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

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.	§	
	§	Case No. 03:09-CV-0724-N
Plaintiff,	§	
v.	§	
JAMES R. ALGUIRE, ET AL.	§	
Relief Defendants.	§	

RECEIVER'S MOTION FOR ORDER FREEZING AND FOR DISGORGEMENT OF ASSETS HELD IN THE NAMES OF CERTAIN RELIEF DEFENDANTS AND BRIEF IN SUPPORT THEREOF

BAKER BOTTS L.L.P.
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

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Page(s)

CASES

The Receiver's investigation has confirmed that the Stanford defendants were operating a fraud machine, the engine of which was revenue generated by sales of Stanford International Bank Ltd. ("SIB") CDs. The revenue, let alone any profit, from the numerous, diverse, complicated, and sometimes equally fraudulent, transactions in which the Stanford defendants engaged was miniscule. The lifeblood of the entire worldwide operation was new SIB CD sales. The over $7 billion bilked from SIB CD investors paid for many things including numerous lavish Stanford offices, luxurious homes and cars for the defendants and their families, a fleet of aircraft, political contributions, athletic sponsorships, speculative "investments," and the list goes on. But the Stanford defendants also spent new SIB CD purchase money in even more sinister ways, and ones specifically designed to conceal and prolong the fraud scheme.

New SIB CD purchase money funded loans, commissions, bonuses, and other compensation to financial advisors so they would be motivated to move their clients out of other legitimate investment vehicles and into fraudulent SIB CDs and to keep their clients' money under the control of the Defendants. Likewise new SIB CD purchase money funded the payments made to a small percentage of investors who collected purported interest and redemption payments on their CDs, at the same time that other investors were still being lured into purchasing new CDs or keeping their CD investment under the control of the Stanford defendants. Money diverted from thousands of unwitting investors to these improper purposes was stolen money; obtained through fraud and deception practiced on a massive scale.

The ultimate purpose of this Receivership is to make the "maximum disbursement to claimants." This requires the Receiver to maximize the pool of assets that will be available for distribution. To accomplish this, the Court has charged the Receiver with the duty to take control of all assets of the Estate and traceable to the Estate, "wherever located." The hard truth

is that a significant amount of money stolen from SIB CD purchasers – a conservative estimate is $800 million – was paid out to financial advisors and early investors in the form of CD Proceeds just in the months prior to the appointment of the Receiver.

The freeze that has been in place since the Receivership was instituted has insured that approximately $300 million of these funds will be, upon final adjudication of the Estate's right to them, readily available for distribution to Stanford claimants. The continuation of this freeze is necessary for the same reason. If these funds are released on August 3rd (*See* Order, Doc. 533), they will be dispersed worldwide and only recovered, if at all, at great cost – perhaps prohibitive cost – to the Estate. The ease with which tens of millions of dollars can be moved electronically within minutes poses a real and serious risk that if the funds currently frozen are released, much will surely become unrecoverable at any cost when Relief Defendants, knowing of the Receiver's claim, intentionally move them beyond his reach. For these reasons the Receiver requests immediate consideration of this motion for a continuation of the freeze.

Both prior to and since the date of the Court's June 29, 2009 Order stating that the current account freeze will end as to certain investor accounts at noon on August 3, the Receiver's team has worked diligently to review and release as many Pershing, SEI and JP Morgan accounts as possible. Just since June 29, the Receiver's team has reviewed and released over 750 accounts with a value of approximately $225 million. The investor accounts on which the Receiver requests a continued freeze are only those necessary to satisfy an order disgorging the amount of SIB CD Proceeds received by the associated Relief Defendants named in the Receiver's Amended Complaint. These accounts represent approximately $300 million of recoverable assets to the Receivership Estate.

Opposition to the existing freeze and to the Receiver's claw-back claims against Relief Defendants has been premised on the assertion that the Relief Defendants are innocent of any wrongdoing; that they are, in fact, also victims of the Stanford scheme. The Receiver does not allege at this time that any of the Relief Defendants participated in the fraudulent scheme at issue in the SEC's case or otherwise engaged in any wrongdoing. Moreover, some Relief Defendants consider themselves "net losers", such as financial advisors who also owned the SIB CDs they were selling and who did not cash them out; and investor Relief Defendants who received fewer CD Proceeds than they invested. But the partial losses of this small percentage of claimants cannot be minimized further at the expense of thousands of other claimants. The case law universally supports a pro rata distribution of Estate assets; investor claimants must share the Estate assets – and the pain of loss – equally. *See e.g., SEC v. Infinity Group Co.*, 226 Fed. Appx. at 217, 219 (3rd Cir. 2007).

