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

In re	:	Chapter 15
Stanford International Bank, Ltd.,	:	Case No. 09-0721 (DCG)
Debtor in a Foreign Proceeding.	:	

LIQUIDATORS' CONSOLIDATED REPLY IN SUPPORT OF THEIR PETITION FOR RECOGNITION UNDER CHAPTER 15 OF THE U.S. BANKRUPTCY CODE

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In complete contravention of chapter 15's stated purpose of fostering cooperation in cross-border insolvency cases, and consistent with their unflinching refusal to recognize the legitimacy of Liquidators or to work toward any meaningful cooperation agreement, the Receiver and the SEC ask this Court to completely disregard the on-going SIB liquidation proceeding in Antigua (the "Antiguan Proceeding"), thus ensuring no coordination of the proceedings and the continuation of litigation around the globe. The opposition briefs contend that the Court should do so based on several spurious grounds.

The Receiver and the SEC at first appear to agree that recognition turns, absent a never before applied "public policy" exception, on where SIB had its "center of main interests" ("COMI"). Applying settled legal principles, however, there is no question that the COMI for SIB is in Antigua. The Receiver and the SEC rely heavily on cases addressing off-shore investment funds, but such letter-box entities bear no resemblance to SIB, a bricks-and-mortar operation in Antigua with the vast majority of its officers and scores of employees working there and its day-to-day operations physically conducted there. Whether some of SIB's most senior executives lived in the United States (or elsewhere) and made key decisions from outside Antigua cannot change settled Circuit law that dictates that SIB's principal place of business and thus, in the language of chapter 15, its "center of main interests," is in Antigua. Indeed, it would be unprecedented for the Court to determine that COMI was in a jurisdiction where the entity had no offices, no employees and no parent company.

The Receiver and the SEC seek to avoid those clear facts by contending that because Mr. Stanford perpetrated a fraud, the Court should ignore established rules governing COMI and instead treat SIB as part of a fraudulent Stanford monolith with its "nerve center" in this District. There is, however, no precedent for that approach. Instead, even in cases involving fraud, courts

have found a debtor's COMI to be in the jurisdiction where it conducted its day-to-day operations. Contrary to upsetting 150 years of receivership law, this is simply a straightforward application of Congress's rule for determining the lead insolvency proceeding in a multi-jurisdictional case. To rule otherwise would completely undermine the principle that COMI should be ascertainable by third parties doing business with the debtor.

While the Receiver and the SEC alternatively urge this Court to apply – for the first time – chapter 15's public policy exception, even they concede that it is a narrow exception meant to apply only in rare situations where the result would be "manifestly contrary" to U.S. public policy. Nothing they describe comes close, in part because, putting innuendo aside, they cast no real doubt on the integrity of the Antiguan process. Other U.S. courts have granted "main" recognition to similar proceedings under the auspices of the same foreign court.

Finally, recognition of the proceedings in Antigua, where SIB has its employees, computer systems, and records as well as substantial liquid assets, offers the best means to ensure coordination among the several jurisdictions in which proceedings relating to SIB or its assets are pending. It will by no means eliminate this Court's oversight, which would retain jurisdiction over SIB in the chapter 15 case and continue to hear all issues relating to it, including any transfer of SIB assets out of the United States, but would avoid the inconsistent and conflicting rulings to which the Receiver's and SEC's position would inevitably subject SIB, to the detriment of its CD holders and others.

I. ARGUMENT AND AUTHORITIES

A. THE OPPOSITION EXAGGERATES SIB'S U.S. CONTACTS AND EMBRACES A FLAWED "ANYTHING-BUT-ANTIGUA" APPROACH TO THE COMI ANALYSIS

In their Responses, the Receiver and the SEC ask this Court to do something unprecedented: to find that a debtor's COMI is located in a jurisdiction where it has no office, no

employees and no parent corporation in lieu of the jurisdiction where it is registered and has its headquarters, virtually all of its employees and the substantial majority of its operations. The Receiver's basic argument is that because Mr. Stanford perpetrated a fraud, the Court should ignore the rules traditionally applied in determining a debtor's COMI and instead, without evidence or a showing of any kind, aggregate the individual Stanford companies and hold that the COMI is in the jurisdiction where the alleged fraud was directed. There is no case law to support this argument.

1. The Cases Relied On By The Opposition Are Plainly Distinguishable

The Receiver and the SEC rely on three cases that are plainly distinguishable: *In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37 (Bankr. S.D.N.Y. 2008); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007); *In re SPhinX, Ltd.*, 351 B.R. 103 (Bankr. S.D.N.Y. 2006). The **only** similarity between these three cases and SIB is that the debtor in each of the cases was domiciled in a Caribbean nation. Otherwise the cases bear no resemblance to this case given that the respective debtor in each of the cases had no assets, no office, no employees and no operations in its domicile country. In contrast, SIB had its headquarters and virtually all of its employees and tangible assets in Antigua and conducted substantially all of its operations in Antigua.[1]

The Receiver asserts that the cases stand for the proposition that COMI will not lie in the jurisdiction where a debtor is registered if the debtor is only "performing in that jurisdiction the minimum functions required by law to be conducted there . . . ." Rec. Br. at 18. Even if the cases stood for that proposition, it is hard to see how it is relevant to this case. There is no

[1] Further, neither *Basis Yield* nor *Bear Stearns* is on point because in both cases the local law prohibited the debtor from conducting its operations in the jurisdiction. *See, e.g.*, *Basis Yield*, 381 B.R. at 48-49. As discussed, SIB was not prohibited from conducting its operations in Antigua (and in fact conducted significant operations there).

statute in Antigua that requires as a jurisdictional minimum that SIB maintain a 30,000 sq. ft. headquarters, issue $8 billion worth of CDs, maintain and audit its books and records, make loans, provide credit card services, operate and maintain its internal software systems, manage cash assets, review and approve all sales, manage its human resources, retain virtually all of its employees, provide private banking services, and handle account inquiries, among other things.

