

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

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| SECURITIES AND EXCHANGE COMMISSION | § |
| | § |
| Plaintiff, | § |
| | § |
| v. | § |
| | § |
| STANFORD INTERNATIONAL BANK, LTD., | § |
| STANFORD GROUP COMPANY, | § |
| STANFORD CAPITAL MANAGEMENT, LLC, | § |
| R. ALLEN STANFORD, JAMES M. DAVIS, and | § |
| LAURA PENDERGEST-HOLT, | § |
| | § |
| Defendants. | § |

Case No. 3:09-CV-0298-N

**RECEIVER'S REPLY TO DEFENDANTS' OPPOSITION TO
MOTION TO APPOINT PRIVATE EQUITY ADVISOR**

Ralph S. Janvey, Receiver for Defendants and all Stanford-controlled entities, files his Reply to the Opposition to Receiver's Motion to Appoint Private Equity Advisor ("Opposition") filed by Defendants R. Allen Stanford, Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC (collectively "Defendants")¹ and respectfully shows the Court as follows:

I. ARGUMENT AND AUTHORITIES

Notably, in their Opposition, Defendants do not dispute that the Receiver is under a Court-ordered mandate to manage the private equity holdings contained in the Receivership Estate's investment portfolio (the "Investment Portfolio"). Likewise, Defendants do not contest that the Receivership Order grants the Receiver the authority to hire consultants "as the Receiver

¹ The Receiver disputes the ability of the attorneys for R. Allen Stanford to represent any of the corporate entities in receivership.

judges necessary” to assist him in connection with the administration of the Receivership Estate and its associated Investment Portfolio. Amended Order Appointing Receiver (Doc. 157), at 5(h). Instead, Defendants argue in their Opposition that (1) the Receiver has already employed other firms with private equity experience; and (2) the fee structure of Park Hill Group, LLC (“PHG”) is not in the best interests of the Receivership Estate. Both of these arguments are without merit.

A. The Receiver requires a private equity advisor to manage the Investment Portfolio.

As noted in the Receiver’s Motion, the Investment Portfolio consists of debt and equity investments in over 40 different companies. The complexity of the Investment Portfolio clearly requires the service of private equity professionals to assist in the proper management and liquidation of the holdings. In addition to direct investments in portfolio companies, Stanford invested in a disparate and dizzying array of private equity, venture capital, and real estate funds. These investments vary widely in size, and are not industry-focused. Many of these holdings are illiquid and require professional analysis to determine their value. Further, in certain instances, the Receivership Estate is faced with obligations to infuse additional capital into the investments in a timely manner or face the potential dilution of its interests. Simply ignoring the holdings in the Investment Portfolios, or injecting additional funding into them without proper evaluation, would be highly detrimental to the Receivership Estate. Given the challenges inherent in the Investment Portfolio, the Receiver’s need for professional private equity advice to manage these assets is apparent.

B. The Receiver conducted a diligent search and considered multiple professional firms before determining PHG was the best option.

The Receiver carefully weighed all of his potential options before selecting PHG. Over a six-week time period, the Receiver considered a number of firms and conducted

interviews with seven of them. The Receiver held further discussions with four of these firms before ultimately selecting PHG as the best fit to manage the array of holdings present in the Investment Portfolio. As illustrated in the material and resumes attached to the Receiver's Motion, PHG's professionals are highly qualified to assist the Receiver in this capacity. Retaining PHG will provide the professional expertise that the Receiver requires to ensure that the Receivership Estate receives maximum value from an orderly liquidation of the Investment Portfolio.

Defendants argue that several professional firms already engaged by the Receiver should instead be charged with the task of managing the Investment Portfolio. In support of this, Defendants cite to various websites and biographies from Baker Botts, Ernst & Young, and Strategic Capital Corporation. The Receiver does not dispute that he has retained other professional firms that have some level of experience with certain aspects of private equity investments. However, the Receiver has not engaged any of these firms to conduct the specific, day-to-day management tasks PHG would undertake with respect to the Investment Portfolio, nor would it be in the best interest of the Receivership Estate to do so. Defendants fail to recognize that *any* professional firm—including those that the Receiver has already retained for other purposes in connection with this Receivership—is going to request compensation for the time that its professionals spend managing the array of holdings that make up the Investment Portfolio.

