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 0298-N**
STANFORD INTERNATIONAL BANK, LTD., *et al.*,	§	
Defendants.	§	

EXAMINER'S REPORT NO. 2
(Motion for Relief from Paragraph 10(e) of the Amended Order Appointing Receiver)
February 3, 2010

John J. Little, Examiner, submits his Report No. 2.

I. Preliminary Statement

Pursuant to the Court's Order dated April 20, 2009 [*Doc. No. 322*], 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.[1] The Examiner is to convey this information, in part, by periodically filing a Report and Recommendation with the Court.[2] *Doc. No. 322 at 2.*

Report No. 2 ("Report No. 2") addresses the Motion for Relief from the Injunction Contained in Paragraph 10(e) of the Amended Order Appointing Receiver, and supporting Brief, that was filed by Dr. Samuel Bukrinsky, Jaime Alexis Arroyo Bornstein and Mario Gebel (the "Bukrinsky Movants). [*Doc. Nos. 772 and 773.*] The purpose of Report No. 2 is to identify issues that have been addressed by neither the Bukrinsky Movants nor the Receiver in the

[1] The "Investors" include any "investors in financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendants in this action." *Doc. No. 322 at 1.*

[2] This Report does not contain any specific recommendations to the Court; accordingly, it is styled simply as Report No. 2.

briefing that is on file, in the hope that those issues will be addressed either in supplemental briefing or at the hearing scheduled for February 11, 2010.[3]

II. Existing Briefing

The parties have filed a significant number of briefs concerning the Motion for Relief and the Motion to Intervene that was earlier filed by the Bukrinsky Movants, as follows:

Doc. No. 367: Motion: (i) to Intervene; (ii) to Amend or Modify Certain Portions of this Court's Amended Receivership Order; (iii) in support of the Antiguan Receivers—Liquidators' Request to Coordinate Proceedings under Chapter 15 of the Bankrupty Code; and (iv) in the alternative, for Extension of Time to Appeal (filed May 11, 2009)
Doc. No. 369: Brief in Support of Doc. No. 367 (filed May 11, 2009)
Doc. No. 369-2: Appendix in Support of Doc. No. 367 (filed May 11, 2009)
Doc. No. 369-3:

Doc. No. 420: Plaintiff SEC's Response to Doc. No. 367 (filed June 1, 2009)

Doc. No. 422: Receiver's Response to Doc. No. 367 (filed June 1, 2009)

Doc. No. 424: Examiner's Response to Doc. No. 367 (filed June 1, 2009)

Doc. No. 476: Bukrinsky Movants' Reply Brief in Support of Doc. No. 367 (filed June 16, 2009)

Doc. No. 772: Bukrinsky Movants' Motion for Relief from Injunction Contained in Paragraph 10(e) of the Receivership Order (filed September 10, 2009)
Doc. No. 773: Brief in Support of Doc. No. 772 (filed September 10, 2009)

Doc. No. 817: Receiver's Opposition to Doc. No. 772 (filed September 30, 2009)

Doc. No. 836: Bukrinsky Movants' Reply Brief in support of Doc. No. 772 (filed October 15, 2009)

Despite all this briefing, neither the Bukrinsky Movants nor the Receiver has squarely addressed what the Examiner views as the critical question – will Stanford CD investors be better served by

[3] The Examiner has conferred with counsel for the Receiver and with counsel for the Bukrinsky Movants concerning the issues raised in this Report No. 2. The Examiner understands that both the Receiver and the Bukrinsky Movants intend to file supplemental briefs addressing these issues and others deemed pertinent to the pending Motion.

continuing to proceed as a Receivership or by commencing bankruptcy proceedings for some or all of the Stanford entities? Put differently, which path – receivership or bankruptcy – is most likely to result in a greater recovery by the Investors?[4]

III. The Arguments Summarized.[5]

The Bukrinsky Movants urge the Court to lift the injunction imposed by paragraph 10(e) of the Amended Order Appointing Receiver so that they might begin involuntary bankruptcy proceedings with respect to one, some or all of the Stanford entities. They argue that Congress enacted the Bankruptcy Code for the express purpose of dealing with insolvent entities, that creditors (including the Bukrinsky Movants and others) are afforded certain due process rights under the Bankruptcy Code that they do not enjoy in a receivership, and that this Court should permit the filing of bankruptcy proceedings so that creditors can exercise the rights that Congress afforded them.

The gist of the Receiver's response is that equity receiverships are a time-tested mechanism commonly used to address fraudulent schemes, that such receiverships are both more efficient and more flexible vehicles than bankruptcy proceedings, and that (as opposed to the priority system established under the Bankruptcy Code) receiverships are capable of tailoring distribution schemes and priority systems to the circumstances of a particular case.

Both arguments are largely correct, as far as they go. Congress certainly enacted the Bankruptcy Code to address insolvencies, and it gives creditors a number of rights to participate in the process that they do not necessarily enjoy in an equity receivership. On the other hand,

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[4] A corollary issue is which path is more likely to result in the Investors receiving a recovery sooner than later.

