 million in cash flow the Receiver has secured and collected for the Estate, the Receivership currently has at least $600 million in claims pending in various stages of litigation. [Doc. 1237 at 5.] The initial investigation and development of these claims required significant up front work and expense, most of which consisted of forensic accounting analyses necessary to identify the fraudulent transfers received by hundreds of defendants. The majority of the forensic accounting work, however, is now complete. The completion of this initial work has allowed the Receiver to reduce substantially the monthly professional fees and expenses relating to these pending claims. As these claims advance through the litigation process, the Receiver is confident in the likelihood that his claims will succeed. For example, the Receiver has recently obtained a final judgment for over $1.7 million against the national Democratic and Republican political committees. [*See* No. 3:10-CV-0346-N, Doc. 109.] As the prevailing party on this fraudulent transfer claim, the Receiver is entitled to seek his attorneys' fees from the defendants, and he has filed a motion seeking to do so, [*id.*, Doc. 113], as he intends to do in all fraudulent transfer claims in which he prevails. *See* TEX. BUS. & COM. CODE § 24.013 (Vernon 2009).

ARGUMENT AND AUTHORITIES

I. Movants are not entitled to intervene as of right under Federal Rule of Civil Procedure 24(a)(2).

A party seeking to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) must prove four elements:

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Haspel & Davis Milling & Planting Co. Ltd. v. Bd. of Levee Comm'rs of the Orleans Levee Dist., 493 F.3d 570, 578 (5th Cir. 2007). Failure to satisfy any one of these precludes intervention. *Id.* Here, Movants' motion fails because (1) Movants' interests are adequately represented by the Receiver, the Examiner, the Investors Committee, and the SEC; (2) disposition of this action will not impair or impede Movants' ability to protect their interests; and (3) the motion was not timely.

A. Movants' interests are adequately represented by the Receiver, the Examiner, the Investors Committee, and the SEC.

A party seeking to intervene in an action bears the burden of establishing the inadequate representation requirement of Rule 24. *Haspel & Davis*, 493 F.3d at 578. To meet this burden, the proposed intervenor "must show that the representation of his interest by existing parties to the suit may be inadequate." *Saldano v. Roach*, 363 F.3d 545, 553 (5th Cir. 2004) (internal quotations omitted), *cert. denied*, 543 U.S. 820 (2004). When the proposed intervenor "has the same ultimate objective as a party to the suit, the existing party is presumed to adequately represent the party seeking to intervene unless that party demonstrates adversity of interest, collusion, or nonfeasance." *Haspel & Davis*, 493 F.3d at 579. To meet this burden,

Movants "must produce something more than speculation as to the purported inadequacy." *United States v. Tex. Educ. Agency*, 138 F.R.D. 503, 507 (N.D. Tex. 1991) (quoting *League of United Latin Am. Citizens v. Clements*, 884 F.2d 185, 189 (5th Cir. 1989) (internal quotations omitted)). In this case, where Movants' interests—maximizing returns for investors—are clearly aligned with those of the Receiver, the Examiner, the Investors Committee, and the SEC, Movants' motion to intervene should be denied.

Per this Court's order appointing him, the Receiver's objective is to preserve and return investors' assets to the maximum extent possible. [*See* Doc. 1130 at 6.] In SEC enforcement actions like this one, several courts have denied motions to intervene by investors on the grounds that a receivership is adequate to protect their interests. *See, e.g.*, *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1042-43 (C.D. Cal. 2001) (denying a request from 700 investors in a Ponzi-type scheme to intervene in an SEC enforcement action because the investors seeking to intervene had the same interests as the other investors, and they all had the same goal as the receiver—to maximize the distributions to the individual investors); *SEC v. Byers*, No. 08 Civ. 7104 (DC), 2008 WL 5102017, at *1 (S.D.N.Y. Nov. 25, 2008) (denying an investor's motion to intervene in an enforcement action because "[a]lthough not all investors and creditors share the same interests, it is in all their interests to maximize the value of the assets under the receivership" and that is what the court charged the receiver with doing). In this case, the Receiver's actions are further overseen by the Examiner, who was appointed for the express purpose of "present[ing] the interests of the Stanford investors to the Court," [Doc. 321 at 6], and who closely scrutinizes the Receiver's activities and applications for professional fees. Thus, the Receiver and the Examiner adequately represent Movants' interests as investors, as this Court has found in rejecting previous motions to intervene filed by investors. [*See id.* at 4.]