The Receiver also asserts that the cases suggest some "inherent contradiction" in locating a debtor's COMI in a jurisdiction where it is barred from transacting business with local residents. Rec. Br. at 18. But clearly no such contradiction exists because a court has specifically held that COMI lies in a jurisdiction where the debtor is prohibited from transacting business locally. *See In re Tri-Continental Exch. Ltd.*, 349 B.R. 627, 629 (Bankr. E.D. Cal. 2006). In *Tri-Continental*, the debtors were "organized as international business companies under the laws of the nation of St. Vincent and the Grenadines . . . ." *Id.* The International Business Companies Act of St. Vincent and the Grenadines No. 18 of 1996 (the "SVG IBCA") specifically provides that entities organized under the SVG IBCA shall not "regularly carry on business with persons resident." Exh. C, SVG IBCA at § 5(1)(a), App. at 76. Nonetheless, the *Tri-Continental* court held that the debtors' COMI was in St. Vincent and the Grenadines because they "conducted regular business operations there." *Id.* The Receiver cites to no case, and Liquidators are unaware of any, in which a court has held that because of a statute limiting trade with residents, COMI does not lie in a jurisdiction where the debtor otherwise conducts its operations.

2. The *Tri-Continental* Case Controls Here

Although largely ignored by the Receiver and the SEC, the *Tri-Continental* case is much more akin to this case. In *Tri-Continental*, a U.S. citizen, Matthew Schachter, established several sham insurance companies in St. Vincent and the Grenadines. 349 B.R. at 630. Those entities

sold fraudulent insurance policies primarily to United States citizens through a network of brokers and agents retained to acquire and service U.S. policy holders. *See* Exh. E, Confidential Report to the Eastern Caribbean Supreme Court dated as of July 20, 2006 § 2.3 (filed by the Foreign Representatives in the *Tri-Continental* case), App. at 83. At least one officer was based in the United States and apparently provided legal services to the debtors. *Id.* The funds collected in the scam never flowed through bank accounts in St. Vincent and the Grenadines, but instead were routed through accounts in the United States, the Channel Islands, Ireland, Gibraltar and elsewhere. *Tri-Continental*, 349 B.R. at 630. Most of the debtors' assets were not located in St. Vincent and the Grenadines. *Id.* at 631. The debtors had their only offices in St. Vincent and the Grenadines, from which the debtors' twenty employees conducted the debtors' operations. *Id.* at 630. The Eastern Caribbean Supreme Court appointed joint liquidators to liquidate the debtors, and the joint liquidators filed a chapter 15 petition in the United States seeking recognition as a foreign main proceeding. *Id.* at 629-30. A judgment creditor objected and argued that the debtors' COMI was in the United States because most of the fraudulent activities and victims were in the United States. *See* Exh. F, Limited Objection to Ch. 15 Petition filed by Bennett Truck Transport, App. at 85-88. The Court held that even though the fraud was perpetrated primarily in the United States and Canada, the debtors' COMI was in St. Vincent and the Grenadines because the debtors "conducted regular business operations" there. 349 B.R. at 629. The holding of *Tri-Continental* controls here.

B. SIB'S CENTER OF MAIN INTERESTS IS IN ANTIGUA

SIB conducts and manages its daily operations in Antigua, and it is the location of a debtor's operations that generally determines its COMI. Indeed, the Receiver cannot point to a single case where a court determined that COMI was in a jurisdiction where the Debtor had no office, no employees and no parent company.

1. SIB's Principal Place Of Business Is Antigua

As the opposition briefs note, courts have found that COMI is generally equivalent to the concept of a principal place of business under U.S. law.[2] *See* Rec. Br. at 11; *see also In re Tri-Continental Exch.*, 349 B.R. at 633-34; *Basis Yield*, 381 B.R. at 48; *Bear Stearns*, 374 B.R. at 129. Courts employ a variety of tests to determine a debtor's principal place of business, but "[r]egardless of which test or tests the court employs, as a general rule the location of the bulk of corporate activity, as evidenced by the location of daily operating and management activities, is likely to govern the . . . court's choice of a principal place of business . . . ." 13F Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3625 (3d ed. 1998). In this case, SIB's daily management and operating activities are conducted in Antigua.

Even if the Receiver is correct that some executive decisions were made in the U.S., under established Fifth Circuit precedent, SIB's principal place of business would still be in Antigua. The Fifth Circuit has uniformly held that where a company's executive decisions are made in one state and its operations conducted in another, the latter is the debtor's principal place of business. *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 408-09 (5th Cir. 1987); *Teal Energy USA, Inc. v. GT, Inc.*, 369 F.3d 873, 877 (5th Cir. 2004). In *Teal*, for example, the Fifth Circuit rejected the argument that a debtor's principal place of business was in Canada because "all major decisions related to the corporation are made" there, and affirmed the holding that the debtor's principal place of business was in Texas because its day to day operations were conducted in Texas. 369 F.3d at 876-78.

Most courts have followed the Fifth Circuit and have expressly adopted a presumption that when a debtor's executive offices and its operations are in different jurisdictions, the

[2] While making that point, however, the Receiver and the SEC both fail to cite to any of the controlling law in the Fifth Circuit for analyzing that question.

debtor's principal place of business is where its operations are conducted.[3] *See, e.g.*, *Díaz-Rodríguez v. Pep Boys Corp.*, 410 F.3d 56, 61 (1st Cir. 2005) (adopting presumption); *R. G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 655 (2d Cir. 1979) (applying presumption); *Arbee Mech. Contractors, Inc. v. Capital Sun Corp.*, 683 F. Supp. 144, 147 (E.D. Va. 1988) (same); *Rapier v. Union City Non-Ferrous, Inc.*, 197 F. Supp. 2d 1008, 1014 (S.D. Ohio 2002) (same); *White v. Halstead Indus., Inc.*, 750 F. Supp. 395, 397 (E.D. Ark. 1990) (applying presumption and citing other cases in the 8th Circuit that do the same); *Bialac v. Harsh Bldg. Co.*, 463 F.2d 1185, 1186 (9th Cir. 1972) (applying the presumption); 13F Wright, Miller & Cooper, *Federal Practice and Procedure*, § 3625, at 100.

2. Objective Factors Ascertainable By Third Parties Indicate That SIB's COMI Is In Antigua

Consistent with the principal place of business approach, many courts have defined COMI as "the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties." *Tri-Continental*, 349 B.R. at 634 (quoting Council Reg. (EC) No. 1346/2000));[4] *Bear Stearns*, 374 B.R. at 129 (same); *In re Betcorp, Ltd.*, 400 B.R. 266, 286 (Bankr. D. Nev. 2009) (same). That definition, derived from international

[3] The Receiver's approach seems to fit the "nerve center" test, but that test is almost never employed in the Fifth Circuit, and is limited to those situations in which a debtor has "far flung" operations. *Teal Energy USA.*, 369 F.3d at 876. Here, although SIB had far flung sales, its operations are conducted solely in Antigua. "It is the business operations of a corporation, however, that must be 'far-flung and varied' to trigger application of the nerve center test, not simply the sales and results of those business operations." *Columbia Gas Transmission Corp. v. Burdette Realty Improvement, Inc.*, 102 F. Supp. 2d 673, 678-79 (S.D. W. Va. 2000).