Although the Receiver understands the indignation and pain the Relief Defendants express, he has a duty to pursue the claims against them for the benefit of those who have, so far, suffered a 100% loss. This duty is not shared by those who object to such claims, including the Examiner and SEC. If the Receiver did not pursue these claims, then an investor who redeemed millions of dollars in CDs just before the Receivership began could recover 100%, or more, of his initial investment – despite the absolute certainty that what he received was money stolen from other investors.

For example, on or about January 23, 2009 Relief Defendant Gregory Alan Maddux received $3,669,735.10 in SIB CD Proceeds, consisting of $3,500,000 in principal and $169,735.10 in purported interest. On December 19, 2008, Relief Defendant Regions Bank received over $13 million in CD Proceeds. Mr. Maddux and Regions Bank were lucky. Had

they waited only a few more weeks and tried to cash out after the Receivership began, they would have received nothing.

Through no fault of their own, more than 20,000 other investors were not so lucky. Those who did not cash out before the Receivership are waiting, and will continue to wait for some time, to receive pennies on the dollar. There is no legal authority for a Receiver to allow such an inequity to go unchallenged. To the contrary, the case law establishes that all persons who were deceived into parting with their money are to be treated equally according to law, and not preferentially according to mere chance. No one – not the SEC, not the Examiner, and not the fortunate few who cashed out in time – has come forward with a single case holding that victims' compensation should be based on who was quick enough, or lucky enough, to receive a pay-off with stolen money before the Stanford fraud was revealed and the house of cards collapsed.

The fraudulent proceeds received by the financial advisors and investors (collectively, the "Relief Defendants") was delivered, either to brokerage and trust accounts, or to depository banks, or directly to the investors and brokers. A substantial portion of the fraudulent proceeds – approximately $300 million – was received into accounts in the name of or controlled by the Relief Defendants in the custody of (a) Pershing LLC ("Pershing"), the primary clearing broker used by Defendant Stanford Group Company ("SGC") in the conduct of its brokerage business, (b) SEI Private Trust Company ("SEI"), which holds Stanford Trust Company customer accounts or (c) JP Morgan Clearing Corp., which also holds SGC customer brokerage accounts. Pershing and SEI ("Custodian Relief Defendants") are also relief defendants in this action solely to facilitate final relief upon an adjudication that the money in the frozen accounts should be disgorged and delivered to the Receiver's exclusive control.

This motion seeks both immediate temporary relief and a final order of disgorgement.[1] The Receiver first requests an order freezing certain assets currently held at Pershing, JP Morgan and SEI in the names of the Relief Defendants in an amount equal to payments of CD Proceeds received by Relief Defendants from SIB, so that this property of the Estate may be preserved and protected while the Receiver seeks an order of disgorgement.

The Receiver also seeks an order against the Relief Defendants with frozen Pershing, JP Morgan and SEI accounts or who have transferred funds to the Receiver's escrow account for disgorgement of the amount of CD Proceeds those Relief Defendants received. Contemporaneously with this motion, the Receiver is filing a Motion for Order Establishing Summary Proceedings to govern adjudication of the request for disgorgement.

I. FACTUAL BACKGROUND

A. Stanford investors were defrauded out of over $7 billion.

The court has already made findings regarding the fraud committed by Robert Allen Stanford. *See* Preliminary Injunction and Other Equitable Relief as to R. Allen Stanford (Doc. 159), ¶¶ 11, 16-18.

