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

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF, vs. STANFORD INTERNATIONAL BANK, LTD., ET AL., DEFENDANTS.	Civil Action No. 3:09-CV-0298-N

OPPOSITION OF CERTAIN STANFORD INTERNATIONAL BANK DEPOSITORS TO (ECF NO. 1393) KLS STANFORD VICTIMS' MOTION TO INTERVENE AND FOR APPOINTMENT TO THE OFFICIAL STANFORD INVESTOR COMMITTEE

Comes Now Malouf & Nockels, LLP ("M&N") (successor to The Law Offices of Stephen F. Malouf, P.C.) and files this *Opposition of Certain Stanford International Bank Depositors to (ECF No. 1393) KLS Stanford Victims' Motion to Intervene and for Appointment to the Official Stanford Investor Committee* and would show the Court as follows:

M&N represents approximately 600 victims of the collapse of Stanford International Bank ("SIB") and related entities. M&N does not serve on the Stanford Investors Committee ("Committee") established by (ECF No. 1149) the Court's August 10, 2010, Order approving (ECF No. 1051-1) *Stipulation and Proposed Order* establishing the Committee. Rather, M&N files this opposition to the motion for leave to intervene and appointment to the Stanford Investors' Committee because we do not need yet more cooks in the kitchen.

I.
BACKGROUND

By Order dated August 10, 2010, (ECF No. 1149) the Court established the Stanford Investors Committee. The Order provides that "the members of the Committee shall owe fiduciary

duties to Stanford investors in the same way that members of a bankruptcy committee owe fiduciary duties to unsecured creditors"[1] and further mandates that:

> The Receiver and the Committee will cooperate in the identification and prosecution of actions and proceedings for the benefit of the Receivership Estate and the Stanford Investors, and endeavor to consensually determine which such actions shall be brought by the Receiver, and which shall be brought on a class and/or contingency fee basis, at no direct cost or expense to the Receivership Estate, by the Committee or one or more of its members, or one or more Stanford Investors designated by the Committee.[2]

The Committee was appointed almost one year ago and only after notice to all who had entered appearances in this matter.

On July 7, 2011, four Stanford victims represented by Ms. Gaytri Kachroo sought leave to intervene in this action and for appointment to the Stanford Investors Committee in order to provide "increased scrutiny of the expenditures and agreements in this action" as well as "independent and disinterested representation for investors."[3] M&N, on behalf of its approximately 600 clients opposes the intervention and the appointment of movants to the Stanford Investors Committee.

II.
ARGUMENT AND AUTHORITIES

M&N expressed in communications with the Committee, and on the record at a status conference on September 23, 2010, some of the same concerns as those expressed by the movants and made the basis of the motion for leave to intervene, including the concern that the (ECF No.

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1 ECF No. 1149 at ¶ 1(h).

2 *Id.* at ¶ 8.

3 ECF No. 1393 at 2.

1149) Order establishing the Committee vested too much authority in the Committee and effectively foreclosed pursuit of class actions on behalf of Stanford investors except by the Committee.[4]

In response to concerns expressed by M&N at the September 23, 2010, hearing, the Court asked the Committee to meet with M&N as well as any other counsel who expressed concerns with the scope of the work of the Committee or the terms of the (ECF No. 1149) Order establishing the Committee. Since the Court made this September 23, 2010, request, M&N has met on a number of occasions with one ore more members of the Committee, as well as the full Committee, for purposes of informing M&N of the conduct of the Committee's efforts, the quality of the Committee's analysis of potential third-party claims, and the resolve of the Committee to fully explore all potential recoveries. The members of the Committee have made themselves available on every occasion where M&N sought information regarding the work of the Committee and the actions it was taking. Based upon M&N's observations to date, the Committee has fully and faithfully discharged its duties.

Movants complain about the fees and expenses incurred by the Receiver. M&N shares this concern. But the movants may interpose their objections to the Receiver's fee applications without being members of the Committee. Indeed, others have objected to various fee applications of the Receiver, including the Court-appointed Examiner.

Movants also complain that the Receiver entered into an agreement with attorneys who are members of the Committee for those attorneys to pursue various fraudulent transfer cases on behalf

[4] Like the movants, M&N has also at various times expressed serious doubts about the quality of the work of the Receiver and his counsel, and the fees and expenses incurred by (and largely paid to) the Receiver and his counsel. But disposition of this issue, should it become contested, need not be addressed as part of the Court's consideration of the motion to intervene. The movants need not be members of the Committee to challenge the Receiver's fees and expenses, or seek leave of Court to commence an action against the Receiver and Baker & Botts for any alleged failures.

of the estate for a contingency fee of 25%, and that representation of all Stanford investors by attorneys who serve on the Committee somehow creates a conflict of interest. Movants do not, however, articulate with precision what that conflict consists of. The explanation for this is simple - there is no conflict.

The attorney members of the Committee serve without compensation. It is only if and when they are approved to pursue an action on behalf of the investors that they may be compensated. The only fee agreement approved by the Court to date is a contingency fee agreement. For its clients, M&N is fully supportive of providing an incentive to the attorney members of the Committee to pursue claims that have merit and to do so without cost to the estate unless and until there is a recovery. In this regard, the attorneys' interests are completely aligned with the interests of the investors - maximizing the recovery for investors. In doing so, the attorneys maximize the return to themselves. And based upon M&N's experience in class actions and mass actions, a contingency fee of 25% is not only reasonable, it is a bargain. Moreover, counsel would be required under the Court's (ECF No. 1267) Order approving the fee terms to seek approval of the Court for the payment of fees insofar as such approval was "required by Rule 23."[5] Thus, the Stanford investors are afforded the precise protections contemplated by the Rules - if Rule 23 required this Court's approval of a settlement, so too would Rule 23 require the Court's approval of the fees payable thereon.

M&N will not repeat here the arguments made by the Receiver (ECF No. 1423) or jointly by the Examiner and the Committee (ECF No. 1421) in opposition to the motion to intervene. Instead, M&N would simply note that the mechanisms already in place provide the movants with

[5] ECF No. 1267 at 2.

every opportunity to scrutinize "the expenditures and agreements in this action" as well as "independent and disinterested representation for investors" and that adding more members to the Committee at this stage would serve no purpose, and likely slow down the efforts of the Committee. For these reasons, M&N opposes the (ECF No. 1393) *KLS Stanford Victims' Motion to Intervene and for Appointment to the Official Stanford Investor Committee*.

Respectfully submitted

/s/ Stephen F. Malouf

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2011, a true and correct copy of this pleading was served on all counsel of record in compliance with the Federal Rules of Civil Procedure

/s/ Sarah Shulkin
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