[4] "In interpreting [chapter 15], the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions." 11 U.S.C. § 1508 (2005). Thus, "proper analysis requires consulting the Model Law on Cross-Border Insolvency ("Model Law"), the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency ("Guide"), the reports cited within the Guide, and the UNCITRAL Case Law On Uniform Texts. *See* H.R. REP. No. 109-31(I), at 109-10 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 88, 172-73." *Lavie v. Ran*, __ B.R. __, 2009 WL 890387, at *2 (S.D. Tex. Mar. 30, 2009). Further, "statutes, cases, and interpretative materials of the European Union are also instructive." *Id*. (citing the European Union's Council Regulation on Insolvency Proceedings ("Regulation"), the European Union's Convention on Insolvency Proceedings ("Convention"), and the Report on the Convention on Insolvency Proceedings ("Virgos-Schmit Report")).

sources interpreting the Model Law,[5] requires that a debtor's COMI be "identified by reference to criteria that are both objective and ascertainable by third parties." Case C-341/04, *In re Eurofood IFSC Ltd*, 2006 E.C.R. 3813. The rationale for the rule is that because insolvency is a foreseeable risk, "international jurisdiction [should] . . . be based on a place known to the debtor's potential creditors." *In re Betcorp Ltd.*, 400 B.R. at 286 (quoting Virgos-Schmit Report).

Under that standard, Antigua is undoubtedly the place where SIB conducted the administration of its interests on a regular basis in a manner ascertainable by third parties (as well as its investors). Among other things:[6]

Physical Location

- SIB is registered in Antigua and maintains its headquarters in Antigua. *See* Declaration of N. Hamilton-Smith in Support of the Petition for Recognition of a Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code ("Hamilton-Smith Orig. Decl.") (Dkt. #3) ¶ 25.

- SIB occupies a 30,000 sq. ft. facility in St. John's Antigua. This is SIB's **only** physical location other than a five employee sales office in Montreal, Canada. *Id.* ¶ 25, 27.

Operations

- Eighty-eight of SIB's ninety-three employees worked in Antigua. *Id.* ¶ 27.

- Top executives and department heads worked in Antigua, including SIB's President, the V.P. of Operations, the V.P. of Client Support, the Human Resources Manager, the Finance Manager, the Internal Auditor, the Compliance

[5] The term "center of main interests" derives from the Convention, which was adopted by the Model Law. *See In re Betcorp, Ltd.*, 400 B.R. at 286.

[6] The SEC asserts, without arguing that it applies to SIB, that "[s]ection 1501(c) and 109(b) indicate that Chapter 15 relief is not available to a foreign bank that has a branch or agency in the United States." SEC Br. at 7, n.5. The foreign bank exemption does not apply here because SIB was not regulated by U.S. banking authorities as envisioned in chapter 15. If SIB had a "foreign bank branch" this matter would be proceeding very differently than in an SEC receivership and, because it is not, Liquidators' only option is to proceed under chapter 15. *See* H.R. Rep. No. 95-595, at 318 (1977) ("[W]hen a foreign bank or insurance company is not engaged in the banking or insurance business in the United States, then those regulatory laws do not apply and the bankruptcy laws are the only ones available for liquidation of any assets found in the United States.").

Officer and the Quality Control Supervisor (and were primarily Antiguan citizens). *See* Supplemental Declaration of N. Hamilton-Smith in Support of the Petition for Recognition of a Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code ("Hamilton-Smith Supp. Decl.") (Dkt. #15) ¶ 19.

- All sales of CDs were reviewed and approved in Antigua. *Id.* ¶ 12-13.
- All credit cards were issued from and all loans were made from Antigua. *Id.* ¶ 21.
- SIB's private banking services were carried out in Antigua. *Id.* ¶ 21.
- Audits of SIB were conducted in Antigua. *Id.* ¶ 20.
- Many of SIB's most important customers were flown to Antigua before investing in SIB's CDs, and (as discussed) to the extent they required personal banking services, those services were provided from Antigua. *See* Exh. A, Second Supplemental Declaration of Nigel Hamilton-Smith in Support of the Petition for Recognition of a Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code ("Hamilton-Smith 2nd Supp. Decl.") ¶ 7, App. at 7.

Administration and Management

- SIB's human resources, accounting and IT departments were run out of Antigua and its critical software was maintained there. *See* Hamilton-Smith Supp. Decl. ¶ 15, 18 (discussing that Terminus, the Bank's software, was based in Antigua).
- Investor inquiries were handled in Antigua and client account statements were generated and distributed from Antigua.[7] *See* Hamilton-Smith Orig. Decl. ¶ 29.
- Other than the management (and looting) of SIB's Tier 3 assets and a very small portion of the Tier 2 assets, which was done in the United States, and the sale of CDs, which was done by affiliated brokers in countries around the world with no single country predominating, all of the administration and management of SIB's daily operations were conducted in Antigua. *See* Hamilton-Smith Supp. Decl. ¶ 17-18.

Marketing

- Marketing materials promoted SIB as an Antiguan bank. Hamilton-Smith Orig. Decl. ¶ 30. The first sentence of the Disclosure Statement for the U.S. Accredited Investor Certificate of Deposit Program provides that "[t]his Disclosure Statement was prepared and is being furnished by Stanford International Bank Ltd. . . . a bank chartered in Antigua and Barbuda under the International Business

[7] Utilizing only SIB's Antiguan systems and client information, Liquidators processed and mailed account statements to SIB depositors, none of whom have contacted Liquidators to complain that the statement was incorrect. *See* Exh. A, Hamilton-Smith 2nd Supp. Decl. ¶ 8, App. at 7.

Corporations Act, No. 28, of 1982, solely for use by certain prospective depositors who reside in the United States . . . ." Hamilton-Smith Orig. Decl. ¶ 30.