Movants claim that the Receiver's interests are not aligned with the interests of the investors, based on the false claim by the Movants that the Receiver has used "virtually all that" has been recovered to pay himself and his attorneys. Of the over $188 million in cash secured and collected for the Receivership as of the most recent status report, $46.2 million had been paid to the Receiver and his team of professionals. And, as the Court has recognized when approving the Receiver's fee applications, those fees have been reasonable and necessary in light of the extraordinary complexity of this Receivership. [Docs. 994, 1069, 1111, 1151, 1175, 1203, 1302, 1339, 1410.]

Movants' interests are also adequately represented by the Investors Committee. This Court recognized as much when it approved the formation of the Committee. [*See* Doc. 1149 at 2.] Indeed, the Committee owes investors a fiduciary duty. [*See id.* at 4.] Rather than creating a conflict, the contingency fee arrangement for the Investors Committee's counsel aligns their interests with all investors. This is so because the Committee only gets paid if it successfully prosecutes a claim on behalf of the investors. [Doc. 1208 at 8.] And, rather than representing a drain on Receivership assets, the Investors Committee's agreement to pursue fraudulent transfer claims on a contingency basis represents a significant cost savings for the Receivership by sparing the Estate up-front attorneys' fees associated with such litigation and sparing the Estate litigation fees altogether in connection with litigation efforts that are unsuccessful. Further, the twenty-five percent contingency fee is significantly below the market rate for plaintiffs' attorneys, who typically collect between thirty and fifty percent contingency fees. Additionally, as all of the claims brought by the Investors Committee are fraudulent transfer claims, the Committee will be entitled to seek its attorneys' fees from the parties against whom it prevails, thus potentially relieving the Estate of any attorneys' fee burden in connection

with such claims. Finally, Movants erroneously suggest that the work of the attorneys for the Investors Committee will generally be limited to filing "boilerplate" complaints. Movants' suggestion is at odds with the reality of the lawsuits the Investors Committee has filed and reflects either that they are hopelessly naïve or that they are attempting to mislead the Court.

Movants' interests are also adequately represented by the SEC in this action. This Court has already determined that the SEC adequately represents the interests of investors in this case. [*See* Doc. 321 at 4.] A presumption of adequate representation arises where "the party seeking intervention has the same ultimate objective as a party to the suit" and "when the representative is a governmental body or officer charged by law with representing the interests of the absentee." *Baker v. Wade*, 743 F.2d 236, 240-41 (5th Cir. 1984). This presumption is only rebutted "upon a showing of adversity of interest, the representative's collusion with the opposing party, or nonfeasance by the representative." *Johnson v. City of Dallas*, 155 F.R.D. 581, 586 (N.D. Tex. 1994). Here, there is not even any suggestion of collusion or nonfeasance by the SEC. Indeed, the SEC has objected to several of the Receiver's fee applications, [*see* Docs. 437, 738, 853, 946], and the SEC continues to scrutinize each and every one of the Receiver's fee applications, [*see, e.g.*, Doc. 1247 at 4]. Because the interests of the Receiver, the Examiner, the Investors Committee, and the SEC are all aligned with those of the Movants, this Court should deny their motion to intervene.

B. Disposition of this suit will not impair or impede Movants' interests as investors in the Stanford Ponzi scheme.

Federal Rule of Civil Procedure 24(a)(2) requires the movant to establish that "disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." FED. R. CIV. PROC. 24(a)(2); *see also Swann v. City of Dallas*, 172 F.R.D. 211, 214 (N.D. Tex. 1997) (citing *United States v. Tex. E. Transmission Corp.*, 923 F.2d 410,

