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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3:09-cv-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT,	§	
	§	
Defendants,	§	
and	§	
	§	
STANFORD FINANCIAL GROUP, and THE STANFORD FINANCIAL GROUP BLDG INC.,	§	
	§	
Relief Defendants.	§	
_____	§	

PLAINTIFF'S RESPONSE TO MOTION OF DR. SAMUEL BURINSKY, JAIME ALEXIS ARROYO BORNSTEIN AND MARIO GEBEL TO INTERVENE AND TO AMEND OR MODIFY AMENDED RECEIVERSHIP ORDER

The Securities and Exchange Commission opposes the motion filed by Dr. Samuel Burinsky, Jaime Alexis Arroyo Bornstein, and Mario Gebel ("Movants") to, among other things, intervene in this action and amend the Court's Amended Receivership Order.

A. The Court Has Appropriately Precluded the Filing of Involuntary Bankruptcy Petitions Against the Entity Defendants.

"The Supreme Court has repeatedly emphasized the broad equitable powers of the federal courts to shape equitable remedies to the necessities of particular cases, especially where a federal agency seeks enforcement in the public interest." *SEC v. Wenke*, 622 F.2d 1363, 1371 (9th Cir. 1980) (citations omitted). A necessary corollary to that power is the authority of federal

courts, particularly in SEC enforcement actions such as this one, to stay proceedings against a court-appointed receivership, even as to nonparties that have notice of the stay. *Id; see also Liberte Capital Group, LLC v. Capwill*, 462 F3d 543, 551 (6th Cir. 2006); *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir. 1985) (noting that courts recognize the importance of preserving a receivership court's ability to issue orders preventing interference with its administration of receivership property).

This authority may properly extend to an injunction prohibiting the filing of bankruptcy petitions against defendants in an enforcement proceeding. *See, e.g., SEC v. Byers*, 592 F. Supp. 2d 532, 536 (S.D.N.Y. 2008) (noting that the court "has the authority to enjoin non-parties from filing involuntary bankruptcy petitions against any [receivership entities]." The fact that the receivership entities may be at risk of insolvency does not change this fact. The inability of a receivership estate to meet all of its obligations is typically the *sine qua non* of the receivership. *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551-53 (6th Cir. 2006); *see also Securities Exchange Commission v. Capital Consultants LLC*, 453 F.3d 1166, 1172 (9th Cir. 2006) (noting that where "rightful claims to assets exceed the assets available, the court, with the help of the receiver, must determine how to distribute the assets equitably. . . . [D]istributing . . . the assets [of the entity placed in receivership] is one of the central purposes of the receivership."); *United States Securities Exchange Commission v. The Infinity Group Company*, 226 F. Appx. 217, 2007 WL 1034793 (3d Cir. 2007). Stated simply, while in some cases, application of the bankruptcy code may ultimately become appropriate, there is no reason supporting Movants' effort to impair the receivership estate now, less than four months after the receivership was put in place in a complex securities fraud enforcement action and while significant efforts to continue to preserve assets are ongoing.

Movants' reliance on *United States v. American Board of Trade, Inc.*, 830 F.2d 431, (2nd Cir. 1987) is misplaced. More specifically, that reliance is premature. In *American Board of Trade*, the Second Circuit noted concerns about an equity receivership being used to liquidate entities. Here, contrary to the Movants' arguments, the Receiver has not embarked on a liquidation of the receivership estate. Indeed, while Movants argue such liquidation has been or shortly will be commenced, they note later that the Receiver has made it clear that "asset recovery efforts are still in an early stage" and that the Receiver has stated that he "cannot at this time estimate when he will be able to propose a plan." The concerns raised in *American Board of Trade* simply are not at issue here, where the estate has not yet even been ascertained.[1]

In short, far from authorizing the liquidation of the receivership estate (which has not yet even been ascertained), the Court's Amended Receivership Order properly places the decision as to whether to petition for relief under the Bankruptcy Code to the Receiver and properly precludes other creditors from burdening the receivership estate by filing involuntary bankruptcy motions in what is still the early stages of this equity receivership. There is no reason, particularly at this early stage, to alter that status quo. Instead, the Receiver should be permitted to discharge his duties to, among other things, identify and preserve assets.

B. The Motion to Intervene Should be Denied.

Movants' belated motion to intervene should be denied. As the Court found in its April 20, 2009 Order, the SEC and Receiver adequately represent Movants' interests in this action. Moreover, the Court has also appointed an examiner "specifically to present the collective

[1] It should also be noted that in a recent case arising in the Southern District of New York, the district court, in holding that the Court has the authority to enjoin non-parties from filing involuntary bankruptcy petitions against receivership entities, noted that "[t]he Receiver is charged with protecting the investments of all the [receivership estate entity] investors. Movants, on the other hand, are only concerned with recouping their own investments, presumably even at the expense of other investors." *SEC v. Byers*, 592 F. Supp. 2d 532, 536-537 (S.D.N.Y. 2008).

interests of the Stanford investors to the Court." The Court's reasoning in earlier denying a variety of motions to intervene applies equally here and Movants' motion to intervene should be denied.[2]

C. Conclusion

For the reasons set out above, the Commission respectfully submits that Movants' motion should be denied.

Respectfully submitted,

s/ David B. Reece
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[2] Because these issues were previously addressed in the Commission's Consolidated Response to Motions to Intervene [Docket 174], the Commission incorporates by reference the arguments and authorities set forth in that Response rather than repeat them here.

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2009, I electronically filed the foregoing document with the Clerk of the court for the Northern District of Texas, Dallas Division, by using the CM/ECF system which will send notification of such filing to all CM/ECF participants and counsel of record.

s/ David B. Reece