- Additionally, the SIB Training and Marketing Manual dated March 2005, Exh. A-2, App. at 42-65, which was used to train financial advisors from both the United States and other jurisdictions, provides that SIB is "domiciled in Antigua, a minimum-tax jurisdiction." Exh. A-2, SIB Training & Marketing Material (March 2005) at 1, 4, App. at 45, 48. It further provides that SIB's day-to-day operations are managed by "[a] select group of professionals at the Bank's headquarters in Antigua." *Id.* at 1, App. at 45. It specifically advises that SIB "is not a U.S. bank [and] is not covered by FDIC insurance." *Id.* at 8, App. at 52. It includes an extensive description of Antigua and Barbuda and advises that SIB "is chartered under the 'International Business Corporation Act' of Antigua."[8] *Id.* at 13, App. at 57. Finally, it describes the Antiguan laws and authorities governing SIB and again provides that SIB "is an International Bank that has a physical presence (head office) in the 'offshore' financial center of Antigua." *Id.* at 14, App. at 58

Governing Law

- The relationship between SIB and its depositors was governed by Antiguan law.[9] Hamilton-Smith Orig. Decl. ¶ 31. SIB's General Terms and Conditions, which were incorporated by reference into most transaction documents, expressly provide that the "Terms and Conditions shall be interpreted in accordance with the laws of Antigua and Barbuda," and that investors irrevocably submit to the jurisdiction of the courts of Antigua and Barbuda." General Terms and Conditions ¶ 23 attached as Exh. E to Hamilton-Smith Orig. Decl. The Disclosure Statement provided to investors also states that "under the Subscription Agreement you sign for each CD Deposit, you will agree that your rights and obligations with respect to the CD Deposits will be governed by the laws of Antigua and Barbuda and that the courts of Antigua and Barbuda will have exclusive jurisdiction over any dispute relating to the CD Deposit." Hamilton-Smith Orig. Decl. ¶ 31.

[8] Indeed, the marketing materials even include a map of Antigua. *See* Exh. A-2 at 13, App. at 57.

[9] The Receiver dismisses these agreements as "boilerplate contracts of adhesion," Rec. Br. at 6, but they are not. Few wealthy and sophisticated investors sign contracts of adhesion, and these contracts could not have been clearer that SIB was an Antiguan bank operated pursuant to Antiguan law. *See* Hamilton-Smith Orig. Decl. ¶ 31. Further, the Receiver also implies that the jurisdiction whose law governs most disputes is not an important factor. But the *Bear Stearns* opinion, on which the Receiver extensively relies, lists five factors that courts should consider in determining a debtor's COMI, one of which is "the jurisdiction whose law would apply to most disputes." *Bear Stearns*, 374 B.R. at 128.

At bottom, SIB's investors clearly understood when they signed agreements subjecting themselves to the jurisdiction of Antiguan courts that they were dealing with an Antiguan entity.[10]

C. THE RECEIVER'S ARGUMENTS AGAINST FINDING COMI IN ANTIGUA ARE NOT PERSUASIVE

1. The Receiver Has Not Demonstrated Any Basis For Aggregation

Although the Receiver makes several arguments that SIB's COMI is in the United States rather than Antigua, all of his arguments are variations of a single theme – because Stanford was engaged in a fraud, all of the Stanford companies should be treated as a single aggregated fraudulent enterprise in determining SIB's COMI. To do otherwise, the Receiver asserts, is to elevate form over substance. Rec. Br. at 3. The Receiver, however, ignores the general rule under United States law that a separately incorporated entity is considered to have its own principal place of business, *Frisone v. Pepsico*, 369 F. Supp. 2d 464, 472-73 (S.D.N.Y. 2005), and offers neither evidence to support aggregation, nor case law to support the proposition that corporate separateness should be ignored as a matter of course simply because a fraud was committed.

As an initial matter, the Receiver implies that aggregation should occur under an alter ego theory. *See* Rec. Br. at 28-29. Alter ego, however, seeks to impose liability on a parent company (or shareholder) for the actions of its subsidiaries, not to impose liability on every affiliated entity for the debts of every other affiliated entity. *See, e.g., SEC v. Resource Dev.*

[10] The Opposition Briefs attempt to establish a substantial connection between SIB and the United States. *See, e.g.*, SEC Br. at 2 ("The fact that SIB was incorporated in Antigua pales when compared to its extensive connection to the United States."). The facts, however, reflect that the connection between SIB and the U.S. is far more attenuated than SIB's connection to Antigua. For example, of the Tier 2 assets, $222 million were held in the UK or Switzerland, compared to only $12 million in the U.S. And in terms of depositors, the largest group was in Venezuela (37%), compared to only 15% in the U.S. *See* Hamilton-Smith Orig. Decl. ¶ 28. Indeed, even if the Receiver's inflated estimates are to be believed, only a quarter of SIB's investors were from the United States. Rec. Br. at 26.

Int'l, LLC, 487 F.2d 295, 302 (5th Cir. 2007) (in SEC receivership case, using the "alter ego" theory under Texas law to pierce the corporate veil to hold corporate principal personally liable for sham corporation's debts). The more appropriate theory for that purpose, and one not mentioned by the Receiver, is substantive consolidation. Substantive consolidation is a remedy that the Fifth Circuit describes as "extreme and unusual." *In re Gandy*, 299 F.3d 489, 499 (5th Cir. 2002). It requires proof that (i) pre-petition the entities "disregarded separateness so significantly their creditors relied on the breakdown of entity borders and treated them as one legal entity, or (ii) postpetition their assets and liabilities are so scrambled that separating them is prohibitive and hurts all creditors." *In re Owens Corning*, 419 F.3d 195, 211 (3d Cir. 2005).[11]

Regardless of the theory employed, if the Receiver intends to aggregate all of the Stanford entities as he has indicated he will do, he has the burden to establish that aggregation is justified on these facts. *Id.* at 212. And other than general assertions that Mr. Stanford was engaged in a fraud, the Receiver has offered no evidence to meet his burden. Nor has he established that, as a general matter, aggregation would not substantially harm SIB's investors. Indeed, given his statements that the vast majority of the combined assets are SIB assets, *see* Rec. Br. at 32-33, aggregation would almost certainly dilute the potential recovery of SIB's investors by requiring that investor deposits be used to pay the liabilities of other Stanford entities, which could include significant claims for taxes, for damages arising from the breach of various real property leases and for unpaid commissions.