413 (5th Cir. 1991)). "Intervention generally is not appropriate where the applicant can protect its interests and/or recover on its claim through some other means." *Deus v. Allstate Ins. Co.*, 15 F.3d 506, 526 (5th Cir. 1994), *cert. denied*, 513 U.S. 1014 (1994) (citing *Diaz v. S. Drilling Corp.*, 427 F.2d 1118, 1124-25 (5th Cir. 1970), *cert. denied*, 400 U.S. 878 (1970)). As discussed above, Movants have alleged no facts that set them apart from any of the other investors in this case. This Court has already rejected numerous motions to intervene on the basis that the disbursement process to be implemented in this Receivership will adequately preserve the investors' interests. [*See, e.g.*, Doc. 321 at 6-7 (citing *SEC v. Funding Res. Group*, No. 99-10980, 2000 WL 1468823, at *4 n.9 (5th Cir. 2000) (unpub.); *United States v. Alisal Water Corp.*, 370 F.3d 915, 924 (9th Cir. 2004).] The Court should likewise reject Movants' motion.

Movants' general complaints about the Receivership's fees and expenses paid to date are equally unfounded.[2] The examination of reasonableness and necessity of fees takes into account all circumstances surrounding the receivership. *See SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465, 480 (S.D. Tex. 1974), *aff'd*, *SEC v. W.L. Moody & Co.,* 519 F.2d 1087 (5th Cir. 1975). Because all receiverships are different, a court's analysis of the fees and expenses must be tailored to the particular case. *Id*. The complexity and difficulty associated with a receivership are highly relevant factors in determining the reasonableness of professional fees. *See SEC v. Fifth Ave. Coach Lines, Inc*., 364 F. Supp. 1220, 1222 (S.D.N.Y.

[2] Movants' complaint that certain attorneys' rates are over $500 per hour is also meritless. Courts consider the usual and customary fees charged and the evidence presented to support the application for fees. *See SEC v. Fifth Ave. Coach Lines, Inc*., 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (fees awarded in full because based on law firm's usual hourly rate and supported by meticulous records). The case Movants cite, *United States v. Petters*, involved a scheme that took place in Minnesota and did not involve the inherent complexities of a Ponzi scheme operating as an international bank. *See* Civil No. 08-5348 ADM/JSM, 2010 WL 1839297, at *2 (D. Minn. May 5, 2010); *see also United States v. Ritchie Special Credit Invs., Ltd.*, 620 F.3d 824, 827 (8th Cir. 2010). The SEC recognized that a top tier international firm like Baker Botts would be required to handle this case when it recommended the firm to the Receiver. Further, this Court has already conducted this analysis and concluded that the Receivership's professional fees—which have been subjected to a twenty percent discount, twenty percent hold back, and were frozen in time in 2009—were reasonable and necessary.

1973) (awarding interim fees and expenses to law firm for role in receivership and noting that it involved wide variety of complex legal matters requiring the time, competence, and diverse resources of a law firm of high caliber). This Court has already evaluated these factors as they apply to this Receivership and has approved each of the Receiver's fee applications filed to date. [Docs. 994, 1069, 1111, 1151, 1175, 1203, 1302, 1339, 1410.] Through their generic (and inaccurate) complaints about the professional fees incurred in this case, Movants have offered no real rebuttal to the adequacy of the Court's numerous findings in this regard.

Additionally, Movants' depiction of the Receivership's expenses is incomplete and misleading. As discussed above, the Receiver has reduced operating expenses from $33.3 million per month to $280,000 per month and has protected significant Estate assets. The Fifth Circuit has recognized the value in such non-monetary results and has directed that they should be considered in awarding fees. *Johnson v. Ga. Hwy. Express, Inc.*, 488 F.2d 714, 718 (5th Cir. 1974); *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989). In addition, as of the most recent status report, the Receiver had secured and collected over $188 million in cash for the Estate, while spending $46.2 million on professional fees. And the bulk of the professional fees were incurred in the initial months of the Receivership. Since then, the amounts incurred and paid for professional fees have decreased substantially, and cash collections for the Receivership Estate have continued to climb, such that professional fees are being substantially exceeded by cash collections on a monthly basis. This Court has already found that the Receiver's fees and expenses have been reasonable and necessary to date, and the corpus of the Receivership Estate will continue to grow as the Receiver's pending claims proceed through the litigation process. Thus, the disposition of this case will not impair or impede Movants' ability to protect their interests.

