

# BAKER BOTTS LLP

April 27, 2012

## VIA ELECTRONIC MAIL

Judge David C. Godbey  
United States District Court  
for the Northern District of Texas  
Dallas Division  
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Re: Projected fees and expenses relating to claims process

Dear Judge Godbey:

At the April 25, 2012 hearing concerning the Receiver's Bar Date Motion [*see* Doc. 1546], the Court requested an estimate regarding the fees and other costs associated with implementing and administering the Receiver's proposed claims process. Based on his review of Receivership Estate records, as well as consultations with Gilardi & Co. LLC ("Gilardi") and FTI Consulting, Inc. ("FTI"), the Receiver estimates that the claims process — from notice through claims reconciliation and determination — will cost approximately \$3.85 million in expenses and professional fees. A more detailed breakdown of the total estimate is set forth below, along with the assumptions on which it is based and the contingencies that may impact the overall cost.

The Receiver anticipates making multiple interim distributions as funds become available through litigation recoveries and repatriation of assets by the DOJ, but the costs associated with notice and administration of the claims process, set forth herein,<sup>1</sup> will be incurred only once.

**Primary Assumption — Number of Claims.** The Receiver believes the estimate set forth herein is a reasonable projection of the complete cost of the claims process. This estimate, however, is based on certain assumptions that ultimately may prove incorrect, and there are many factors that are outside of the Receiver's control and that may lead to increased and unexpected expenses.

The primary driver of costs will be the number of claims submitted, which is impossible to know in advance. The Receiver estimates, however, that approximately 30,000 claims will be submitted, including claims by SIB CD holders and other claimants of the Receivership Estate entities.

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<sup>1</sup> This estimate does not include fees and expenses associated with ultimate distributions of funds or the approval of the distribution plan.

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In March 2009, the Receiver began accepting information regarding potential claims against the Receivership Estate through an online claims filing process. Although this process was not mandatory and no deadline was established for filing claims, over 10,000 claims were filed for over \$2.8 billion. The details regarding these claims are as follows:

- 9,009 CD claims for approximately \$2.6 billion
- 241 coin and bullion claims for approximately \$63.4 million
- 595 employee claims for approximately \$23.1 million
- 293 vendor claims for approximately \$21.4 million
- 7 landlord claims for approximately \$5.6 million
- 409 other claims for approximately \$138.7 million

In the Amended Bar Date Motion, the Receiver stated that claimants who used the previous claims submission process would not be required to file a proof of claim form and that the earlier filings would be treated as satisfying the requirements of filing a claim before the bar date.

In addition to the number of claims previously submitted, the Receiver has reviewed SIB CD records to determine the number of open accounts with positive balances at the time the Receiver was appointed and has taken into account communications received from potential claimants and their lawyers, as well as the fact that additional claims will be generated as a result of the notice process. Based on this information, but also accounting for the fact that not all potential claimants will actually submit claims, the Receiver believes that the estimate of 30,000 submitted claims, including CD claims and other claims, is reasonable.

**Notice to Potential Claimants:** The Receiver estimates that it will cost approximately \$500,000 to provide direct and publication notice to potential claimants. The vast majority of this work will be performed by Gilardi, including compilation of recipient addresses into a mailing database, mailing out notice packets, emailing notices, providing newspaper and online publication, designing and maintaining the claims website and receiving and processing returned mail. This estimate also includes Baker Botts fees associated with implementing CM/ECF notice, as well as oversight and consultation relating to the work performed by Gilardi.

**Claims Intake and Notices of Deficiency:** The Receiver estimates that the claims intake process and issuance of notices of deficiency will cost approximately \$950,000. Gilardi will perform the bulk of this work, which includes the receipt and recording of claims; verification of basic claim data; preparation and mailing of notices of deficiency; and claimant support throughout the process via an automated telephone system, live operators and website communications. Baker Botts will oversee Gilardi's work and, where necessary, Baker Botts and FTI will provide input concerning notices of deficiency. The Receiver further anticipates that certain communications from claimants will be escalated to Baker Botts for further handling.

**Reconciliation of Claims & Notices of Determination:** The Receiver estimates that the work associated with claims reconciliation and notices of determination, which also includes addressing objections by claimants, will cost approximately \$2.4 million. The Receiver

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anticipates that both Gilardi and FTI will be involved in the reconciliation of claims to the records of the Receivership. Gilardi is well positioned, given its significant prior experience, to handle the types of claims typically received by insolvent estates. Given FTI's familiarity and prior work with the SIB CD transactional records and other Receivership records, it will be involved in the reconciliation of more complicated claims when the value of the claim and/or discrepancy between the claimants' and the Receivership's records justify such analysis. Gilardi will be primarily responsible for drafting and issuing notices of determination with input from FTI and Baker Botts as necessary.

The volume of claimants' objections to the Receiver's claim determinations is very difficult to predict, and Baker Botts will be primarily responsible for negotiating with claimants and ultimately responding to objections that cannot be resolved.

The Receiver expects that at least some, and possibly many, claimants will submit claims for fictitious interest that they claim is due to them pursuant to the fraudulent SIB CDs. It is the Receiver's position that SIB investors are not entitled to such so-called "interest," as the Receiver has explained in his Motion for Partial Summary Judgment Against Certain Stanford Net Winner Investors.<sup>2</sup> That motion is fully briefed and ripe for the Court's ruling. Should the Court rule that SIB CD investors are not entitled to fictitious interest, that holding will help limit professional fees and expenses required to address objections relating to fictitious interest.

