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

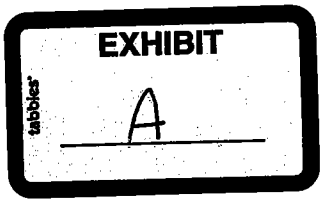
SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3:09-cv-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT,	§	
	§	
Defendants,	§	
and	§	
	§	
STANFORD FINANCIAL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

PLAINTIFF'S SUPPLEMENTAL RESPONSE TO MOTION OF DR. SAMUEL BUKRINSKY, JAIME ALEXIS ARROYO BORNSTEIN AND MARIO GEBEL TO MODIFY AMENDED RECEIVERSHIP ORDER

The Commission files this response to the supplemental brief filed by Dr. Samuel Bukrinsky, Jaime Alexis Arroyo Bornstein, and Mario Gebel ("Bukrinsky movants") in which the Bukrinsky movants urge the Court to amend the Court's Amended Receivership Order to allow involuntary bankruptcy proceedings as to one or more Stanford-related persons or entities.

I. SUMMARY

The Commission opposes the current effort to put part of this receivership into involuntary bankruptcy. As a threshold matter, the Court acted properly and well within its authority when it initially stayed the filing of involuntary bankruptcy petitions. This is true



notwithstanding the strong rhetoric and criticisms of the Receiver offered the Bukrinsky movants. As the Court knows, the Commission has not always agreed with the Receiver. Agreement with the Receiver's past actions, however, is not the critical question. The Commission does not believe the Bukrinsky movants have offered any argument or factual consideration demonstrating that the receivership estate would be better off if Stanford International Bank were now put into involuntary bankruptcy proceedings.[1] Simply put, the disadvantages (for example, increased administrative fees and complexities) inherent in transferring a portion of this proceeding to bankruptcy are apparent and undeniable. In contrast, no real benefits have been identified. There is no reason to lift the stay at this time.

II.
DISCUSSION

Courts have routinely recognized that in securities cases brought by the Commission, federal courts have "broad powers" and "wide discretion" to shape receivership proceedings. *See Canada Life Assu. Co. v. LaPeter*, 563 F.3d 837, 845 (9th Cir. 2009). In fact, "[t]he 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

[1] It appears that the Bukrinsky movants intend to file involuntary bankruptcy petitions as to Stanford International Bank and R. Allen Stanford. See Supplemental Brief in Further Support of Motion for Relief from the Injunction Contained in Paragraph 10(e) of the Receivership [Doc. No. 1003-2] at p. 12 fn. 18.

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]);" *SEC v. Great White Marine & Recreation, Inc.*, 428 F.3d 553 (5th Cir. 2005) (affirming a district court's enforcement of injunction against bankruptcy proceedings by withdrawing and then dismissing a bankruptcy proceeding). In particular, courts have recognized that converting equity receiverships into bankruptcy proceedings add administrative costs to money already spent on the receivership. *See, e.g., SEC v. Lincoln Thrift Ass'n*, 577 F.2d 600, 607-608 (9th Cir. 1978) (upholding district's decision denying a motion filed by certain creditors to put a Commission-instituted receivership into bankruptcy and noting that newly instituted bankruptcy proceedings would result in expending additional expenses and fees over and beyond receivership expenses already paid).[2]

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[2] The parties' earlier submissions more thoroughly address the legitimacy of using equity receiverships to handle the fall out from fraudulent schemes, including a discussion of several cases that have indicated that bankruptcy should be considered in liquidation proceedings. Here, the Bukrinsky movants have had ample opportunity to present to the Court their arguments supporting a bankruptcy filing. The Commission does not believe bankruptcy presents a better alternative here. It goes without saying that, if the Court concludes that a bankruptcy proceeding is advisable, the Commission will work with any subsequent trustee to maximize any potential investor recovery.

But, it is clear that in federal security enforcement matters, an equity receiver is a frequently approved mechanism for liquidating and distributing assets. *See, e.g., Riehle v. Margolies*, 279 U.S. 218, 223 (1929) (concluding that district court has discretion to sell and restructure receivership assets because the district court has "federal jurisdiction to decide all questions incident to the preservation, collection, and distribution" of receivership estate assets); *SEC v. Ross*, 504 F.3d 1130, 1145 (9th Cir. 2007) (because of district courts' in rem jurisdiction over receivership assets, receivers "exercise broad powers" in disposing of assets belonging to the receivership"); *Lincoln Thrift*, 577 F.2d at 605-06 (affirming district court's authority to sell receivership assets). Indeed, 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

That recognition applies equally to this case. At the end of the day, investor creditors are faced with limited assets available to pay out immense liabilities, and the Receiver has already expended significant sums learning the details of the estate. Repeating that process is unnecessary. Appropriate claims against third-parties may be instituted by either the Receiver or a bankruptcy trustee and either will address various legal issues raised in such claims. Likewise, to the extent investors wish to bring claims directly, such claims are possible under either scenario, and, in fact, have already been filed parallel to the receivership. In short, there is little, if any, real benefit to bankruptcy.

At the same time, putting a significant portion of this receivership into involuntary bankruptcy offers no "silver bullet." Indeed, not only is it unnecessary, it will be costly. For example, not only will bankruptcy add increased costs inherent with more layers and groups of lawyers, it appears that the Bukrinsky movants contemplate yet more ancillary litigation between court-appointed personnel, spending even more of the limited pool of assets. *See, e.g.*, Supplemental Brief at p. 7 (describing bringing claims against other Stanford entities). Such ancillary litigation – similar to that between Vantis and the Receiver that the Bukrinsky movants decry – will only spend scarce resources that would be better spent on other tasks, such as working on an equitable plan to get some measure of recovery to investors. In other words, bankruptcy will no doubt provide an opportunity for more pleadings and arguments made by attorneys and other professionals, but those arguments will in all likelihood decrease, not increase, investor recovery by expending the limited assets available. Finally, but perhaps most importantly, the Bukrisnky movants have not addressed in any detail the practical effect that

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1034793 (3d Cir. 2007). *Cf.* In re Busick, 831 F.2d 745, 748 (7th Cir. 1987) (noting that the power of placing an alleged debtor in involuntary bankruptcy is more a procedural remedy than a substantive right).

placing these claims in bankruptcy will have on investor claims vis-à-vis other creditors. That silence speaks loudly.

The reality is that, unlike a legitimate business that has failed (even one whose demise flows from certain misconduct), the entire Stanford enterprise was a fraudulent charade funded largely through fraud on investors. An equity receivership – subject to the oversight and scrutiny of this Court – is a tool frequently employed in Commission initiated enforcement actions dealing with this type of situation because it provides the flexibility to take equitable considerations into account, while still providing protections for all interested parties.[3] Those considerations make a receivership not only an appropriate, but a preferable course at this time. In sum, an equity receivership is a time-honored tool in securities enforcement actions and the Bukrinsky movants have offered no explanation for why this tool should not be used here.

III.
CONCLUSION

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

Respectfully submitted,

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[3] 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).

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2010, 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