C. Movants' motion to intervene is not timely.

Movants had ample opportunity to file a motion to intervene over the course of this twenty-nine-month-old litigation. Rather than filing such a motion, however, Movants have sat idly by as various other investors sought to intervene shortly after the inception of the Receivership, as a group of investors then sought to force the Receivership into bankruptcy, as these same investors reached an agreement with the Receiver and the SEC to form the Investors Committee, as this Court approved that agreement and the associated contingency fee for counsel for the Investors Committee, and as the Receiver filed a dozen fee applications detailing his activities throughout the Receivership. Movants, whose interests are no different than any other investor, could have sought to intervene at any of these points, but did not. Accordingly, Movants' motion is not timely.

The Fifth Circuit considers four factors when evaluating the timeliness of a motion to intervene: (1) "The length of time during which the would-be intervenor actually or reasonably should have known of his interest in the case before he petitioned for leave to intervene"; (2) "The extent of prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case"; (3) "The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied"; and (4) "The existence of unusual circumstances militating either for or against a determination that the application is timely." *Ross v. Marshall*, 426 F.3d 745, 754 (5th Cir. 2005) (quoting *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264-66 (5th Cir. 1977)). Each of these factors weighs against granting Movants' motion.

The first factor "focuses on the time lapse between the applicant's receipt of actual or constructive knowledge of his interest in the litigation and the filing of his motion for

intervention." *Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996) (internal citation omitted). This lawsuit started twenty-nine months ago. The first motions to intervene by investors were filed days later. This Court approved the formation of the Investors Committee almost one year ago in August 2010. [Doc. 1149.] The Receiver and Investors Committee reached an agreement regarding the Committees' contingency fee in December 2010, [Doc. 1208 at 6], which this Court approved in February 2011, [Doc. 1267]. Movants have long been aware of the interests that allegedly support their proposed intervention. They were aware of their interest as investors at the inception of the Receivership, were aware of the Receiver's first fee application by May 2009, were aware as of August 2010 of the details of the make-up of the Investors Committee, and of the compensation for its counsel by February 2011. All of this was a matter of public record, yet Movants failed to seek to intervene at any of these points. This delay was unreasonable and, accordingly, Movants' motion to intervene should be denied. *See United States v. Allegheny-Ludlum Indus*., Inc., 553 F.2d 451, 453 (5th Cir. 1977) (rejecting motion to intervene delayed by "seven and a half months").

The second *Stallworth* factor "is concerned only with the prejudice caused by the applicants' delay, not that prejudice which may result if intervention is allowed." *Ross*, 426 F.3d at 755 (quoting *Edwards*, 78 F.3d at 1002). "In order to show prejudice, the [party opposed to intervention] must point to results that would not have obtained but-for [the would-be intervenor's] failure to file its motion to intervene *earlier*." *Id.* at 756 (citing *John Doe No. 1 v. Glickman*, 256 F.3d 371, 378 (5th Cir. 2001)) (emphasis in original). There is no question that granting Movants' delayed motion to intervene would severely prejudice the orderly operation of the Receivership. The processes in place by which the Receiver and Investors Committee pursue their fraudulent transfer claims, under the watchful eye of the Examiner and SEC, have been

developed over the course of the Receivership in furtherance of this Court's order to preserve Receivership assets and ultimately maximize the distribution to the defrauded creditors of the Stanford Ponzi scheme. It is too late to reverse or halt those processes for the sake of accommodating Movants' belated request to add another level of oversight to the activities of the Receivership.

For the third *Stallworth* factor, courts consider whether the potential intervenor would be exposed to significant liability if not allowed to intervene. *See Ross*, 426 F.3d at 756. As discussed above, this Court has already held on multiple occasions that the Stanford investors' interests are adequately represented by the Receiver, the Examiner, the SEC and now the Investors Committee. Because they have alleged no facts demonstrating that they are situated any differently than any other investor, Movants cannot demonstrate prejudice, nor can they demonstrate the fourth factor, an unusual circumstance justifying a determination that their application is timely. *See, e.g.*, *TLC Invs. & Trade Co.*, 147 F. Supp. 2d at 1042 ("For example, they have not noted any ways in which one investor, or a subgroup of investors, has a claim based on a legal argument that is inconsistent or at-odds with the legal arguments available to another group."). Accordingly, Movants' motion is untimely, and this Court should deny Movants' motion.

