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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 3:09-CV-0721-N**
	§	
STANFORD INTERNATIONAL BANK, LTD., *et al.*,	§	
	§	
Defendants.	§	

BRIEF OF THE EXAMINER REGARDING THE ANTIGUAN LIQUIDATORS' PETITION FOR RECOGNITION PURSUANT TO CHAPTER 15 OF THE BANKRUPTCY CODE

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BRIEF OF THE EXAMINER REGARDING THE ANTIGUAN LIQUIDATORS' PETITION FOR RECOGNITION PURSUANT TO CHAPTER 15 OF THE BANKRUPTCY CODE

TO THE HONORABLE JUDGE OF SAID COURT:

John J. Little, Examiner, submits his brief regarding Nigel Hamilton-Smith and Peter Wastell's (collectively, the "Antiguan Liquidators") Petition for Recognition Pursuant to Chapter 15 of the Bankruptcy Code [Doc. No. 4]. The Examiner files this brief pursuant to this Court's Order dated June 1, 2009 [Doc. No. 14].

I. Preliminary Statement

Receiver Ralph S. Janvey (the "Receiver") and Antiguan Liquidators Nigel Hamilton-Smith and Peter Wastell (collectively, the "Liquidators") have thoroughly briefed the legal issues concerning the Liquidators' Petition for Recognition under Chapter 15 of the U.S. Bankruptcy Code and have submitted comprehensive supporting papers. The Examiner does not believe that it would be productive to restate their descriptions of applicable law, nor to attempt to challenge the accuracy of the factual

assertions made in their respective filings.[1] However, as one might expect from parties with adverse interests and goals, the arguments of the Receiver and the Liquidators are affected somewhat by their positions as advocates for themselves. Absent both discovery and extensive evidentiary proceedings, the Court cannot resolve those issues where the Receiver and the Liquidators offer differing views of the facts. The Examiner respectfully submits that the Court can determine the Petition for Recognition without resolving all the factual issues that remain in dispute.

Investors[2] and Investors' counsel with whom the Examiner has had contact concerning the Petition for Recognition have expressed divergent views as to how this Court should rule, most expressed in terms of a preference for the primacy of the Receiver or the Liquidators. The views of most Investors on this point are not based upon an analysis of the facts or law in respect of Chapter 15, but instead grow out of their conclusions, most of which are largely speculative at this point, as to which result will yield for that individual Investor (or group of Investors) the greater ultimate financial recovery. Some Investors seem to focus on the size of the group of claimants (*e.g.*, taxing authorities, ex-Stanford employees, the Antiguan Government, landlords, assorted vendors and secured creditors) likely to share in the pool of recovered assets. To them, the smaller the group the better, and the Receiver's approach of treating the many

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1 The Court's Order April 20, 2009 [Doc. No. 322, Civil Action No. 09-298] cautions the Examiner against duplicating the efforts of the Receiver in this matter.

2 Pursuant to the Court's Order dated April 20, 2009, the Examiner's task is to convey to the Court such information as he determines may be helpful to the Court in considering the interests of the Investors.

Stanford entities collectively is concerning to them. Other Investors express concerns with the prospect of having the Antiguan government oversee the "clean-up" of the Stanford enterprise given the extent of Allen Stanford's involvement with that government and the indictment of the Antiguan regulator charged with regulating SIB. Still other Investors have expressed concerns as to the costs being incurred by the team assembled by the Receiver, though as of the date of this filing the fees and expenses of the Liquidators' team are unknown so any accurate comparison is impossible at this stage.[3] For other Investors, the Receiver's expressed intention to aggressively pursue claw back claims against Investors is enough to incline them to favor the Liquidators, who have apparently expressed, informally, a view that such claw backs claims are inappropriate. To date, the Examiner has not received from an Investor or group of Investors any thorough analysis of facts or law as to the actual COMI determination facing this Court.[4]

Thus the Examiner's views as expressed below are not reflections of the views of a unified Investor group, or even a recitation of the specific comments made by Investors, though they are informed by the input of Investors and their counsel. The Examiner's

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[3] Both the Receiver and the Liquidators have assembled formidable teams of counsel and other professionals spread across the globe. It would be optimistic to think that the fees and expenses of Liquidators' team will be greatly less than those of the Receiver's team.