Stanford is the owner of virtually 100% of more than 130 affiliated companies that operated under the brand Stanford Financial Group. The Stanford Group Company ("SGC") is a Houston-based corporation, registered with the SEC as a broker-dealer and investment

[1] The Motion for Disgorgement applies to all investor Relief Defendants named in the Amended Complaint who have accounts currently frozen at Pershing, SEI or JP Morgan or who have transferred funds to the Receiver's segregated escrow account pending final adjudication of rights to those funds. The Receiver's Motion for Continued Freeze applies only to the investor Relief Defendants who have accounts currently frozen at Pershing, JP Morgan or SEI, as the freeze on those accounts, per this Court's June 29, 2009 Order in *SEC v. Stanford Int'l Bank, Ltd., et al.,* Civil Action No. 3-09-CV-0298-N, expires at Noon on August 3, 2009. The financial advisor Relief Defendants are not addressed in any of the Receiver's motions being filed on this date, as the freeze on their Pershing, SEI and JP Morgan accounts continues even under the Court's June 29, 2009 Order. Similarly, the Receiver's motions do not apply to the investor Relief Defendants who have no Pershing, SEI or JP Morgan accounts and have not transferred funds to the Receiver's escrow accounts, as those claims do not require the emergency relief being requested by the Receiver.

adviser. SEC App. 585.[2] SGC had offices located throughout the U.S., including Dallas, Texas. SEC App. 928, 945. SGC's principal business consisted of sales of purported "certificates of deposit" ("CDs") issued by the Stanford International Bank, Ltd.

SIB purported to be a private international bank that was marketed as part of SFG, "a totally American company based in Houston, Texas." Appx. in Support of the Receiver's Motion for Leave to File Supp. Evidence (Doc. 42) at 16, Case No. 3:09-cv-721-N (filed 07/14/2009). SIB CDs were touted as very safe investments that consistently delivered high returns. Some marketing materials told investors that SIB deposits were protected by NASD and SIPC coverage, were insured by Great American Insurance Company and General Star Indemnity Co. and that SIB underwent a stringent Risk Management review by a U.S. insurance broker. *Id.* at 23-25, 30-32.

For almost 15 years, SIB represented that it had experienced consistently high returns on its investment of deposits, ranging from 11.5% in 2005 to 16.5% in 1993. SEC App. 345, 670, 1030. Since 1994, SIB claimed that it never failed to hit targeted investment returns in excess of 10%. SEC App. 407, 590. SIB claimed that its "diversified portfolio of investments" lost only $110 million or 1.3% in 2008. SEC App. 541. During the same period the S&P 500 lost 39% and the Dow Jones STOXX Europe 500 Fund lost 41%. *Id.*

SIB offered significantly higher rates on its CDs than conventional banks and disproportionately large commissions to financial advisors who sold CDs. SEC App. 531, 533, 591, 669. On November 28, 2008 SIB quoted a rate of 5.375% on a 3-year flex CD, while comparable U.S. banks' CDs paid under 3.2%. SEC App. 541. SIB paid SGC a 3% fee on sales

[2]Citations to "SEC App. ___" are references to pages within the four volumes of evidence offered by the SEC upon filing this case and can be found in the record at Docket No. 7.

of CDs and financial advisors received a 1% commission on the sale of CDs. SEC App. 591, 669.

In its 2007 annual report, SIB represented that its portfolio was allocated in the following manner: 58.6% equity, 18.6% fixed income, 7.2% precious metals and 15.6% alternative investments. SEC App. 871. In fact, approximately 80% of SIB's investment portfolio, the so-called Tier III portfolio, was in unknown assets under the apparent control of Allen Stanford and James Davis. SEC App. 31, 586. And purported "earnings" on SIB investments were actually fabricated monthly by Jim Davis and persons working at his direction and under his supervision. The earnings figures were pegged at whatever amount was needed to give SIB acceptable financial performance and capital ratios for regulatory purposes. In other words, earnings — at least for the last three years and probably longer — were fictitious "plugged" numbers.

B. The Defendants operated a Ponzi scheme with investor money.

A Ponzi scheme is defined as "[a] fraudulent investment scheme in which money contributed by later investors generates artificially high dividends or returns for the original investors." BLACK'S LAW DICTIONARY 975 (abridged 8th ed. 2005). Extensive forensic accounting work indicates that the Defendants operated a Ponzi scheme. SIB was nothing like a typical commercial bank. It did not offer checking accounts and did not, in the normal course, make loans. It had one principal product line — certificates of deposit — and one principal source of funds — funds from CD purchases. KVT Decl. ¶ 9, App. 4. The Receiver and his professionals have undertaken an extensive analysis of SIB's bank accounts, in particular four operating accounts and two money market accounts. KVT Decl. ¶ 25, App. 9-10. Substantially all of the funds deposited into each of these accounts were proceeds from the sale of SIB CDs.

Id. These same accounts were then the source of CD Proceeds paid out to customers and financial advisors.