[5] The Examiner recognizes that he is greatly simplifying the competing arguments made by the Bukrinsky Movants and the Receiver.

equity receiverships have long been used to address, and clean up after, fraudulent schemes, they have filled (and continue to fill) that role because they can be more flexible and efficient than other proceedings, and they have the ability to tailor distribution schemes to the unique circumstances presented by a particular case.

For the Investors, the critical issue is not whether they prefer the "due process rights" afforded them under the Bankruptcy Code or the "flexibility and efficiency" that may be available in a receivership. The critical issue is which route will result in a greater recovery for those who were victimized by Stanford. Neither the Bukrinsky Movants nor the Receiver address this issue. In an attempt to help frame the debate, the Examiner has identified below certain questions that may help the Court and the parties identify the route that will be more likely to result in a greater recovery for the Investors.

IV. For the Bukrinsky Movants: Which Stanford Entities Do They Contemplate Placing into Involuntary Bankruptcy Proceedings?

The Examiner's brief filed on June 1, 2009 [*Doc. No. 424*] inquired as to the specific Stanford entities the Bukrinsky Movants sought to place into involuntary bankruptcy proceedings:

> Movants must address specifically which Stanford entities they seek to place into bankruptcy and how bankruptcy proceedings for those specific entities will result in benefits for the creditors (including Investors) both of those entities and any Stanford entities that Movants would not place into a bankruptcy.

Doc. No. 424 at 4. While the Bukrinsky Movants have filed three separate briefs[6] since the Examiner raised this issue, they have never addressed it.

It is time for the Bukrinsky Movants to spell out what they intend to do if the Court grants them the relief they seek. If it is their intention to file involuntary bankruptcy petitions as

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[6] The Bukrinsky Movants have filed Docs. No. 476, 773 and 836.

to all the known Stanford entities and individuals, that should be made clear. Moreover, if such a filing is what they intend, the Bukrinsky Movants should also address whether the various Stanford entities should be substantively consolidated for purposes of the bankruptcy proceedings.[7] If the Bukrinsky Movants do not intend to file involuntary bankruptcy proceedings with respect to all the known Stanford entities and individuals, it is time that they identify those entities for which they intend to seek bankruptcy protection. Moreover, they must also address how the bankruptcy proceedings they contemplate will interact with the Receivership, which presumably would retain authority over any individual or entity not placed into a bankruptcy, and how that interaction will yield a net benefit to the Investors.

V. For the Receiver: Who are the Creditors of the Stanford Entities and What is the Magnitude of their Claims?

Whether this proceeding remains a receivership or is converted, in whole or in part, to a bankruptcy, it is imperative that the parties and the Court have a firm grasp on two issues – who are Stanford's creditors and what is the magnitude of their claims? To date, the Receiver has identified one extremely significant potential creditor; the IRS apparently asserts a claim against Allen Stanford individually for some $226 million in unpaid taxes, penalties and interest. *Doc. No. 336 at 52 of 58.* As to other potential creditors, the Receiver has identified them by broad category – employees, landlords, vendors, service providers and lenders – but has said little

[7] The Examiner has previously noted that Investors in SIB CDs are not the only Investors who are creditors of the Stanford entities. Certain investors in coins and bullion are creditors of Stanford Coin & Bullion. Investors who purchased limited partnership interests for which Stanford Capital Management, LLC served as the general partner likely are creditors both of that entity and of the partnerships created and marketed by Stanford. Accountholders of Stanford Group Company and Stanford Trust Company are likely creditors of those entities. *Doc. No. 424 at 5.* The Examiner fully anticipates that the various creditors of the Stanford entities will have divergent views as to how any bankruptcy should proceed, including but not limited to issues relating to the substantive consolidation of different Stanford entities.

about the amounts that these various creditors claim.[8]

It is impossible to discuss intelligently the relative benefits of proceeding in bankruptcy vs. a receivership without having at least some information concerning the creditors that assert claims against the Stanford entities and the relative magnitude of those claims. For example, there is little point to discussing the relative merits (for the Investors) of a bankruptcy priority scheme as compared to a receivership priority scheme if creditors with higher priority (like the IRS, to name just one) hold claims that alone are sufficient to consume all the available assets.

In advance of the hearing on the Bukrinsky Movants' Motion, the Receiver must provide the Court and the parties with current information concerning the likely creditors that have claims against the Stanford entities and, at a minimum, the likely magnitude of those claims.

VI. Specific Issues that should be addressed by both the Bukrinsky Movants and the Receiver.

In addition to the issues identified above, the Examiner respectfully submits that both the Bukrinsky Movants and the Receiver should specifically address each of the following issues either prior to or at the hearing to be held on February 11, 2010.

A. How Will Stanford Investors Fare under the Priority Schemes that the Parties Advocate?

If the Bukrinsky Movants prevail and are able to commence bankruptcy proceedings with respect to some or all of the Stanford entities, then the priority schemes mandated by the Bankruptcy Code will govern the distribution of any available assets to the creditors of the bankruptcy estate. It is difficult to see how the Bankruptcy Code's priority scheme will benefit Stanford Investors given that they necessarily have a lower priority than tax claims, secured

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[8] The Receiver has suggested that the Stanford entities had approximately $95 million in outstanding debt owed to third-party lenders as of December 31, 2008, of which approximately 97% was secured by real estate or other assets. *Doc. No. 336 at 16 of 58.*

claims and, at least potentially, vendor and trade claims. The Bukrinsky Movants need to specifically address how they perceive that the Stanford Investors will benefit if the Bankruptcy Code's priority scheme controls the distribution of available assets to Stanford's creditors.