[4] The Examiner maintains regular contact, via email, with a group of more than ninety (90) attorneys who represent Investors or groups of Investors. The Examiner has twice invited the members of that group to provide their views as to the issues pertinent to the Petition for Recognition. While the Examiner has received many responses expressing preferences, none have been framed in terms of the COMI analysis required of the Court.

views are based upon a careful reading of the many declarations, affidavits and briefs on file in an effort to distinguish the broad points as to which the Receiver and Liquidators do not really disagree from other matters as to which there remains disagreement. The Examiner believes these disputed matters can be left for another day and need not delay resolution of the Petition for Recognition. As an example of the latter, it is not really crucial to know whether Tier 1 assets were wholly or partly managed in the U.S. or Antigua since those assets are so minimal in the scheme of things and there appears to be agreement that assets in Tiers 2 and 3 were managed by Stanford, Davis and Pendergest-Holt, almost certainly from the United States. Similarly, the Court does not need to determine exactly what Mr. Rodriguez-Tolentino, SIB's President, did on a daily basis, nor does it matter whether he resided in Puerto Rico, Florida or Antigua. There is general agreement that all of the other executive level officers and most of the directors of SIB were based in and worked from the United States.[5]

The Examiner believes that there are enough undisputed or inarguable critical facts to make a decision as to SIB's COMI even though there are many details about SIB's operations which, for now, remain unclear. The Examiner believes the largely undisputed facts establish that SIB's COMI is in the United States. This is so even if SIB is considered on its own, and thus the Antiguan proceeding cannot be recognized under

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[5] The Liquidators have recently filed with the Court a copy of Judge Hittner's Order revoking the release order entered with respect to Mr. Stanford. Doc. No. 36-3. In that Order, Judge Hittner found that Mr. Stanford engaged in "almost non-stop travel across the globe" during the period from January 2004 through February 2009. Doc. No. 36-3 at 5, ¶11. While Mr. Stanford's day to day whereabouts may not be ascertainable, there is no question that the remainder of SIB's top management were based in and worked from the United States.

Chapter 15 as a foreign main proceeding. The Liquidators have not borne the burden, which is theirs, to establish an Antiguan COMI by a preponderance of the evidence.[6] If SIB is in any sense considered a part of a larger Stanford enterprise for purposes of the COMI determination, then the U.S. COMI of that enterprise is clear. If the Antiguan proceeding is to be accorded any recognition by this Court under Chapter 15, it must be recognized only as a foreign non-main proceeding.[7]

II. The Largely Undisputed Evidence Establishes That SIB's COMI is in the United States.

If SIB is considered to any extent as a part of the larger U.S.-based Stanford organization, the result of a COMI analysis is so clear as to require no further comment. Certainly the "Stanford Financial Group" considered as a whole had its center of main interests squarely within the United States. It is not clear whether the drafters of Chapter 15 intended for a debtor, particularly an incorporated debtor such as SIB, to have its COMI determined in combination with one or more affiliates in a situation such as this. It is not necessary for this Court to reach that issue. With respect to SIB standing alone, as between the competing jurisdictions (Antigua and the U.S.), the real center of SIB's

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[6] The Liquidators have also filed with the Court [Doc. No. 36-2] the Approved Judgment of the High Court of Justice, Chancery Division (the "UK Court"), entered on July 3, 2009 (the "UK Judgment") which concluded that the Antiguan proceeding should be recognized as the "foreign main proceeding" for SIB. The Examiner notes that the UK Court applied a standard different from the one that this Court must apply. In particular, the UK Court placed upon the Receiver the burden of defeating the "presumption" that SIB's COMI was the place of its registered office. Doc. No. 36-2 at 18, ¶70. The UK Court further limited the Receiver's proof to "factors that are objective" and "ascertainable by third parties." The UK Court did so even though it recognized that U.S. jurisprudence places the burden upon the party seeking to establish itself as the "main proceeding." *Id.* at 17, ¶65. The Examiner addresses the UK Judgment in more detail in section III of this Brief.

[7] The Receiver and SEC correctly note that the Liquidators have not affirmatively sought recognition as a foreign non-main proceeding.

main interests as a bank is the United States.