II. Permissive intervention is also improper.

Movants offer no additional justification for permissive intervention beyond the arguments cited for their intervention as of right. Movants Motion to Intervene at 12. Federal Rule of Civil Procedure 24(b) gives a court discretion to allow intervention to anyone who "has a claim or defense that shares with the main action a common question of law or fact." FED. R. CIV. PROC. 24(b)(1)(B). This, however, is only a threshold requirement, and even if it is met, a "court must exercise its discretion in deciding whether intervention should be allowed."

Stallworth, 558 F.2d at 269; *see also Kneeland v. Nat'l Collegiate Athletic Ass'n*, 806 F.2d 1285, 1289-90 (5th Cir. 1987), *cert. denied*, 484 U.S. 817 (1987). In deciding whether to grant permissive intervention, the "court may consider, among other factors, whether the intervenors' interests are adequately represented by other parties, and whether intervention will unduly delay the proceedings or prejudice existing parties." *Kneeland,* 806 F.2d at 1289 (internal citations omitted).

Because permitting intervention inevitably leads to delay, courts have been loath to grant it in SEC enforcement actions such as this one. *See, e.g.*, *SEC v. Behrens*, No. 8:08CV13, 2008 WL 2485599, at *3 (D. Neb. June 17, 2008) (finding that allowing an individual investor to intervene in an SEC action would impede settlement "to the detriment of all the investors"). Indeed, the Fifth Circuit recognized this in an appeal of an earlier motion to intervene in this case. *See SEC v. Stanford Int'l Bank, Ltd.*, No. 10–10387, 2011 WL 2447717, at *3 (5th Cir. June 20, 2011) ("The district court also found that the Receiver had already been unduly delayed by responding to the numerous motions filed by creditors and investors, without adding another layer of litigation on the issue of construction flaws."). Further, courts have been even more reluctant to grant permissive intervention than intervention as of right in cases such as this where the movants' request is untimely. *See Stallworth*, 558 F.2d at 266 ("[T]he district court should apply a more lenient standard of timeliness if the would-be intervenor qualifies for intervention under section (a) [intervention of right] than if he qualifies for intervention under section (b) [permissive intervention].").

As this Court recognized in its order denying the Stanford Condominium Owners Association's ("SCOA") motion to intervene:

> If SCOA intervenes, it will add yet another layer of litigation for the Receiver to defend. This would further drain receivership

> assets and leave fewer funds available for distribution to creditors and investors. Indeed, the Receiver's brief details the voluminous expense he has incurred thus far in responding to the many motions filed by creditors and investors in this case.

[Doc. 1042 at 4.] The same complications would arise if this Court granted Movants' motion to intervene. Permitting Movants to intervene for the redundant purpose of reviewing the Receiver's fee applications—which are currently closely scrutinized by the SEC, the Examiner, and this Court—would simply "add yet another layer of litigation for the Receiver to defend," ironically accomplishing the exact opposite of Movants' stated goal. By adding an unnecessary layer of litigation, Movants' motion to intervene only serves to diminish the already limited resources of the Receivership, and their ultimate intervention, if allowed, would unnecessarily complicate the work of the Receiver and Investors Committee and further reduce the funds available for disbursement to the defrauded investors of the Stanford scheme. This Court should not permit such a result. The Court, therefore, should deny Movants' request for permissive intervention.

CONCLUSION

Responding to Movants' baseless motion has already represented a drain on limited Receivership resources, and permitting Movants to intervene would only serve to further waste the parties' time and reduce the Receivership Estate. For the foregoing reasons, the Receiver respectfully requests that this Court deny Movants' motion to intervene.

Dated: July 28, 2011

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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CERTIFICATE OF SERVICE

On July 28, 2011, 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 will serve the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
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