**Rates and Timekeepers.** Consistent with the Court's statements at the hearing on April 25, 2012, the Receiver will, to the fullest extent possible, utilize timekeepers with lower billing rates to perform the necessary claims process work. On average, the Receiver anticipates that approximately 70% of the claims process work will be performed by professionals who have billing rates at the lower end of their respective firms' rate structure,<sup>3</sup> and 30% will be performed by more senior professionals who have higher rates.<sup>4</sup>

**Reporting.** The Receiver shares the Court's goals of making a distribution to the Stanford victims as quickly as possible, while at the same time conducting the claims process in a cost-efficient manner. While the costs of the claims process are significant, the Receiver believes the amounts are justified given the Receivership funds that are currently available for distribution and the amounts that likely will be available in the future through litigation recoveries and the funds frozen overseas. As the Receiver informed the Court at the April 25th hearing, he has reached an agreement (*see* attached Exhibit 1) with the DOJ whereby it will use the Receiver's claims process to distribute the funds that are remitted to the DOJ.

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<sup>2</sup> The Receiver's Motion for Partial Summary Judgment is pending on the docket of the following cases before the Court: Case No. 3:09-CV-0724-N, Doc. 615; Case No. 3:10-CV-0366-N, Doc. 145; Case No. 3:10-CV-0415-N, Doc. 46; Case No. 3:10-CV-0478-N, Doc. 46; Case No. 3:10-CV-0528-N, Doc. 30; Case No. 3:10-CV-0617-N, Doc. 26; Case No. 3:10-CV-0725-N, Doc. 24; Case No. 3:10-CV-844-N, Doc. 31; Case No. 3:10-CV-0931-N, Doc. 43; and Case No. 3:10-CV-1002-N, Doc. 89.

<sup>3</sup> For Gilardi, the rates in this category range from \$60 to \$115 per hour. For FTI, the rates in this category range from \$180 to \$300. For Baker Botts, the rates in this category, after the 20% discount, range from \$280 to \$340.

<sup>4</sup> For Gilardi, the rates in this category range from \$150 to \$275. For FTI, the rates in this category range from \$380 to \$584. For Baker Botts, the rates in this category, after the 20% discount, range from \$440 to \$600.

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Due to the nature of the work involved and the factors that are as of yet unknown, the Receiver expects that the amounts of fees and expenses for each of the categories above may vary somewhat from this estimate. Certain amounts may increase or decrease as the Receiver makes adjustments to achieve the most efficient and cost-effective process. In order to promote transparency and facilitate input from the Court regarding the claims process, the Receiver further proposes to submit monthly reports to the Court reflecting the fees and expenses incurred by the Receiver as a result of the claims process. If the Receiver anticipates that the total fees and expenses for the claims process will exceed his estimate of \$3.85 million, the Receiver will seek further guidance from the Court.

Please let me know if the Court has any questions regarding the above information. Once the Court enters the proposed Amended Bar Date Order, the Receiver and his team are prepared to implement notice procedures and begin processing previously submitted claims immediately.

Respectfully submitted,

A handwritten signature in black ink, reading "Kevin M. Sadler". The signature is written in a cursive style with a large initial "K" and "S".

Kevin M. Sadler

Counsel to Receiver, Ralph S. Janvey



U.S. Department of Justice

Criminal Division

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Washington, D.C. 20530

APR 20 2012

Kevin M. Sadler  
Baker Botts, L.L.P.  
98 San Jacinto Blvd.  
Suite 1500  
Austin, TX 78701-4078

Re: *United States v. Robert Allen Stanford*, No. 4:09-CR-342 (S.D. Tex.)

Dear Mr. Sadler:

Thank you for your letter dated March 29, 2012, requesting that the Stanford Receiver handle the processing of investor claims and distribution of funds to victims through the Department of Justice (DOJ) forfeiture and remission process. As you indicated, this approach should maximize efficiencies for both DOJ and the Securities and Exchange Commission (SEC), and avoid duplication of effort, to the ultimate benefit of the victims. While DOJ would welcome an opportunity to coordinate a claims process with the Antigua Joint Liquidators, we believe that the Joint Liquidators have unnecessarily worked contrary to the interests of the victims by engaging in expensive litigation over assets already restrained by other parties.

Subject to the below caveats and reaching a final agreement, DOJ agrees in principle to the proposal set forth in your letter. However, any consummation of an agreement will depend, among other things, on the timing and realization of any recoveries by DOJ, along with the consistency of the claims process with the remission regulations at 28 C.F.R. Part 9. Moreover, the authority to grant remission of forfeiture under the regulations at 28 C.F.R. Part 9 carries an implied responsibility to maximize victim recovery. To that end, DOJ would request the opportunity to participate in the oversight of the SEC claims process, including, but not limited to, the development and implementation of a Distribution Plan, and participation in decisions regarding the granting and denial of claims.

We agree that all costs and fees associated with the claims process and an initial distribution would be incurred by the Receiver. Although DOJ would not directly incur such costs and fees, we request to have a voice in their reasonableness. Because we have an interest in ensuring that the services provided afford the maximum value to the government and preserve the greatest amount of assets for the victims, we also would like to have a voice in the determination of the reasonableness of total asset recovery charges incurred by the Receiver.

If this is acceptable to you we will work with you and the Receiver to arrive at definitive terms that can be presented to the Court and the Official Stanford Victims Committee. We look forward to a mutually satisfactory relationship geared toward serving the best interest of the victims in this case.

Sincerely,

  
Tim Virtue, Acting Deputy Chief  
Asset Forfeiture and Money  
Laundering Section