In their submissions to the Court, the Receiver and the Liquidators joust about many things, including a number that have little to do with COMI. These include the propriety of the Liquidators' actions in dealing with SIB's Canadian branch, the allegedly bad treatment accorded the Receiver in the Antiguan courts (or alternatively, the Receiver's failure to properly present his case there), the possible bias (or worse) of the Antiguan Government and/or its regulators, and the possible depletion of Stanford assets by virtue of a pending or threatened expropriation of Stanford-related real estate located in Antigua. Some of those points could have implications for application of the public policy exception found in 11 U.S.C. §1506; they do not bear upon the COMI decision.

The Receiver and the Liquidators also disagree over many matters that do have COMI implications. Among these are whether the huge sums paid to Stanford affiliates in the U.S. indicate that those entities really provided operating services to SIB (and if so, how to quantify and compare those services with the operational work of SIB's Antigua-based personnel), whether SIB was held out to depositors as a separate Antiguan bank or as part of the U.S.-based Stanford global empire,[8] whether the Tier 1 monies were managed in Antigua or in the U.S., and exactly which records were maintained in each jurisdiction. Despite these matters in dispute, there is sufficient agreement as to key facts

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[8] A putative class action was recently filed in this District by a group of Mexican national investors in SIB CDs. *See Troice v. Willis of Colorado, Inc., et al.*, Doc. No. 1, Civil Action No. 09-1274. The Complaint in that action clearly alleges that SIB was sold to the putative class as a part of the U.S.-based and U.S.-regulated Stanford Financial Group. In fact, the Complaint alleges that many members of the putative class still do not understand that they purchased CDs issued by a bank based in Antigua. Complaint at ¶28.

establishing a U.S. COMI that this Court should conclude that the Liquidators have not met their burden of establishing an Antiguan COMI for SIB.

A. What is the "Main Interest" of a Bank?

In order to determine COMI for SIB, it is appropriate to consider the business in which the Liquidators contend SIB was engaged. The Liquidators say SIB was a bank. But what is a bank? SIB itself provides the answer: In its Disclosure Statement relating to its U.S. Accredited Investor Certificate of Deposit Program, at page 10, SIB described its primary business: "*Our primary business is the investment of funds deposited with us by depositors.*" Banks are not just groups of tellers and form checkers, but institutions that gather money, pool it and invest it in the hopes of keeping the funds secure and making a profit. Banks are more than the street corner branch offices or drive-through windows at which people make deposits, cash checks, pay bills and verify balances. The weightiest activities of a "bank" are the activities involved in what a bank does with the money it gathers and manages. To determine the locale of SIB's COMI, the Court must determine where that activity was primarily carried out.

B. What Facts Support COMI in Antigua?

The Liquidators offer a number of undisputed facts that they contend support an Antiguan COMI. To begin with, bricks, mortar and people were located in Antigua. The Receiver and the Liquidators agree that there were 88 employees working at the 30,000 square foot SIB facility in Antigua.[9] The Antigua building was SIB's main office, and

[9] The Antigua building was not owned by SIB; instead, it was leased from a Stanford affiliate.

there was only one other SIB office in existence -- in Montreal, Canada, where 5 SIB employees worked. Some SIB customers actually visited the building in Antigua. The cited numbers (240 in 2007 and 123 in 2008 per the Liquidators) are tiny when considered in light of an overall customer base of approximately 28,000, but all seem to agree that at least some customers visited Antigua and the SIB building.[10]

There was at least some SIB money in Antigua too, at least U.S.$10 million, though much of it was sent to SIB only a few months prior the initiation of the Receivership.[11] At least some of SIB's "Tier 1" assets were clearly in Antigua throughout, and those funds were probably managed, to at least some degree, by SIB employees in Antigua.

The 88 SIB employees in Antigua, including a President and various subordinate officers, performed at least some banking-related activities in Antigua, though the extent of those activities is in dispute. The Liquidators suggest that the Antiguan employees performed all account opening procedures, undertaking money laundering checks and compliance procedures, maintaining all client files, managing SIB's operating software, generating client statements, managing clients' accounts in respect of loan requests, credit cards and bill payment services, executing all interest and redemption payments to clients, receiving statements from financial institutions holding monies on behalf of SIB

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10 Whether these customers visited the building to conduct business or to be entertained during a vacation is entirely less clear.