The forensic analysis of cash flows for 2008 through February 17, 2009 indicates that funds from sales of new SIB CDs were used to make purported interest and redemption payments on pre-existing CDs. Redemptions of principal and payments of interest on CDs should generally be paid from earnings, liquid assets or reserves. In this case, CD sale proceeds were used because sufficient assets, reserves and investments were not available to cover the liabilities for redemptions and interest payments. "Although SIB received some returns on investments, these amounts were miniscule in comparison to the obligations." KVT Decl. ¶ 14, App. 6.[3]

At the inception of the U.S. Receivership on February 16, 2009, the total principal amount of outstanding SIB CDs was approximately $7.2 billion (U.S.), according to SIB records. This $7.2 billion reflects a liability on the books of SIB, as it is owed to the investors. Although the SIB financial statements reflect investments valued at $8.3 billion (classified as assets) as of December 31, 2008, the combined assets of all Stanford Entities (SIB included) have a total value of less than $1 billion. SIB is insolvent and apparently has been for a considerable time. KVT Decl. ¶ 13, App. 5.

C. The Relief Defendants all received proceeds from the Stanford Ponzi scheme.

The Relief Defendants in this case all received CD proceeds in the form of loans, commissions, bonuses or other compensation for the sale of CDs or interest or redemption

[3]Both Allen Stanford and James Davis have refused to testify, provide an accounting, or produce any documents related to the matters alleged by the SEC. *See* Declarations, attached as App. 59-64. Their invocation of the Fifth Amendment right against self incrimination permits the Court to draw the adverse inference that their testimony would support the SEC's allegations. *See GE Capital Commercial, Inc. v. Wright & Wright Inc*., 2009 WL 11148235, at *3 (N.D. Tex. Apr. 28, 2009); *Breeden v. Kirkpatrick & Lockhart, LLP*, 268 B.R. 704, 712 (S.D.N.Y. 2001); *SEC v. Homa*, 2004 WL 1474580, at *3 (N.D. Ill. June 28, 2004).

payments on the CDs they owned. KVT Decl. ¶¶ 15, 24, 46-54, App. 6, 8-9, 19-22. In other words, each of the Relief Defendants received funds that can be traced to proceeds from the sale of fraudulent CDs.[4]

II. ARGUMENT & AUTHORITIES

A. This Court has the power to order a temporary asset freeze against Relief Defendants.

The Court has expansive equitable powers over an SEC receivership. "It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." *SEC v. Great White Marine & Recreation, Inc.*, 428 F.3d 553, 556 (5th Cir. 2005) (citation omitted). Likewise, "[t]he district court has broad equitable powers to fashion appropriate relief for violations of the federal securities laws." *SEC v. First Pac. Bancorp.*, 142 F.3d 1186, 1193 (9th Cir. 1998). The Court may "grant ancillary relief . . . where necessary and proper to effectuate the purposes of" the securities laws. *SEC v. Am. Bd. of Trade, Inc.*, 830 F.2d 431, 438 (2nd Cir. 1987).

Pursuant to these powers, the Court may order an asset freeze. *See SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734 (11th Cir. 2005). The purpose of an asset freeze is to preserve the status quo by preventing dissipation and diversion of assets. *SEC v. Infinity Group Co.*, 212 F.3d 180, 197 (3rd Cir. 2000). In this way, the freeze "preserve[s] funds for the equitable remedy of disgorgement." *ETS Payphones*, 408 F.3d at 734; *see also SEC v. Unifund SAL*, 910 F.2d 1029, 1041 (2nd Cir. 1990) (asset freeze designed "to facilitate enforcement of any disgorgement remedy that might be ordered").

[4]In terms of where the Relief Defendants' CD proceeds currently reside, the Relief Defendants can be described as (1) Stanford customers or financial advisors who have a frozen account at Pershing, SEI or JP Morgan; (2) Stanford customers who, pursuant to stipulation, have transferred assets equal to the value of purported CD proceeds to the Receiver's escrow account; and (3) Stanford customers and financial advisors who do not presently have any frozen accounts or funds in escrow.