[11] The Fifth Circuit has cited the *Owens Corning* decision with approval. *See In re Amco Ins. Co.*, 444 F.3d 690, 696 n.5 (5th Cir. 2006); *see also In re Green Aggregates Inc.*, No. 08-51075, 2009 WL 1143202, at *1 (5th Cir. Apr. 28, 2009) (unpublished).

2. Stanford's Location Is Not Important In Determining COMI

The Receiver argues that COMI is in the United States because Allen Stanford allegedly directed the fraud from the U.S. *See* Rec. Br. at 19. Yet in cases where the architect of the fraud is in one jurisdiction and the debtor's daily operations are conducted in another, courts have held that the architect's location does not determine COMI.[12] *See In re Tri-Continental*, 349 B.R. at 629 (COMI in St. Vincent and the Grenadines where debtor's operations were conducted); *In re Tradex Swiss AG*, 384 B.R. 34, 43-44 (Bankr. D. Mass. 2008) (architect is registered citizen of Switzerland, but court holds that COMI is not in Switzerland).[13] That is particularly true in this case given the difficulty of pinning down Allen Stanford's location for COMI purposes. As the court in *Tradex* noted, the residence of the fraud's architect in Switzerland does not establish COMI in that country, "especially when the individual is a citizen of yet another country and may now be living in still another." *Tradex*, 384 B.R. at 43. Here, Stanford is a citizen and resident of both the United States and Antigua, and he also resided and work in St. Croix. *See, e.g.*, Van Tassel Aff. ¶ 8 (included as Exh. C to Rec. Br.).

According to the Receiver's theory of the case, COMI simply follows the fraud's ringleader, who apparently has the ability to bind all of his victims to a specific COMI simply by residing in a particular country. COMI is not that arbitrary, however, and the location of SIB's COMI does not depend, as the Receiver asserts, on where Stanford's adult daughter lives or where his minor children attend school. Rec. Br. at 19 n.4. *See also In re Ci4net.com Inc.*, (Ch

[12] A court considered the location of the person orchestrating the fraud in one case, but there the debtors had no operations, so location of the person perpetrating the fraud and the location of the debtor's assets were the only relevant considerations and each indicated a COMI in Canada. *See In re Ernst & Young, Inc.*, 383 B.R. 773 (Bankr. D. Colo. 2008).

[13] Even in cases not involving fraud, the location of a debtor's operations has been considered more important than the location of its principals. *In re Innua Canada Ltd.*, No. 09-16362, 2009 WL 1025090, at *6 (Bankr. D. N.J. Apr. 15, 2009) (holding that debtor's COMI in Canada when debtor's operations were conducted in Canada but its principals resided in the British Virgin Islands).

D (Companies Ct)), [2004] EWHC 1941, 2004 WL 2578376, ¶ 26 (June 8, 2004) ("The notion of the location of a business shifting as its director moves from one country to another does not sit easily with the policy which underlies the EC Regulation. A business must under the EC Regulation have a CoMI and, in my judgment, a CoMI must have some element of permanence.").

3. Services Provided By Affiliates Are Not Important In Determining COMI

The Receiver also erroneously asserts that COMI is in the United States because certain affiliates of SIB provided consulting services to SIB. *See* Rec. Br. at 21. No court has ever held that COMI is located in a jurisdiction where non-parent affiliates provide consulting services instead of the jurisdiction where the debtor conducts its operations. It is common for companies within groups to share certain services, but it is not indicative that a debtor's COMI is other than the country where it conducts its operations.

Even if the provision of services by affiliates was relevant to a COMI analysis (which it is not), the Receiver vastly overstates the services provided by U.S.-based affiliates of SIB. The only significant managerial function performed in the United States was the management of the Tier 2 and Tier 3 investment assets. Hamilton-Smith Supp. Decl. ¶ 17. The Receiver mentions certain management agreements between SIB and certain affiliates.[14] Rec. Br. at 21. Yet Liquidators' investigation reveals that those affiliates provided only minimal services to SIB, none of which were necessary to the operation of SIB. *See* Hamilton-Smith Supp. Decl. ¶ 16, 17 (discussing limited services provided). In fact, during the course of their work, Liquidators have found nothing in SIB's books and records or otherwise to suggest that any substantial

[14] The most recent and significant of these agreements was with Stanford Financial Group Global Management LLC, based in the U.S. Virgin Islands, which clearly does not establish that SIB's COMI is in the United States. *See* Exh. A-1, Second Affidavit of Nigel John Hamilton-Smith dated 15 May 2009 ¶ 20, App. at 17-18.

management services – in terms of IT, human resources, accounting or the running of the business – were provided to SIB from persons outside Antigua. *Id.* ¶ 15.

4. The Receiver's Other Arguments Are Similarly Unpersuasive

The Receiver makes several other arguments that allegedly support his position that SIB's COMI is in the United States: (a) most of SIB's sales by dollar amount were to U.S. citizens, Rec. Br. at 23; (b) the fraud was committed in the United States, *id.* at 6; (c) most of SIB's assets were located outside Antigua, *id.* at 25; (d) sales proceeds bypassed Antigua and went to accounts in the U.S., Canada and England, *id.* at 23; (e) an SIB investor's primary contact was the financial advisor in his native country, *id.*; and (f) few CD sales were to Antiguans, *id.* Yet each of these arguments has been expressly rejected in precisely this context. *See, e.g., Tri-Continental*, 349 B.R. at 629 (holding that debtor engaged in a fraud had its COMI in St. Vincent and the Grenadines where debtor "conducted regular business operations" even though: (a) substantially all of debtor's sales were to U.S. citizens; (b) the fraud was committed in the United States; (c) most of the debtors' assets, their financial assets, were not located in St. Vincent and the Grenadines; (d) sales proceeds were routed through bank accounts, not in St. Vincent and the Grenadines, but in the United States, the Channel Islands, Ireland, Gibraltar and elsewhere; (e) the debtors' insurance policies were sold through a network of independent brokers in the United States retained to acquire and service U.S. policyholders; and (f) no insurance policies were sold to residents of St. Vincent and the Grenadines).