11 The Receiver's expert indicates that the amount of money on hand at SIB might have been as high as U.S. $14.6 million, but also suggests that the average cash on hand in Antigua was more like U.S. $615,000 during most of SIB's existence prior to October 2008.

and handling all day to day communications with clients or their advisors. The Receiver disputes that view and contends that substantial U.S.-based assistance was needed and provided even for basic operations. The precise facts have not been ferreted out, but there was certainly at least some banking activity in Antigua.

That SIB had a building, 88 employees, at least some of its assets and at least some banking-related operations provide a more meaningful connection to Antigua than did the post office box in the *Bear Stearns* case. The facts before the Court in *In Re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007) (same), *aff'd*, 389 B.R. 325 (S.D.N.Y. 2008) were quite a bit simpler than those we find here. All of the operations, books and records, and assets of the Cayman Islands entity in question were situated in the U.S. and the entity was prohibited from doing business with local residents. In determining that the debtor's COMI was in the U.S., the Court cited as important factors (i) the location of the debtor's headquarters, (ii) the location of those persons who actually managed the debtor (which, he said, could conceivably be the headquarters of a holding company), (iii) the location of the debtor's primary assets, (iv) the location of a majority of the debtor's creditors or of a majority of the debtor's creditors who would be affected by the case, and (v) the jurisdiction whose law would apply to most disputes. The Court had no trouble finding that the "only adhesive connection with the Cayman Islands that the ...[debtors]...had...is the fact that they are registered there," 374 B.R. at 129, and thus it was easy to conclude

that the Fund's COMI was in the U.S.[12] Other courts have identified a large number of additional factors that should be considered in determining the location of COMI. *See In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37 (Bankr. S.D.N.Y. 2008)(identifying 20 or more additional factors), cited by the Receiver in his Response to the Petition for Recognition. Doc. 20 at 11-13, n. 3.

C. What Facts Support COMI in the United States?

The Receiver relies on a different group of facts, also largely undisputed (or at least inarguable). Of these facts, perhaps the most important is that the overwhelming bulk of SIB's assets -- indeed, virtually all of them -- were managed from the U.S. by Stanford people, not the 88 SIB employees. Mr. Hamilton-Smith, one of the Liquidators, says, perhaps somewhat dismissively, that "the only significant managerial function performed in the U.S. was the management of the tier 2 and tier 3 investment assets." Doc. No. 15 at ¶17.[13] When one looks at the numbers, Mr. Hamilton-Smith's comment is telling in terms of SIB's COMI.

The Receiver and the Liquidators generally agree that SIB's total outstanding CD liability at the time the Receivership was commenced was approximately U.S.$7.2 billion. There is also general agreement that the most SIB money ever physically present

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12 The UK Court considered and rejected the factors identified in *Bear Stearns* because it concluded that those factors were not "ascertainable" by third parties. Doc. No. 36-2 at 18, ¶67.

13 The Receiver would argue that Tier 1 assets were managed in the U.S. as well, but the Court need not address that issue because the Tier 1 assets were such a small fraction of SIB's total asset base.

in Antigua was somewhere between $10 and $14.6 million.[14] SIB's Tier 1 assets were approximately $150,000,000.00; the most that was ever actually located in Antigua was less than 10% of that amount. SIB's Tier 2 assets amounted to approximately $345,000,000.00 at the time of institution of the Receivership and SIB's Tier 3 assets were claimed by Stanford's people to have a value of approximately $6,300,000,000.00.

If we assume that SIB's Tier 1 assets were worth U.S.$150,000,000.00, and that all of those assets were managed by SIB employees in Antigua,[15] the result is that 98% of the money that collected by SIB in respect of outstanding CDs was situated somewhere other than Antigua and was managed from the United States.[16] If at least 98% of the money collected by SIB from its depositors was managed in the U.S., and Tier 1 assets were managed in Antigua only "until they were transferred for investment with tier 2 or tier 3 assets," Doc. No. 15 at ¶17 (Mr. Hamilton-Smith's Supplemental Declaration), that is a persuasive argument in favor of United States COMI. SIB's "management" of its deposits was indisputably centered in the United States.