Similarly, the Receiver needs to provide specific information to both the Court and the Investors concerning how he perceives that his ability to adopt a more "flexible" distribution scheme will result in a benefit to the Investors. In order for the Investors to conclude that they will fare better if this proceeding remains an equity receivership, the Receiver must do more than offer mere promises of future "flexibility."[9] It is imperative that he provide at least his current thinking as to how his priority system might be structured, how that system compares to the Bankruptcy Code priority system, and why his system is more likely to result in a benefit to the Investors.

B. Which Route Provides the Best Chance of Recovering Assets from Culpable Third Parties?

Almost a full year into this Receivership, it is likely that the Receiver has identified virtually all of the Stanford-owned assets that may be recoverable. If that is so, then the prospects for increasing the assets ultimately available for distribution to the creditors rest in three areas:

1. monetization of illiquid assets (equity interests, personal property and real property);

2. prosecution of fraudulent transfer claims against Stanford investors and former Stanford employees; and

3. prosecution of claims against third parties (*e.g.*, banks, law firms, accounting firms, insurance companies and brokerage houses) who may have participated in or facilitated Stanford's scheme.

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[9] To date, the Receiver has not demonstrated any great degree of "flexibility" in his dealings with Investors. For that reason, it is fair to say that the Investors are, on the whole, skeptical as to any promise of future "flexibility."

To the extent that one proceeding enjoys advantages over another with respect to these sorts of efforts, that proceeding may be more likely to increase the recovery ultimately received by the Investors.

For that reason, the Examiner urges both the Bukrinsky Movants and the Receiver to address the following issues:

a. As between an equity receiver and a bankruptcy trustee, does one enjoy any particular advantages over the other with respect to the monetization of illiquid assets that currently are in the possession of the Receiver?

b. As between an equity receiver and a bankruptcy trustee, does one have any greater ability either to assert fraudulent transfer claims, or to avoid defenses to such claims?

c. As between an equity receiver and a bankruptcy trustee, does one have any greater ability to assert claims against potentially culpable third parties, or to avoid defenses to such claims?

Additionally, the Examiner urges both the Bukrinsky Movants and the Receiver to address any other reasons why they believe that one form of proceeding enjoys an advantage over the other with respect to efforts to bring assets into the estate for the benefit of creditors, including the Investors.

C. What are the Likely Costs of Remaining in a Receivership vs. Transferring to a Bankruptcy?

It is no secret that the Examiner has been highly critical of the various fee applications that have submitted by the Receiver in this proceeding. As the Court has accurately observed, that is so because every dollar the Receiver spends on professional fees is a dollar that is not available for distribution to the Investors. *September 12, 2009 Transcript at 24.* It is from that

same perspective that the Court ought to consider the likely costs of continuing in a receivership proceeding as compared to the costs of transferring these entities to a bankruptcy proceeding.[10]

In their arguments as to costs, the Receiver and the Bukrinsky Movants largely ignore each other. The Receiver overlooks the considerable fees and expenses that he and his professionals have incurred while arguing that a bankruptcy proceeding would inevitably be more expensive than the receivership because (a) the bankruptcy trustee would have to hire professionals to assist in the administration of the estate(s), and (b) one or more constituent committees representing unsecured creditors, investors, and possibly other interest groups would inevitably be formed, each requiring its own retained professionals. *Doc. 817 at 22 of 32.* The Bukrinsky Movants do not dispute that a bankruptcy trustee will inevitably require his or her own professionals, nor that one or more constituent committees will be formed that will also require professional assistance. Instead, they focus upon the bankruptcy court's authority to approve or reject unreasonable fee arrangements. *Doc. 836 at 7 of 11.*[11]

The Examiner respectfully submits that both parties are missing the point. The critical question that both parties must address is this – from this point forward, which process is likely to be the most cost-effective? Every dollar that is spent on legal fees, accounting fees, and other professional fees (including the Examiner's fees) is a dollar that is not available to the creditors, including the Investors. If all other factors are equal, the Investors are better served by the process that will cause them to incur the fewest professional fees and expenses going forward.

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[10] For the purposes of this section, the Examiner is assuming that the Bukrinsky Movants would seek to place all the Stanford entities into bankruptcy proceedings.

[11] The Bukrinsky Movants also seem to ignore this Court's considerable authority to approve or reject the fee applications submitted by the Receiver and the Examiner.

VII. Conclusion

The Examiner urges both the Bukrinsky Movants and the Receiver to address the various issues identified in this Report No. 2 so that the Court will have the information necessary to determine which form of proceeding – bankruptcy or equity receivership – is most likely to provide the greatest benefit to the Investors victimized by the Stanford fraud.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On February 3, 2010, I electronically submitted the foregoing document with 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