D. RECOGNIZING THE ANTIGUAN PROCEEDING AS A FOREIGN MAIN PROCEEDING IS NOT MANIFESTLY CONTRARY TO U.S. PUBLIC POLICY

Alternatively, the Receiver argues that even if SIB's COMI is in Antigua, an order of this Court that recognizes the Antiguan Proceeding as a foreign main proceeding would be contrary to U.S. public policy. *See* Rec. Br. at 1, 32-42. As discussed below, the "public policy"

exception to chapter 15 is extremely narrow and applies only in exceptional circumstances. None of the Receiver's assertions or attempts to malign Antigua, its government or Liquidators, justify invoking the exception here. In fact, granting recognition to Liquidators is entirely consistent with U.S. public policy given the clear Congressional intent of chapter 15.

1. The Public Policy Exception Is A Narrow One That Applies Only In Exceptional Circumstances Not Present Here

The public policy exception to chapter 15, which permits a court to refuse to take any action governed by chapter 15 if that action "would be **manifestly contrary** to the public policy of the United States," 11 U.S.C. § 1506 (2005) (emphasis added), is a narrow exception that should be invoked only when application of chapter 15 would violate the most fundamental policies of the United States:

> This provision follows the Model Law article 5 exactly, is standard in UNCITRAL texts, and has been narrowly interpreted on a consistent basis in courts around the world. The word "manifestly" in international usage restricts the public policy exception to the most fundamental policies of the United States.

H.R. Rep. No. 109-31(I), at 109, *as reprinted in* 2005 U.S.C.C.A.N. pp. 88, 172.[15]

Federal courts have relied on this language (and on the language in the UNCITRAL Guide upon which it is based) to consistently reject application of the exception.[16] *See, e.g., In re Iida*, 377 B.R. 243, 259 (9th Cir. BAP 2007) (noting that the exception is limited only to the

[15] *See also* UNCITRAL Model Law and Guide, ¶ 20(e) ("it is expected that the public policy exception will be rarely used"); *id.* ¶ 89 ("The purpose of the expression 'manifestly' … is to emphasize that public policy exceptions should be interpreted restrictively and that [the exception] is only intended to be invoked under exceptional circumstances concerning matters of fundamental importance for the enacting State."), available at http://www.uncitral.org/pdf/english/texts/insolven/insolvency-e.pdf (last visited June 23, 2009).

[16] As of the date of this Reply Brief, Liquidators have been unable to locate a single decision in which a Federal court has invoked the "public policy" exception. *See generally* L. Granfield & J. Croft, *Pratt's Journal of Bankruptcy Law* , J. of Bankr. L. 2009.01-1 (Jan. 2009) ("The Guide to the Model Law makes clear that the public policy exception to recognition is limited to the most fundamental policies of the United States. Thus, it is not surprising that all attempts to avoid regulation using Section 1506 have failed thus far.") (internal quotations and footnote omitted).

most fundamental policies of the United States and finding that recognition of Japanese bankruptcy proceeding did not violate any such fundamental policy); *In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336-37 (S.D.N.Y. 2006) (citing the House Report in refusing to apply public policy exception to Canadian claims settlement order that did not provide a right to trial by jury); *In re Ernst & Young, Inc.*, 383 B.R. at 781 (rejecting application of exclusion on the grounds that the risk of administrative expenses would limit creditor recovery, as well as that U.S. creditors risked recovering less in the Canadian proceeding than Canadian creditors would receive in the U.S. proceeding); *In re Loy*, 380 B.R. 154, 169 (Bankr. E.D. Va. 2007) (refusing to apply exception).

Neither the Receiver nor the SEC has identified any "fundamental policy" of the United States that would warrant application of the exception. For one, recognizing the Antiguan Proceedings would not undermine the long history of using equity receivers "upon a showing that a corporation has been used to perpetrate a fraud upon investors," Rec. Br. at 32-35, or that distributions can be made through the receiverships in certain cases. *See id.* at 33. While the Receiver cites a multitude of cases to support these propositions, not a single case resembles this case,[17] and none of them – either individually or in the aggregate – stand for the proposition that recognizing the Antiguan Proceeding pursuant to chapter 15 would undermine the ability of future courts (or the SEC) to use equitable receiverships where they are appropriate.

Further, the public policy exception cannot apply (and no court has found it to apply) simply because a foreign court declines to defer to U.S. proceedings, nor even, as the SEC

[17] All but fourteen of the cases pre-date the enactment of chapter 15, and of those fourteen cases, none involve a cross-border insolvency proceeding.

attempts, in every case where fraud is at issue.[18] Invoking it in these circumstances would undermine, in the statute's infancy, the entire concept of COMI as a way to determine objectively which nation's insolvency proceeding should be deemed the lead proceeding in an international insolvency proceeding.

2. Liquidators' Conduct In Canada Complied With The Antiguan Court's Order And Is Not Contrary To U.S. Public Policy

The Receiver also attempts to invoke the exception by trying to disparage Liquidators. In particular, the Receiver again dredges up his frivolous argument that Liquidators inappropriately "wiped" data that existed on servers in SIB's Montreal office and that "[t]here is no reason to believe that the Liquidators would not do the same thing in the U.S. if given the chance." Rec. Br. at 36.[19] Liquidators have already responded to this allegation, *see* Liquidators' Consolidated Reply To Their Motion to Amend, Modify or Vacate (SEC Case Dkt. #382) at 9-10, and incorporate that response here. *See also* Exh. A-1, Second Affidavit of Nigel John Hamilton-Smith dated 15 May 2009, ¶ 84, App. at 38. For purposes of this Reply Brief, Liquidators simply reiterate that, contrary to the Receiver's allegation, their representatives took a forensic image of servers located in SIB's Montreal office, and then, as a precaution, erased any

[18] The Receiver appears to embrace this latter ground as well and makes the breathtaking claim that "[g]ranting recognition to the Liquidators effectively would put an end to the long-used effective and efficient tool of equity receiverships for winding up entities that have been used to perpetuate fraud." Rec. Br. at 36. It is difficult to conceive how a determination on the facts of this case that SIB's center of main interests is in Antigua could have such a sweeping impact on receivership law.