An asset freeze may be ordered against relief defendants. *See SEC v. Cavanagh*, 155 F.3d 129, 136 (2nd Cir. 1998); *SEC v. Cherif*, 933 F.2d 403, 414 (7th Cir. 1991); *SEC v. Byers*, 2009 WL 33434, at *2–3 (S.D.N.Y. Jan. 7, 2009); *CFTC v. Bolze*, 2009 WL 1313249, at *7 (E.D. Tenn. Apr. 1, 2009); *SEC v. Amerifirst Funding, Inc.*, 2008 WL 282275, at *1 (N.D. Tex. Feb. 1, 2008), *vacated in part on other grounds sub nom.*, *Whitcraft v. Brown*, 570 F3d 268, 270 (5th Cir. 2009); *SEC v. Elfindepan, S.A.*, 2002 WL 31165146, at *4–5 (M.D.N.C. Aug. 30, 2002); *SEC v. Milan Capital Group, Inc.*, 2000 WL 236374, at *1, 3 (S.D.N.Y. March 1, 2000); *CFTC v. IBS, Inc.*, 113 F. Supp. 2d 830, 852–53 (W.D.N.C. 2000), *aff'd sub nom.*, *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 189 (4th Cir. 2002); *SEC v. Heden*, 51 F. Supp. 2d 296, 299 (S.D.N.Y. 1999); *SEC v. Pinez*, 989 F. Supp. 325, 345 (D. Mass. 1997); *SEC v. Certain Unknown Purchasers*, 1983 WL 1343, at *1 (S.D.N.Y. July 25, 1983).

The amount of the assets to be frozen need only be a reasonable approximation of the amount of assets subject to disgorgement. *ETS Payphones*, 408 F.3d at 735-36 (quotation omitted); *see also SEC v. Reynolds*, 2008 WL 4107528, at *2 (N.D. Tex. Aug, 22, 2008); *SEC v. Lauer*, 445 F. Supp. 2d 1362, 1370 (S.D. Fla. 2006). The burden then shifts to the opponent of the freeze to demonstrate that the estimate is not a reasonable approximation. *ETS Payphones*, 408 F.3d at 735.

Moreover, if the Relief Defendants received funds traceable to the underlying fraud, the assets to be frozen need not be the same funds they received. Even if the Relief Defendants spent the actual CD Proceeds on other investments, gifts to family members, or mortgage payments, other assets equal to the amount of the CD Proceeds can be frozen. *See Lauer*, 445 F. Supp. 2d at 1370 (noting that "[m]any district courts . . . agree that there is no requirement that frozen assets be traceable to the fraudulent activity underlying a lawsuit"

(quotation omitted)); *SEC v. Forte*, 598 F. Supp. 2d 689, 693 (E.D. Pa. 2009) (holding that "even if Defendant could show that some of the frozen funds are from 'untainted' sources, I would not release those funds"). The purpose of an asset freeze is to preserve funds for disgorgement, and a court may order disgorgement of funds that cannot be traced to wrongdoing. *See SEC v. Banner Fund Int'l*, 211 F.3d 602, 617 (D.C. Cir. 2000) (reasoning that "disgorgement is an equitable obligation to return a sum equal to the amount wrongfully obtained, rather than a requirement to replevy a specific asset"); *Lauer*, 445 F. Supp. 2d at 1370.

Finally, there is no requirement that relief defendants be given a hearing or other opportunity to be heard prior to the issuance of an asset freeze. *See Cherif*, 933 F.2d at 415; *Elfindepan*, 2002 WL 31165146, at *4-6. In *Elfindepan*, an asset freeze was issued before any relief defendants had even been named. *Id.* at 1. After the freeze was issued, third parties with notice of the freeze spent nearly $2 million in their possession. *Id.* at 3. The SEC later amended its complaint to add the third parties as relief defendants and filed a contempt motion against them, alleging that they violated the asset freeze by spending money in their possession, even though they had not been named as relief defendants when the expenditures were made. *Id.* at 1. At the contempt hearing, the relief defendants argued that they had a right to be heard *before* the court could issue an asset freeze binding them. *Id.* at 4-5. Because the freeze was issued without their input, they argued, it did not bind them and thus they were not liable for contempt. *Id.* The district court rejected this argument, reasoning that:

> The Relief Defendants' theory would force the SEC to name all possible relief defendants and permit each of them to litigate their respective ownership interests before an injunction could issue to protect defrauded investors. **Given the court's broad equitable powers to afford relief to defrauded investors, the better approach is to permit the SEC to identify a source of fraudulent funds and freeze them pending resolution.** Parties in possession of such funds who do not have a legitimate

> ownership interest and who are given notice of the freeze are not prejudiced by such a freeze as they are not deprived of their own property.