SIB's efforts to gather deposits -- another key activity of any "bank" -- were also centered in the United States. There seems little dispute that the U.S. $7.2 billion in CD

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14 In comparison to the $7.2 billion in outstanding CDs, the difference between $10 million and $14.6 million is not material.

15 If instead we assume that SIB employees in Antigua managed only the funds located in Antigua, then the most money ever managed by the Antiguan employees ($14.3 million) is less than 2/10ths of SIB's supposed assets.

16 Given the current proceedings, "managed" may be the wrong term. For current purposes, the Examiner means that decisions with respect to the use, mis-use, investment, deployment or misappropriation of these funds were made by Stanford personnel in the United States.

deposits was not generated by the activities of the 88 SIB employees in Antigua; rather, those deposits were generated by the activities of financial advisors working for Stanford affiliates outside of Antigua. Stanford financial advisors in the U.S. accounted for a large portion of CD sales, though the Receiver and the Liquidators disagree as to the precise numbers. The Receiver's expert says that close to half of the CD sales in 2007 (44%) and 2008 (48%) were made by U.S. financial advisors working for Stanford affiliates. The Liquidator's expert says 20% or less, but in either case the amount sold by U.S.-based financial advisors is vastly more than were sold from SIB, which accounted for very few (if any) CD sales. Moreover, there seems little dispute that the sales activities of Stanford financial advisors, wherever located, were all managed and directed by Stanford personnel based in the United States.

Another factor considered important by the *Bear Stearns* court is the location of a majority of the debtor's creditors. As to this issue, the numbers again favor the United States over Antigua. The Liquidators acknowledge that U.S. residents represent 22% of the outstanding CD liability, and 16% of the worldwide number of CD holders. (The Liquidator's exact numbers are 15.66% and 21.85%.) The Receiver's numbers are somewhat higher, suggesting that 37% in terms of dollar value and 25% in terms of numbers of CD holders were U.S. residents. The difference between those numbers is not pertinent given that very few, if any, CD purchasers were resident Antiguans.[17]

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[17] Perhaps there were no truly Antiguan CD purchasers given that both the Receiver and Liquidators agree that it was illegal for SIB to do business with resident Antiguans. If there are any Antiguan CD holders, the number is likely to be miniscule. Since his appointment, the Examiner has communicated with only one CD investor who is a resident of Antigua (but a UK citizen).

There is some debate between the Receiver and the Liquidators about Antiguan addresses used by some CD holders, but it also seems rather clear that almost all of those were "hold mail" addresses or addresses of Stanford affiliates (*e.g.*, Stanford Trust Company, Ltd.) who purchased CDs via trusts for clients.

On this issue, the Liquidators rightly note that most CD purchasers were from outside the United States and Antigua, whether calculated in terms of dollars held or in numbers of holders themselves. Venezuela is home to as many as 37% of the clients and 21% of the dollars value, and Mexico is home to as many as 14% of the clients and 13% of the dollars. Those numbers might be relevant if someone was urging a Venezuelan or Mexican COMI, but neither the Receiver nor the Liquidators urge such a result. As between the two jurisdictions at issue, there are thousands of victimized CD holders located in the United States and none (or virtually none) located in Antigua. This factor also argues in favor of United States COMI.

SIB's ownership and control is another factor that lends support to the conclusion that COMI is in the United States. SIB was created by and wholly owned by a U.S. person. While the Liquidators say on several occasions that there was no "parent company" of SIB in the U.S., there seems to be general agreement that Mr. Stanford was the indirect owner of 100% of SIB (through one or two intervening Antiguan entities). While Mr. Stanford may have been traversing the globe for the past four or five years, he was at all times a United States native and citizen. Moreover, even if there is some doubt as to Mr. Stanford's personal whereabouts, and no handy way of demonstrating his day to day location, the senior officers of SIB were mostly U.S. residents and citizens. Stanford,

with dual citizenship, was Chairman, his father, James A. Stanford, was Chairman Emeritus, Kenneth C. Allen was Secretary and Treasurer, and James M. Davis was Chief Financial Officer. (Ms. Pendergest-Holt, who all acknowledge had some substantial role in running the fraudulent scheme, albeit not as an employee of SIB, was certainly a U.S. resident and citizen, working from the U.S.). Juan Rodriguez-Tolentino, who was probably located in Antigua, was President. Of the seven Directors, five were U.S. citizens, and the other two were non-Antiguans, residing respectively in Montserrat and Barbados. All seem to agree that at least "many" strategic decisions as to the operations of SIB were made by Stanford and Davis and probably Pendergest-Holt from the United States. While the Antiguan President of SIB may well have had duties beyond entertaining "high rollers," it seems clear that SIB was both owned and controlled from the United States.