[19] While the Receiver previously raised this allegation in response to Liquidators' motion to amend the Amended Receivership Order, the Receiver now offers the affidavit of Daniel E. Roffman. *See* Rec. Br. at 36 (citing RSJ-15). Even a cursory examination of Mr. Roffman's affidavit, however, shows that it does nothing to support the Receiver's claim. Not only was the affidavit nearly sixty days old when it was filed in this case, but Mr. Roffman **admits** that after he noticed that Liquidators had begun a "secure erase" of one of the servers, he asked for an explanation from Liquidators' counsel. *See id.* ¶ 8, 11 (emphasis added). Liquidators' counsel returned his call (leaving a voice mail), but rather than call back, Mr. Roffman chose not to pursue the matter further. *Id.* ¶ 12. After choosing to forego an explanation, Mr. Roffman avers that "it **would appear** that some electronically stored business records have been compromised or possibly even destroyed." *Id.* ¶ 13 (emphasis added). This Court should disregard Mr. Roffman's alleged conclusion as nothing more than conjecture that is based on his own refusal to become fully informed.

confidential data before closing the office. Further, Liquidators (then Joint-Receiver Managers) informed the Receiver of their intention to carry out these actions in Canada in a February 26, 2009 report that they provided to the Receiver.[20] At bottom, Liquidators' actions – far from surreptitious or inappropriate – are in accord with their duties under the Antiguan order – namely, to preserve the information related to SIB and then close an office that, without generating any sales, did nothing but drain SIB's estate.

3. There Is No Reason To Doubt The Integrity Of The Antiguan Proceeding

Finally, the Receiver attempts to invoke the exception by arguing that Antigua is a tax-haven jurisdiction and that ceding jurisdiction to Antigua would present a number of potential problems. *See* Rec. Br. at 37. In so doing, the Receiver casts a number of aspersions on Antigua and its government that he presumably would not be raising had the High Court granted his application to be appointed liquidator of SIB. Those sour grapes aside, the Receiver has advanced no meritorious reason to discredit Antigua, the FSRC, or the Antiguan Courts such that recognition of an Antiguan Proceeding would violate the fundamental policies of the United States. *See generally* Exh. B, Affidavit of John Eli Fuller In Support of the Petition for Recognition of a Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code ("Fuller Aff."), App. at 67-73.[21]

First, while the Receiver raises a number of allegations regarding the FSRC's` former chief administrator and his alleged relationship with Mr. Stanford, *see* Rec. Br. at 38-39, he also admits that that gentleman, Leroy King, was terminated by the FSRC last month. *See id.* at 39. Whatever actions Leroy King took or did not take are irrelevant because he did not participate in

[20] The Receiver has never contested the fact that he received notice of Liquidators' proposed actions.

[21] Both the Receiver and the SEC question whether the distribution scheme in Antigua will make payments to some or all of the SEC defendants as former employees of SIB. The answer is that it will not, as none of them are employees of SIB pursuant to Antiguan law. *See* Exh. B, Fuller Aff. ¶ 11, App. at 71.

any way in the appointment of Liquidators or the court proceedings in Antigua.[22] Rather, all matters have been dealt with by Paul Ashe, the FSRC Banking Supervisor. *See* Exh. A, Hamilton-Smith 2nd Supp. Decl. ¶ 10, App. 7-8.

Second, the Receiver again complains that the Antiguan Court refused to recognize this Court's orders. *See* Rec. Br. at 40. The Receiver's argument in this regard is completely undermined by the fact that **he never filed a proper petition for recognition in Antigua**.[23] Without complying with the necessary predicate under Antiguan law, it should come as no surprise that an Antiguan Court would be reluctant to recognize the Receiver (or this Court's Orders), just as this Court expected Liquidators to follow (and Liquidators have followed) the process required by chapter 15.

Moreover, the Antiguan Court procedures were eminently fair to the Receiver. Despite the fact that the Receiver never properly sought recognition in Antigua, the Antiguan Court nonetheless permitted him to file a petition to be appointed liquidator of SIB in Antigua, conducted several days of hearings on his (and a competing) petition, granted him status as *amicus curiae*, allowed him to cross-examine Paul Ashe, the Director of the FSRC, and Mr. Hamilton-Smith, and has allowed the Receiver to appeal the Court's judgment. At the same time, of course, the Receiver has steadfastly fought to preclude Liquidators from having those same opportunities in the United States.

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[22] The Receiver also relies on various draft letters and other papers that may relate to the relationship between Mr. King and Mr. Stanford. *See, e.g.*, RSJ-9, 11. Not only is it unclear whether the draft letters included in RSJ-9 were ever sent, but these documents appear to be dated in 2006 – more than 3 years before the SEC commenced this receivership.

[23] The Receiver made an oral request for permission to file an application, which the Antiguan Court granted. When the deadline for making that application arrived (in late March 2009), however, the Receiver sought permission to delay the application and the accompanying hearing. The Antiguan Court denied that request. While the Receiver has subsequently claimed that he made an oral request for recognition on April 6, 2009 (the first day of hearings on SIB's liquidation and appointment of Liquidators), the Receiver never served any such application on the parties in Antigua, nor have any such papers been produced in the Antiguan Proceeding. *See* Exh. A, Hamilton-Smith 2nd Supp. Decl. ¶ 11, App. at 11. *See also* Exh. A-2, Hamilton-Smith UK Affidavit ¶ 73-81, App. at 35-37.

While the Receiver would have this Court believe that Antigua is some sort of lawless third-world country, the reality is that other U.S. courts – including a federal bankruptcy court just weeks ago – have recognized foreign proceedings conducted by and foreign representatives appointed by the Eastern Caribbean Supreme Court (as are Liquidators here). *See, e.g., In re Grand Prix Assocs., Inc.*, No. 09-16545 (DHS), 2009 WL 1410519, at *8 (Bankr. D.N.J. May 18, 2009) (recognizing as foreign main proceeding a liquidation proceeding in the British Virgin Islands conducted by the Eastern Caribbean Supreme Court); *see also In re Tri-Continental Exch.*, 349 B.R. at 629 (recognizing liquidators appointed by Eastern Caribbean Supreme Court to be "foreign representatives" and a liquidation proceeding in St. Vincent & the Grenadines as a "foreign main proceeding" pursuant to chapter 15).

