

**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., ET AL.,	§	
	§	
Defendants.	§	

**RECEIVER’S REPLY IN SUPPORT OF AMENDED MOTION FOR ENTRY OF AN ORDER (I) ESTABLISHING BAR DATE FOR CLAIMS; (II) APPROVING FORM AND MANNER OF NOTICE THEREOF; AND (III) APPROVING PROOF OF CLAIM AND RELATED FORMS AND PROCEDURES FOR SUBMITTING PROOFS OF CLAIM**

**I. Preliminary Statement**

The Receiver filed his First Motion for Entry of an Order Establishing a Bar Date on November 16, 2011 (Doc. 1473) (“First Bar Date Motion”). After extensive consultation with the Examiner, the Investors Committee, the SEC and counsel for many potential claimants, and after retaining and receiving input from his claims agent, Gilardi & Co. LLC, the Receiver filed his Amended Bar Date Motion on March 16, 2012 (Doc. 1546). Along with the Amended Bar Date Motion, the Receiver submitted a revised proposed order (“Amended Bar Date Order”) and notices concerning the claims process that addressed, incorporated and/or resolved the majority of objections, suggestions, and other feedback received concerning the First Bar Date Motion.

As a result of these efforts, neither the SEC, the Examiner nor the Investors Committee have submitted objections to the Amended Bar Date Motion. Likewise, none of the thousands of defrauded investors, those with the most at stake, have filed any objections.

The only parties who filed objections were (a) INX, a third party vendor to the Stanford entities whose priority claim has been addressed by Order of this Court (*see* Doc. 1466) and (b) Societe Generale Private Banking (Suisse) Limited, a non-party alleging it may have a contingent claim if it has to return fraudulent transfers to the Receivership Estate as a result of other pending litigation.

For the reasons stated herein, the Receiver respectfully requests that all objections be overruled and that the Court grant the Amended Bar Date Motion.

**II. INX has not established a basis to amend or revise the proposed Amended Bar Date Order or claims process procedures.**

**A. The Court should not impose a deadline for the Receiver to make claim determinations.**

INX first argues that the Receiver should have a deadline for making claims determinations or issuing notices of deficiency because otherwise, “[i]n theory, creditors could wait in perpetuity for the Receiver to make a decision on their claims.”

The Receiver respectfully submits that it would be impracticable, at this early stage of the claims process, to impose a deadline for determination of claims. The Receiver and his team will of course diligently consider all claims as soon as reasonably possible after they are submitted and will make determinations and issue notices of deficiency on a rolling basis. While there is no way to know how many claims will be submitted and when, it is likely that claims will number in the thousands and potentially in the tens of thousands. Similarly, there is no way to know what types of and how much information claimants may choose to submit. Based on claims submitted through the Receiver’s informal claims process and investigation the Receiver’s team has performed in connection with ongoing litigation, however, the Receiver is aware that many SIB CD investors had complicated SIB CD investment structures — they often invested in multiple CDs, invested in multiple capacities (individually, through companies or

trusts, as joint accountholders with other investors, *etc.*), transferred monies to multiple different accounts and/or withdrew money only to reinvest in other SIB CDs. Reconciling claims of this nature will be complicated and time-consuming. Under these circumstances, it would be unreasonable to impose an arbitrary deadline for making claims determinations.

INX's concern that creditors will have to wait in perpetuity is unfounded. The Receiver and his team have a proven track record of handling Receivership business in a timely and reasonable manner. Moreover, there are multiple checks in place to ensure that the Receiver addresses claims expeditiously. The SEC and Examiner will monitor and be in contact with the Receiver's team to ensure progress in claims processing, as will the Investors Committee. And most importantly, this Court has communicated its intent to move the claims process forward and its commitment to getting money into the hands of victims as quickly as possible. Under these circumstances, concern about an extended delay in claim determinations is unfounded.

**B. The Court should not impose a deadline for the Receiver to make claim payments.**

INX similarly argues that the Court should "allow[] the Receiver to pay allowed claims within ten (10) days from the date the claim is allowed by (a) the Receiver, (b) by agreement of the Receiver and Claimant or (c) entry of an order by this Court allowing or disallowing the claim." This request, however, is not feasible and reflects a fundamental misunderstanding of the claims submission and distribution processes.

Claims will not be paid until the Court approves a distribution plan proposed by the Receiver. Moreover, the law provides that victims of a Ponzi scheme should be compensated on a *pro rata* basis. *See e.g., SEC v. George*, 426 F.3d 786, 799 (6th Cir. 2005) (approving *pro rata* distribution method in the context of a Ponzi scheme and noting that "the Supreme Court explained in the litigation that gave the Ponzi scheme its name, 'equality is equity' as between

‘equally innocent victims.’”) (quoting *Cunningham v. Brown*, 265 U.S. 1, 13 (1924)); *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 328, 331-32 (5th Cir. 2001) (upholding *pro rata* distribution plan over objection of investor who claimed his investment could be traced); *SEC v. Megafund Corp.*, Civil Action No. 3:05-CV-1328-L, 2008 WL 2856460, at \*1, 3 (N.D. Tex. June 24, 2008) (approving receiver’s proposed *pro rata* distribution plan).

The Receiver cannot structure a *pro rata* distribution proposal, however, unless and until he has processed all submitted claims and knows what claims will be allowed. Because the Receiver will make claim determinations on a rolling basis as they are submitted and then submit a proposed distribution plan after all claims are processed, it is not feasible to impose a deadline to pay individual claims tied to the date they are allowed by the Court or the Receiver.