D. SIB's COMI was in the United States.

Comparing the largely undisputed facts relied upon by the Liquidators and the largely undisputed facts relied upon by the Receiver, this Court must conclude that the actual "banking business" of SIB was predominately conducted in the United States. SIB's assets were managed in the United States, its efforts to generate CD deposits were managed and directed from the United States, a significant number of its depositors are resident in the United States, and it was owned and controlled by individuals located in the United States. In contrast, the activities that SIB conducted in Antigua more closely resemble the sort of banking activities that one conducts at the branch offices of banks (whether the type found on street corners, in supermarkets or as drive-throughs). These

were banking activities, to be sure, but cannot be said to have been the central or primary activities of SIB. The Examiner respectfully submits that there is simply no comparison in terms of SIB's "main interests" as between the United States and Antigua. SIB's COMI was in the United States.

III. The UK Judgment Provides No Guidance to this Court.

As noted previously, the Liquidators recently filed with the Court [Doc. No. 36-2] the Approved Judgment of the High Court of Justice, Chancery Division (the "UK Court"), entered on July 3, 2009 (the "UK Judgment") which concluded that the Antiguan proceeding should be recognized as the "foreign main proceeding" for SIB. In their Motion for Leave to file the UK Judgment, the Liquidators urge that it provides further support for their Petition to be recognized by this Court as SIB's "foreign main proceeding." Doc. No. 36. The Examiner disagrees for two separate reasons.

First, the Examiner notes that the UK Court applied a standard different from the one that this Court must apply. In particular, the UK Court placed upon the Receiver the burden of defeating the "presumption" that SIB's COMI was the place of its registered office. Doc. No. 36-2 at 18, ¶70. The U.S. case law applying Chapter 15 makes it clear that the "presumption" that COMI is the location of a registered office carries little to no weight. It makes it equally clear that the foreign representative always carries the burden of proving that the debtor's COMI is in the jurisdiction that appointed the representative seeking recognition.[18] Because the UK Court placed the burden of proof upon the

[18] The Receiver has set forth these authorities in his Response to the Petition for Recognition, Doc. No. 20, at 4-5. The Examiner incorporates that discussion by reference here.

Receiver and not the Liquidators, its decision granting them recognition as SIB's "foreign main proceeding" does not comport with U.S. case law.

Second, the UK Court also limited the Receiver's proof to "factors that are objective" and "ascertainable by third parties." In doing so, the UK Court expressly rejected consideration of the factors identified as important to the COMI analysis in *Bear Stearns*. *Id.* at 18, ¶67.[19] The UK Court's insistence upon "objective factors" that are "ascertainable by third parties" is particularly troubling because application of that standard would permit the clever architect of a fraudulent scheme to orchestrate, in advance, the location of any insolvency proceedings that might arise out of that scheme.

By definition, the true COMI of any fraudulent scheme is likely to be concealed from those who are the targets of that scheme. In devising a fraudulent scheme, the architect of that scheme could certainly create a number of "objective factors" that are "ascertainable by third parties" in order to insure that COMI was located in a jurisdiction friendly to the architect.[20] The Examiner respectfully suggests that the UK Court's insistence upon "objective factors" that are "ascertainable by third parties" exalts form over substance and ignores the extensive and largely undisputed connections between SIB and the United States (not to mention the even more extensive connections between the Stanford Financial Group, of which SIB was but a part, and the United States).

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[19] Given its rejection of the *Bear Stearns* factors, the Examiner assumes the UK Court would similarly have rejected any consideration of the twenty plus factors identified in *In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37 (Bankr. S.D.N.Y. 2008)

[20] Perhaps those who orchestrate fraudulent schemes do not contemplate which jurisdiction will preside over any collapse of such schemes. However, the approach taken by the UK Court would certainly provide a roadmap for one who wanted to be sure that a friendly jurisdiction would govern.