Third, the Receiver argues that Antigua is a small country, Mr. Stanford was a prominent figure there, and Mr. Stanford, through other entities (not SIB), may have loaned money to the Antiguan government. *See* Rec. Br. at 40-41. Not only is the issue of whether other Stanford entities loaned money to Antigua irrelevant to the issue of SIB's COMI, but Liquidators have uncovered no evidence that money was in fact loaned by SIB. *See* Exh. A, Hamilton-Smith 2nd Supp. Decl. ¶ 12, App. at 8-9. And while it is true that Liquidators have not yet given any indication that they will pursue loans to the Antiguan government (to the extent they were made), they have not ruled out the issue. *Id.*

Fourth, the Receiver argues that recognizing the Antiguan Liquidators would violate some fundamental policy of the U.S. because "Antiguan politics … cannot help but seep into their administration of the liquidation." Rec. Br. at 41. But the Receiver's allegations regarding the Antiguan government's alleged "taking" of real property in Antigua are factually incorrect. In point of fact, the Antiguan government has not yet "taken" any Stanford-related property.

Rather, the resolution passed by the Antiguan legislature **authorizes** (but does not compel) the Secretary of the Antiguan Cabinet to cause a declaration to be made that the affected land is required for a public purpose. *See* Resolution (RSJ-14); *see also* Exh. D, Land Acquisition Act ¶ 3 (CAP. 233), App. at 78-79. The Antiguan government has taken no further action, and recently indicated that it has discontinued its interest with respect to at least some of the properties. *See* Exh. A, Hamilton-Smith 2nd Supp. Decl. ¶ 13, App. at 9. Further, to the extent that the Antiguan government elects to proceed, it must pay the affected landowners the fair value of the "taken" property. *See id.*; *see also* Exh. D, Land Acquisition Act ¶ 19 (CAP. 233), App. at 80-81. Therefore, because the issue is not yet ripe, and because the Liquidation Estate must by law receive fair value for any "taken" property, there is no need for Liquidators to waste valuable estate assets on this issue at this time.

E. RECOGNITION IS ONLY PATH TO AVOID CONFLICT AMONG COURTS

The fundamental point of the Model Law that chapter 15 implements is to establish a single COMI based on objective factors ascertainable by third parties and thus bring order and predictability to the resolution of multinational insolvencies. In this case, recognition of the Antiguan Proceeding not only serves that purpose, but in fact provides the only path to minimize costly and wasteful conflicts between competing proceedings, and, respectfully, competing courts. Only Liquidators have charted a course that will allow Liquidators and the Receiver to work cooperatively to ensure an orderly liquidation of the Stanford entities and appropriate, court-supervised distributions to creditors, including SIB's CD holders. *See* Hamilton-Smith Supp. Decl. ¶¶ 24-29. In contrast, the opposition's position would result in two uncoordinated proceedings and continued battles in the respective jurisdictions. That cannot be the desired, most efficient result.

Moreover, recognition of the Antiguan Proceeding as a foreign main proceeding will not eliminate all involvement or oversight of this Court or the Receiver in the administration of SIB's estate. As an example, and contrary to the Receiver's implied suggestion that recognition will automatically result in all SIB assets being sent to Antigua for distribution, section 1521(b) requires that before any U.S. assets are sent to Antigua and entrusted to Liquidators for distribution, Liquidators must make a request to this Court and this Court must be satisfied that "the interests of creditors in the United States are sufficiently protected." 11 U.S.C. § 1521(b) (2005). All disputes relating to U.S. assets, including creditor claims or rights to such assets, would continue to be addressed in this Court as well.

If the Antiguan Proceeding is recognized, Liquidators would seek to reach a cooperation agreement with the Receiver, as well as a cross-border protocol, as is common in cross-border insolvencies, to facilitate the coordination of the U.S. receivership, the Antiguan Proceeding and other proceedings that have been commenced in other countries. Notably, earlier this month the U.S. Bankruptcy Court for the Southern District of New York approved a cross-border insolvency protocol agreed to by the trustee of Bernard Madoff's U.S.-based company (Bernard L. Madoff Investments Securities) and the Joint Provisional Liquidators of a U.K.-based Madoff entity (Madoff Securities International Limited) also involved in the fraud. *See* Exhs. G-1 and G-2, Cross-Border Protocol and Order dated June 9, 2009 (approving same), App. at 90-122.[24] The Madoff protocol is precisely what should happen here. Given the Receiver's steadfast refusal to recognize the legitimacy of or cooperate with Liquidators, however, recognition of the Antiguan Proceedings remains the only way to facilitate such an agreement.

[24] In that case, the joint provisional liquidators were appointed by the U.K. court for the U.K. entity four days after the U.S. Securities Investor Protection Corporation filed an application to place the U.S. entity into liquidation and appoint a trustee. The U.K. entity was part of the fraud and its affairs were "closely intertwined" with the U.S. entity.

II. THE SUBSTANTIVE CONSOLIDATION ISSUE SHOULD BE REFERRED TO THE BANKRUPTCY COURT

While the Receiver takes great pains to avoid using the term "consolidation" or "aggregation," virtually all of the arguments he raises in opposition to Liquidators' chapter 15 Petition rest on the notion that it is appropriate to consolidate the Stanford entities for purposes of determining SIB's center of main interests. Liquidators contend that this unsupported premise should not drive the COMI analysis. That said, if the Court believes that the potential aggregation of the Stanford entities will be an important consideration in determining COMI, Liquidators submit that the issue should be addressed separately and at the outset, and they respectfully request that the Court refer the issue to the Bankruptcy Court. *See* Joint Status Report (SEC Case Dkt. #417) at 3-4. *See also, e.g., In re Owens Corning*, 419 F.3d at 205-10 (explaining long history of bankruptcy courts' analysis and application of equitable remedy of substantive consolidation).

III. A HEARING REQUIRES TWENTY DAYS NOTICE

In its Order dated June 1, 2009, the Court stated that "[u]pon review of the written materials, the Court will determine whether an evidentiary hearing is required." Order dated June 1, 2009 (Dkt. #14). In compliance with 11 U.S.C. § 1517(a) and Bankruptcy Rule 2002(q), Liquidators respectfully request that the Court provide at least twenty-days notice of any such hearing. *See* 11 U.S.C. § 1517 (2005) (an order recognizing a foreign proceeding should be entered "after notice and a hearing"); Fed. R. Bankr. P. 2002(q)(1) (requiring that certain parties be provided with "at least 20 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding").

IV. CONCLUSION

For all of the foregoing reasons, and for all of the reasons articulated in Liquidators' chapter 15 petition and their Supplemental declaration, Liquidators request that the Court recognize them as "foreign representatives" and recognize the Antiguan Proceeding as a "foreign main proceeding" pursuant to chapter 15 of the United States Bankruptcy Code.

Dated: June 24, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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DLI-6258051v7