Id. at 6 (emphasis added).

Elfindepan cited the Seventh Circuit's decision in *Cherif* to support its holding. *Id.* at 5. In *Cherif*, the district court entered an order freezing the bank account of Sanchou, the defendant's cousin. *Cherif*, 933 F.2d at 403. The basis of the two-year-old freeze – whether the SEC and district court considered Sanchou a relief defendant accused of no wrongdoing or a co-defendant accused of securities violations – was unclear on the record presented. Rather than vacate the asset freeze, the Seventh Circuit remanded the case for an evidentiary hearing to determine the proper capacity in which Sanchou should be named. *Id.* at 416. If the district court were to find that Sanchou was a nominal defendant, the freeze would remain in effect. *Id.* On the other hand, if Sanchou was a defendant, the complaint would need to be amended and the securities laws invoked against him directly to support a new freeze on his assets. *Id*.

Elfindepan and *Cherif* thus confirm that an asset freeze may bind a relief defendant before the relief defendant is given an opportunity to be heard. The power to issue such a freeze derives from "the court's broad equitable powers to afford relief to defrauded investors." *Elfindepan*, 2002 WL 31165146, at *6.

B. An asset freeze is warranted on the facts of this case.

Before a freeze can be granted, "the disadvantages and possible deleterious effects of a freeze must be weighed against the considerations indicating the need for such relief." *SEC v. Manor Nursing Ctrs, Inc.*, 458 F.2d 1082, 1106 (2nd Cir. 1972); *SEC v. Int'l Loan Network*, 770 F. Supp. 678, 696 (D.D.C. 1991), *aff'd*, 968 F.2d 1304 (D.C. Cir. 1992). The Receiver acknowledges that the asset freeze may cause hardship for some of the Relief Defendants. But a freeze should nonetheless be issued for two reasons.

First, the Receiver has made a substantial showing that the assets are ill-gotten gains to which the Relief Defendants have no legitimate claim and are therefore subject to disgorgement. As the *Elfindepan* court recognized, "[p]arties in possession of such funds who do not have a legitimate ownership interest and who are given notice of the freeze *are not prejudiced by such a freeze* as they are not deprived of their own property." 2002 WL 31165146, at *6 (emphasis added).

Second, and most importantly, the equities weigh overwhelmingly in favor of the freeze. An asset freeze is designed to preserve funds for disgorgement by preventing dissipation and diversion of assets. *See ETS Payphones*, 408 F.3d at 734; *Infinity Group*, 212 F.3d at 197. The Receiver has filed a Complaint against the Relief Defendants that seeks disgorgement of CD Proceeds. Unless an asset freeze is granted, dissipation will be immediate and widespread. The assets the Receiver seeks to have frozen are very liquid and easily moved, or hidden. Any Relief Defendant who gains access to these funds, although they do not have any ownership interest in them, could quickly and easily put them into highly illiquid investments or move them overseas. The increased cost to the Estate of executing any judgment – to recover Estate assets – after the funds have been released to the custody of the Relief Defendants will be tremendous. In order to ensure that funds are available for the final remedy of disgorgement, and that the cost of executing any judgment be minimized, the Court should freeze the assets of the Relief Defendants in an amount equal to the fraudulent proceeds they received.

Such a freeze is undeniably equitable. More than 20,000 investors received little or no proceeds from the fraud and are not named as relief defendants. *See* Appx. to Receiver's Interim Rep. on Account Freeze, Application Process, and Partial Account Releases (Doc. 529) at 1 (stating that 20,416 Stanford CD owners with Pershing accounts had been released from the

asset freeze as of June 25, 2009). Their only hope for compensation is a distribution of Receivership assets. If the Relief Defendants are allowed to keep proceeds from the fraud, despite having no legitimate right to them, then the Relief Defendants will enjoy unfair preferential treatment at the expense of the thousands of other investors who were not so lucky. If, instead, the Relief Defendants are ordered to disgorge the proceeds, all investors — including the Relief Defendants — will share equally in what remains of the Stanford assets. Far from treating the Relief Defendants unfairly, the Receiver's plan *avoids* a callous disregard for tens of thousands of other investors. Equity should not shut its eyes to the suffering of thousands in order to preserve the preferential treatment of a few.