Because the UK Court did not place the burden of proof on the Liquidators, and because it unnecessarily and inappropriately limited the sorts of proof that the Receiver could rely upon, the Examiner submits that this Court is not bound by, and cannot adopt, the analysis set forth in the UK Judgment.

IV. A Word About the "Public Policy" Exception

The public policy "exception" set forth at 11 USC §1506 permits this Court to refuse to take any action governed by Chapter 15, including recognizing the Antiguan proceeding as a foreign main proceeding, if "the action would be manifestly contrary to the public policy of the U.S." All agree that this exception is to be applied narrowly and that the exception should be invoked only when the most fundamental of U.S. policies are implicated. As set forth above, the Examiner believes that the COMI of SIB is in the U.S., and there should be no need for resort to the exception.

Should the Court opt to consider the public policy exception, the Examiner respectfully submits that the Court should then place considerable, if not controlling, weight upon the views expressed by the SEC as to whether recognition of the Liquidators is contrary to U.S. public policy. As noted above, the Receiver and the Liquidators each necessarily are advocates for their own positions. While each addresses the "public policy" exception at some length, neither can really be said to speak for the "public policy" of the United States. While the Examiner can opine as to what he views as the "public policy" considerations that the Court ought to consider, the Examiner's charge is far narrower. It is to bring to the Court information pertinent to the interests of Investors,

not to serve as the voice of the public at large. As the Examiner noted at the outset the preferences of the Investors for the Receiver or the Liquidators diverge.

The only party before the Court that can and should be viewed as capable of articulating the "public policy" of the United States with respect to the recognition sought by the Liquidators in this proceeding is the SEC. This Court already has recognized that the SEC's involvement in this action creates the presumption that it adequately represents the interests of the public. *See* Doc. No. 321, Civil Action No. 09-298, at 4, *citing Baker v. Wade*, 743 F.2d 236, 241 (5th Cir. 1984) (holding that when a government entity is a party, it is presumed that the government adequately represents the interests of the public).

In its Response to the Liquidators' Petition for Recognition, the SEC argues that recognition is contrary to the public policy of the United States. The Examiner presumes (and suspects this Court will as well) that the SEC does not make that argument lightly. To the extent that this Court determines that it must consider the public policy exception under Chapter 15, the Examiner respectfully submits that it should view as persuasive the SEC's assessment of how that exception should be applied.

V. The Court Should Schedule a Public Hearing

In its Order dated June 1, 2009 [Doc. No. 14], the Court indicated that it would determine whether to schedule an evidentiary hearing after its review of the parties' written submissions. While the Examiner would not presume to make that determination for the Court, the Examiner does respectfully request that the Court schedule a public hearing with respect to the Liquidators' Petition.

This Court's charge to the Examiner is to convey to the Court information the Examiner deems helpful to the Court in considering the interests of Investors.[21] The Investors (and counsel) with whom the Examiner regularly communicates have increasingly expressed their perception that these proceedings are not being conducted in a transparent, open fashion. This perception is particularly common among the thousands of foreign Investors who have been victimized by the Stanford scheme. The Examiner has communicated with many such Investors for whom these proceedings are an increasingly frustrating mystery. A hearing[22] with respect to the Liquidators' Petition would be particularly instructive and informative for the many Investors whose experience with the U.S. judicial system is limited to what they see on television, and would provide some needed reassurance to the many who believe their interests are getting lost in the shuffle.[23]

VI. Conclusion

For the reasons set forth above, the Examiner respectfully submits that the Court should deny the Antiguan Liquidators' Petition for recognition as SIB's "foreign main proceeding." While the Liquidators have not expressly sought recognition as a "foreign non-main proceeding," the Examiner does not object to the Court granting such recognition if it deems that appropriate.

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21 Civil Action No. 09-298, Doc. No. 322.

22 The Examiner will leave to the Court the determination of whether such a hearing should be evidentiary or limited to oral argument.

23 The Examiner believes that a significant number of Investors and their counsel would likely travel to Dallas to attend any hearing this Court schedules with respect to the Liquidators' Petition.

Respectfully submitted,

/s/ John J. Little
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CERTIFICATE OF SERVICE

On July 8, 2009 I electronically submitted the foregoing document to the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served 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/ John J. Little