Finally, INX’s request for a deadline to pay claims ignores the reality that there likely will be more than one distribution by the Receivership. Although the Receiver is prepared to make a distribution in the short term, the majority of the remaining Receivership assets are in the form of unliquidated litigation claims. Funds from those claims obviously cannot be distributed within the deadline structure proposed by INX.

**C. The Court should not allow claimants to seek a Court ruling on their objections before the deadline for the Receiver to file a motion to uphold his determination.**

INX next asserts that claimants should be allowed to seek rulings from the Court on their objections to claim determinations before the Receiver’s deadline to file a motion to uphold his determination. The proposed Amended Bar Date Order allows the Receiver sixty (60) days after an objection is filed with the Court to file his own motion to uphold the claim determination. It further prohibits motion practice by claimants prior to the Receiver’s deadline unless they first seek and obtain leave of Court, upon a showing of good cause and substantial

need. The Receiver's proposed process allows maximum opportunity to resolve objections without involving the Court. In order to resolve objections, the Receiver will have to investigate issues raised by the claimants and communicate with them in an attempt to reach resolution. The Receivership team will likely be engaging in this process for hundreds, if not thousands, of claims at the same time, while also still performing initial processing of other claims.

The Receiver expects to be able to resolve most claimant objections without requiring involvement from the Court, but allowing claimants to seek rulings before the deadlines in the proposed order will impede the claims process by preventing the Receiver's team from properly investigating and considering claimant objections. Instead of trying to resolve claimant objections and process other claims, the Receiver's team will be forced to spend its time responding to motions and spending money on professional fees that could otherwise be distributed to claimants.

**D. The Court should not require the Receiver to include a priority claim option on the proof of claim form.**

INX next argues that "The Court should require the Receiver to include a priority claim option on the proof of claim form for priority creditors like INX." This step is unnecessary and would only cause confusion.

The proof of claim form already allows claimants to indicate whether they have a secured claim. Thus, to the extent an alleged priority claim is based on a security interest, claimants will have the opportunity to assert that basis on the existing claim form. If other claims are entitled to priority treatment, those determinations will be made by the Court and set forth in Court orders, just as the Court did with regard to the INX claim. If priority status is set forth in a Court order, there is no need for claimants to also check a priority claim box on the proof of claim form.

Moreover, including a priority claim option on the proof of claim form will cause unnecessary confusion. INX does not define what is meant by a “priority claim,” and it is not clear that there will be priority claims other than those granted by Court order or that are based on security interests. Allowing claimants to make subjective determinations as to whether their claims deserve “priority” status undoubtedly will result in hundreds or even thousands of claims being improperly designated with priority status. This will require further investigation by the Receiver’s team and delay the processing and payment of claims.

**III. SocGen has not established a basis to amend or revise the proposed bar date order or claims process procedures.**

**A. The Court should not impose a different deadline for claimants to submit “contingent” claims.**

SocGen acknowledges that it does not have a present claim against the Receivership Estate but argues that it may have such a claim in the future if it is found liable in fraudulent transfer actions brought by investor plaintiffs. SocGen then asserts that the deadline to submit a “contingent” or “springing” claim should be extended to thirty (30) days after the judgment giving rise to the claim becomes final.

The only justification SocGen offers for its proposal is that it “may be forced to file a protective claim with the Receiver by the deadline set in the Bar Date Order.” But submitting such a claim is not a burden and is exactly what SocGen should do. The result of granting SocGen its requested relief would be to extend, by years, the date by which the Receiver will know the universe of claims against the Receivership Estate. The majority of the fraudulent transfer lawsuits brought by the Receiver and others are in their early stages, and it likely will be years before such claims are resolved by judgment and appeals are exhausted. Because the Receiver will make distributions on a *pro rata* basis, it will likewise be impossible to design a distribution plan until all claims are submitted. The burden on the thousands of victims whose

distributions will be severely delayed if SocGen's request is granted far outweighs any burden on the relatively small number of claimants who may choose to file protective or contingent proofs of claims for amounts of fraudulent transfers they may have to return.

**B. The Court should not alter the "Consent to Jurisdiction" language in the proof of claim form.**

SocGen further claims that the "Consent to Jurisdiction" section on the proof of claim form should be revised because it requires SocGen and other defendants in lawsuits brought by third parties to waive the defense of personal jurisdiction in those cases.

SocGen's complaint is unfounded. The "Consent to Jurisdiction" section of the proof of claim form states as follows:

CONSENT TO JURISDICTION: By submitting your Proof of Claim Form, you consent to the jurisdiction of the United States District Court for the Northern District of Texas for all purposes and agree to be bound by its decisions, including, without limitation, a determination as to the validity and amount of any claims asserted against the Receivership Entities. In submitting your Proof of Claim Form, you agree to be bound by the actions of the United States District Court for the Northern District of Texas even if that means your claim is limited or denied.

This provision is not overbroad. When the language is considered in context, particularly given that it is contained in a proof of claim form submitted in this action only and does not reference third party claims, there is no credible basis to argue it requires claimants to waive defenses to third party claims. The Consent to Jurisdiction language is properly limited and should not be revised.

**IV. Conclusion**

For the reasons state herein and in the Receiver's Amended Bar Date Motion, the Receiver respectfully requests that the Court grant the Receiver's Amended Bar Date Motion, and overrule all objections to same.

Dated: April 24, 2012

Respectfully submitted,

**BAKER BOTTS L.L.P.**

By: /s/ Kevin M. Sadler

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**ATTORNEYS FOR RECEIVER RALPH S. JANVEY**

**CERTIFICATE OF SERVICE**

On April 24, 2012, 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 the Court-appointed Examiner, 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/ Kevin M. Sadler  
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