C. The Relief Defendants are subject to disgorgement because they all received ill-gotten gains and have no legitimate right to retain those funds.

Relief defendants are joined to facilitate the recovery of funds necessary to afford full relief. *See SEC v. Colello*, 139 F.3d 674, 676-677 (9th Cir. 1998). No wrongdoing by a relief defendant is alleged. *See Colello*, 139 F.3d at 676; *Kimberlynn Creek Ranch,* 276 F.3d at 191-92; *Elfindepan*, 2002 WL 31165146, at *4. Courts can order disgorgement or other equitable relief against a relief defendant if "that person: (1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds." *Cavanagh*, 155 F.3d at 136; *SEC v. Egan*, 856 F. Supp. 401, 402 (N.D. Ill. 1993). Under this standard, both groups of Relief Defendants, financial advisors and investors, are subject to the Court's equitable powers. *See Colello*, 139 F.3d at 676 ("[A]mple authority supports the proposition that the broad equitable powers of the federal courts can be employed to recover ill gotten gains for the benefit of the victims of wrongdoing, whether held by the original wrongdoer or by one who has received the proceeds after the wrong."); *Kimberlynn Creek Ranch*, 276 F.3d at 192 n.4; *SEC v Ross,* 504 F.3d 1130, 1141 (9th Cir. 2007) ("Although the paradigmatic example of a nominal defendant is 'a bank or

trustee [that] has only a custodial claim to the property,' the term is broad enough to encompass persons who are in possession of funds to which they have no rightful claim, such as money that has been fraudulently transferred by the defendant in the underlying securities enforcement action."); *CFTC v. Hanover Trading Co.,* 34 F. Supp. 2d 203, 207 (S.D.N.Y. 1999) (A relief defendant may either be a gratuitous beneficiary of the proceeds from the principal defendants' fraud or merely the custodian of the principal defendants' assets.).

Investors in a Ponzi scheme are properly named as relief defendants and are subject to disgorgement if they received proceeds from the scheme. *See SEC v. George*, 426 F.3d 786, 798–99 (6th Cir. 2005).[5] In *George*, the SEC brought an enforcement action against the operators of a Ponzi scheme and named several investors as relief defendants. *Id.* at 788. The court-appointed receiver estimated that available funds would allow investors to recover only 42 percent of their original investments. *Id.* at 791. In order "[t]o consolidate the remaining funds," the district court granted summary judgment to the SEC against the relief-defendant investors and ordered them to disgorge any proceeds from the scheme to the receiver. *Id.* The

[5]Case law amply supports the power of a receiver to seek disgorgement of tainted funds from relief defendants who receive proceeds from a Ponzi scheme. *See SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1117 n.15 (9th Cir. 2006) (company that was used as an instrument of a Ponzi scheme ordered to disgorge all proceeds of the scheme); *SEC v. Cross Fin. Servs.*, 908 F. Supp. 718, 730-32 (C.D. Cal. 1995) (relief defendant accused of no wrongdoing ordered to disgorge proceeds of Ponzi scheme received in return for services to defendants); *Commodity Futures Trading Comm'n v. Bolze*, 2009 WL 1313249, at *2 (E.D. Tenn. Apr. 1, 2009) (relief defendant, a corporation not accused of misconduct, ordered to disgorge funds received from operators of Ponzi scheme); *Commodity Futures Trading Comm'n v. Foreign Fund*, 549 F. Supp. 2d 1005, 1008 (M.D. Tenn. 2008) (relief defendant ordered to disgorge proceeds from Ponzi scheme); *Commodity Futures Trading Comm'n v. Foreign Fund*, 2007 WL 1850007, at *5 (M.D. Tenn. June 25, 2007) (relief defendant, a corporation not accused of misconduct, ordered to disgorge customer funds received from operator of fraudulent scheme; additional relief defendant not accused of misconduct, an employee of fraudulent scheme's operator, ordered to disgorge full amount of customer funds received); *SEC v. Chem. Trust*, 2000 WL 33231600, at *11-12 (S.D. Fla. Dec. 19, 2000) (relief defendant not accused of wrongdoing but ordered to disgorge Ponzi proceeds received from both defendants and relief defendants controlled by defendants); *SEC v. Better Life Club of Am., Inc.*, 995 F. Supp. 167, 184 (D.D.C. 1998) (relief defendants not accused of wrongdoing ordered to disgorge Ponzi proceeds received from defendant as gifts or as part of sham transactions); *SEC v. Infinity Group Co.*, 993 F. Supp. 324, 331-332 (E.D. Pa. 1998) (relief defendants against whom no wrongdoing was alleged, including wife of one defendant and two trusts for which wife was trustee, ordered to disgorge cash and assets that represented ill-gotten gains from Ponzi scheme), *aff'd*, 212 F.3d 180 (3rd Cir. 2000). *See also*, *SEC v. AmeriFirst Funding, Inc.*, 2008 WL 1959843, at *5-6 (N.D. Tex. May 5, 2008) (relief defendant not accused of wrongdoing but whose principal was involved in the fraud ordered to disgorge consulting fees paid out of fraudulent proceeds); *SEC v. Dowdell*, 2002 WL 31357059, at *4-5 (W.D. Va. Oct. 11, 2002) (relief defendants accused of no wrongdoing and who received residential property purchased with Ponzi proceeds enjoined from drawing on lines of credit secured by the property).