Finally, this argument is disingenuous at best as these same “parties” have previously objected to the Receiver making any payments to Baker Botts, Ernst & Young, or Strategic Capital Corporation. *See* Defendants R. Allen Stanford, Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLCs' Response in

Opposition to the Receiver's Motion for Approval of Interim Fee Application and Procedures for Future Compensation of Fees and Expenses and Brief in Support at 16, 18 & 19 (Doc. 439).² Now, however, the Defendants have discovered a sudden fondness for these three firms with respect to at least some work efforts. This change in position aptly demonstrates both Defendants' reflexive objection to any action of the Receiver and the reasons why their positions should be given little credence by the Court. PHG's considerable private equity experience, combined with its favorable fee structure (detailed below), make it the Receiver's best option for the ongoing management of the Investment Portfolio.

C. PHG's fee structure is designed to minimize fees to the Receivership Estate.

Defendants object to the Receiver's proposed fee arrangement with PHG because it is based upon the potential sale of assets in the Investment Portfolio. However, all the candidate firms the Receiver interviewed included such a fee arrangement as part of their proposals, and such a fee agreement actually will minimize costs to the Receivership Estate, while, at the same time, incentivizing PHG to maximize the value that the Receivership Estate ultimately receives from the Investment Portfolio. As noted, PHG will require an initial \$375,000 retainer. However, PHG's compensation will be based solely upon a 3% commission from the sale of assets in the Investment Portfolio, and PHG will apply this retainer to offset the first \$375,000 of its 3% fees earned. By this method, the Receiver will not incur billing at an hourly rate from the day-to-day management of the holdings contained in the Investment Portfolio. In addition, the current true value of many of Stanford's investments remains uncertain. With the proposed point-of-sale fee arrangement, PHG is encouraged to obtain the maximum possible benefit for these holdings from any potential bidders. At the same time, the

² The same Defendants also moved to disqualify Baker Botts from the matter. *See* Defendants' Motion to Disqualify Baker Botts L.L.P. (Doc. 478).

fee arrangement ensures that PHG's compensation remains directly proportional to the actual value that the investments add to the Receivership Estate.

Finally, Defendants argue throughout their Opposition that the Receiver is not entitled to sell any of the holdings contained in the Investment Portfolio. This is not the case, nor is this the appropriate time for Defendants to lodge objections to any future sales. A common-law equity receiver has the power to dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Like IOF and Midway, many of the funds in the Investment Portfolio are performing poorly or require the Receivership Estate to continue to inject large amounts of capital to avoid the potential dilution of its ownership interests. Generally, it is in the best interest of the Receivership Estate to marshal and conserve its remaining funds and avoid making large capital contributions into investment vehicles that are performing poorly and represent high levels of risk. However, any potential sale of the holdings contained in the Investment Portfolio is subject to this Court's approval. Thus, the hiring and retention of PHG will not preclude Defendants from raising their objections to divestment of any holdings contained in the Investment Portfolio at the proper time.

II. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Receiver respectfully requests that the Court (1) authorize the retention of PHG; (2) approve the payment of fees to PHG pursuant to the Fee Proposal attached to the Receiver's Motion; and (3) grant any such other relief that is just and equitable.

Dated: August 20, 2009

Respectfully submitted,

Baker Botts L.L.P.

By: /s/ Kevin M. Sadler

Kevin M. Sadler
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
Robert I. Howell
Texas Bar No. 10107300
robert.howell@bakerbotts.com
David T. Arlington
Texas Bar No. 00790238
david.arlington@bakerbotts.com
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039
(512) 322-2500
(512) 322-2501 (Facsimile)

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
2001 Ross Avenue
Dallas, Texas 75201
(214) 953-6500
(214) 953-6503 (Facsimile)

**ATTORNEYS FOR RECEIVER
RALPH S. JANVEY**

CERTIFICATE OF SERVICE

On August 20, 2009 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/ Kevin M. Sadler
Kevin M. Sadler