



**I. Summary.**

For the reasons set forth below, the Examiner believes that this Court should modify paragraph 11 of the Amended Order Appointing Receiver, and permit Movants to intervene, for the limited purpose of allowing Movants to seek to modify paragraph 10(e) of the Amended Order Appointing Receiver.<sup>3</sup>

As explained further below, the Examiner believes that it is appropriate for the parties and the Court to consider, on the merits, whether the creditors (including the Investors) of the Stanford entities would be better served in bankruptcy proceedings for one or more of those entities.

**II. Movants appear to seek only limited relief.**

The Movants seek two forms of relief. First, Movants ask that they be permitted to intervene in this action. Second, Movants ask that paragraph 11 of the Amended Order Appointing Receiver be modified or amended to permit Movants to seek a modification of paragraph 10(e) of the Amended Order Appointing Receiver.

Paragraph 10(e) of the Amended Order Appointing Receiver enjoins creditors and all other persons from filing any case, complaint, petition or motion under the Bankruptcy Code. Paragraph 11 of the Amended Order Appointing Receiver enjoins creditors and all other persons from seeking to modify paragraph 10(e) for a period of one hundred eighty (180) days from the entry of the Order. The Court's Amended Order

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<sup>3</sup> The Examiner respectfully submits that the Court should otherwise leave the Amended Receivership Order in place.

Appointing Receiver was entered March 12, 2009; accordingly, the injunction found in paragraph 11 will expire by its terms on September 9, 2009. As the Examiner understands the relief sought by Movants, it is simply to shorten the duration of the injunction found in paragraph 11 from its stated length of one hundred eighty (180) days to something that likely will be more than ninety (90) but less than one hundred eighty (180) days.<sup>4</sup>

The Examiner notes that the Receiver's response to Movants' motion [Doc. No. 422] assumes that granting the Movants' requested relief will immediately result in the filing of an involuntary bankruptcy petition as to any or all of the Defendants. Doc. No. 422 at 1-2 and n. 2. The Examiner does not read the Motion as broadly as does the Receiver. Nevertheless, the Examiner does not support any order that would give the Movants the ability immediately to file involuntary bankruptcy petitions as to one or more of the Defendants or related Stanford entities. Rather, as is set forth in more detail below, the Examiner believes that the Court and the Investors would benefit from an examination of the relative merits of bankruptcy proceedings versus the continuation of the Receivership in its present form. The Examiner respectfully suggests that neither the Movants nor the Receiver have articulated in their current briefing a factual basis for the result each advocates.

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<sup>4</sup> The Examiner assumes the Movants will file a Reply Brief on or about June 16, such that any decision by the Court to modify paragraph 11 would not become effective until the injunction had been in place for at least ninety (90) days.

**III. If permitted to intervene, Movants must demonstrate that the relief they seek will provide a benefit to the Investors.**

Movants make it clear that their ultimate goal is to obtain the ability to "file an involuntary bankruptcy petition against one or more of the Defendants." Movants' Brief at 3. Movants do not specify the particular Defendants, or other Stanford entities, that might be the subjects of such bankruptcy filings. It appears from Movants' Brief that the primary target of such a filing might be Stanford International Bank, Ltd. ("SIB"), but that is far from clear.

If the Movants are permitted to intervene and seek a modification of paragraph 10(e) of the Amended Order Appointing Receiver, 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. The Examiner respectfully submits that the Court ought not consider modifying paragraph 10(e) of the Amended Order Appointing Receiver until the Movants (i) identify with specificity the Stanford entities that they would seek to place into bankruptcy proceedings, and (ii) introduce some evidence to support their contention that bankruptcy proceedings will result in a better outcome for the creditors, including the Investors.

In that regard, it is important to keep in mind that the Investors include creditors of multiple Stanford entities. The purchasers of CDs issued by SIB are certainly going to be the largest single group of creditors, whether viewed as creditors only of SIB or as

creditors of the combined Defendants and Stanford entities. They are not the only creditors who are Investors. Purchasers of coins or bullion from Stanford Coins & Bullion, Inc. are likely creditors of that entity. Investors who purchased interests in limited partnerships for which Stanford Capital Management, LLC served as the general partner likely are creditors of that entity. Accountholders of Stanford Group Company and Stanford Trust Company are likely creditors of those entities. At least some Investors will likely be creditors of multiple Stanford entities.<sup>5</sup> Any substantive discussion of placing one or more Stanford entities into bankruptcy proceedings necessarily must involve evidence -- as opposed to argument -- addressing how those proceedings will work to the advantage of Investors who are creditors of multiple Stanford entities.

The Examiner believes that Movants must also address with more specificity, and offer some evidence with respect to, two additional issues. The first is the Movants' contention that bankruptcy proceeds should be commenced now so that the "benefits" of a bankruptcy filing are not lost. Doc. No. 369 at 8. Since the Receivership has been in existence for less than one hundred twenty (120) days, it seems premature to suggest that some critical juncture for shifting to a bankruptcy proceeding is at hand. The second is whether the institution of bankruptcy proceedings at this point will increase the administrative costs of the Estate. While it is undeniable that the Receivership has thus far been an expensive enterprise, *see* Doc. No. 384, it is equally true that the institution of

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<sup>5</sup> It is entirely likely, for example, that a single Investor would have purchased SIB CDs, invested in a limited partnership interest, and maintained a coin & bullion account.

bankruptcy proceedings will create new layers of expense that will be borne by the Estate (whether that is the Receivership estate or a bankruptcy estate). The Examiner shares the Receiver's concern that the costs of transitioning to bankruptcy proceedings, together with the costs of Trustees and the various professionals that would necessarily be hired by the Trustees and the various constituent committees that would likely form could well equal or exceed the costs of the Receivership. This Estate is already burdened with the costs of both the Receiver and the Antiguan Liquidators; any additional layers of costs will simply reduce further the ultimate recovery, if any, by the Investors and other creditors.

**IV. The Receivership is increasingly dealing with Bankruptcy Court issues.**

As noted above, the Examiner has significant reservations concerning the extent to which one or more bankruptcy proceedings would serve the interests of the Investors. Nevertheless, the Examiner respectfully submits that the Receiver increasingly is addressing matters, and seeking approval of processes, that are governed by the Bankruptcy Code and familiar to the bankruptcy courts.

For example, the Receiver has filed a motion seeking the Court's approval of a procedure through which the Receiver can liquidate real property [Doc. No. 389]. The bankruptcy courts commonly administer the liquidation of real property assets, such that there is a process in place for such liquidations. The Receiver has recently filed a fee application seeking compensation for his services and the services of his various professional firms and the Court's approval of a process for handling future fee applications. [Doc. No. 384]. The bankruptcy courts commonly review and approve

similar fee applications, such that there is a process for doing so already in place. In his Interim Status Report [Doc. No. 336], the Receiver notes that he will propose and file a list of recognized claims at a later stage in this proceeding. Doc. No. 336 at 29. The Bankruptcy Code already provides mechanisms for recognizing (and objecting to) claims and creates a priority system for the payment of those recognized claims.

In his Response, the Receiver urges that an equity receivership is more efficient and flexible than a bankruptcy proceeding and that this efficiency will ultimately benefit the creditors, including the Investors. Doc. No. 422 at 2-3. That may be so, but the Receiver's argument is almost entirely a legal one -- it addresses few facts relating to this Receivership. Given the fees sought by the Receiver in his recent fee application [Doc. No. 384], there are few (if any) Investors who view this receivership as a model of efficiency. It is also fair to say that there are few Investors who would agree with the Receiver's assertion that this Receivership has thus far been protective of their due process rights.<sup>6</sup> *See* Doc. No. 422 at 10.

**V. Procedural recommendation for moving forward.**

The Examiner believes that the Court should give the Movants, the Receiver, and the other parties to this action an opportunity to address on the merits whether the Receivership should continue in its present form or whether the creditors would be better served by shifting some or all of the Stanford entities into bankruptcy proceedings. It

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<sup>6</sup> To be fair, it is entirely likely that many of the Investors would be equally unhappy with their treatment under the priority scheme established by the Bankruptcy Code.

may well be that the Movants can demonstrate that one or more bankruptcies will yield a better result for the Investors. Conversely, the Receiver may well demonstrate that the Receivership is more flexible, efficient and cost-effective than one or more bankruptcies, to the ultimate benefit of the Investors. At the moment, neither the Receiver nor the Movants have addressed the facts of this issue.

The Examiner respectfully suggests that the Court should grant Movants' motion to intervene for the limited purpose set forth above, and should adopt a procedure similar to that which is in place for addressing the Antiguan Liquidators' pending Chapter 15 Petition. That is, the Court should direct the Parties (Movants, the Receiver, the SEC, the IRS, the Examiner and others) to prepare and submit a Joint Status Report setting forth their views (agreed upon or otherwise) for how the Court can best address whether bankruptcy filings should be permitted with respect to some or all of the Stanford entities and Defendants.

Wherefore, the Examiner respectfully submits that the Court should grant the Movants leave to intervene, and should modify paragraph 11 of the Amended Order Appointing Receiver, for the limited purpose of permitting the Movants to file their Motion to modify paragraph 10(e) of the Amended Order Appointing Receiver.



Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

On June 1, 2009 I electronically submitted the foregoing document to 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