court of appeals affirmed, reasoning that because "the SEC showed that the money [the relief defendants] received came not from profits on their investments but from the investments of others," they "received ill-gotten funds and had no legitimate claim to these funds." *Id.* at 798. The court rejected the relief defendants' argument that they should only be required to disgorge any false profit and should be permitted to keep any amount up to the value of their original investment. *Id.* at 799. According to the court, *all proceeds* received by the investors, including the return of their principal investment, were subject to disgorgement:

> Hundreds of other investors were victimized by this scheme, yet they will recover only 42 percent of the money they invested, not the 100 percent to which the relief defendants claim to be entitled. . . . [T]he use of a *pro rata* distribution has been deemed especially appropriate for fraud victims of a "Ponzi scheme" . . . . As the Supreme Court explained in the litigation that gave the Ponzi scheme its name, "equality is equity" as between "equally innocent victims." *Cunningham v. Brown*, 265 U.S. 1, 13 (1924). . . . Under these circumstances, [the relief defendants] may not receive a disproportionate share of the recovered investor funds, only the same pro rata share that other investors may receive.

George, 426 F.3d at 799 (internal quotation and citation omitted).[6]

---

[6]The SEC secured summary judgment against several relief defendants in the *George* case. The SEC pursued not only the proceeds of fraud, but prejudgment interest, even when the Relief Defendant was a net loser who received less than his original investment. In its Reply Brief for one such motion, the SEC stated:

> [I]t is legally irrelevant whether a relief defendant knows of the defendant's fraud. *See SEC v. Colello*, 139 F.3d 674, 675 (9th Cir. 1998) (Colello dismissed as a defendant and named as a relief defendant after Commission failed to obtain preliminary injunction against him). Finally, Mojica argues that he is innocent and therefore prejudgment interest should not be awarded against him. Mojica's position is wrong as a matter of law. In Commission law enforcement actions, prejudgment interest is available and appropriate against relief defendants, who necessarily are not charged with wrongdoing. . . . Mojica admits that he received $416,512 from Thorn and Estrada. He does not deny that the money came from investors. Mojica made use of the money for his own benefit. Given these facts, it would be unfair for Mojica to be allowed to benefit from his use of investor money, while the investors suffer the loss of their money. Mojica should be ordered to disgorge $416,512 plus prejudgment interest.

SEC Reply Brief in *SEC v. Thorn*, App. 80.

Having demonstrated that the defendants paid relief defendants with other investors' money, the SEC argued that it was entitled to summary judgment against investor Harris – who received $34,000 less than he invested in the scheme – because Harris admitted he did not know the source of the funds he received from the defendants. *Id.* at 80-81.

> Harris asserts that he has not profited because he is still out $34,000. But in making this argument, Harris misunderstands the law regarding relief defendants. A relief defendant is someone who received money or property that belongs to another,

As shown above, the Relief Defendants in this case all received proceeds from a Ponzi scheme. They are thus indistinguishable from the relief defendants in *George*. In fact, the argument for equitable relief is even stronger here, because other investors — those not lucky enough to receive proceeds before the Stanford fraud was discovered — will receive far less than 42 percent of their initial investment. *See* KVT Decl. ¶ 13, App. 5 ("At the inception of the U.S. Receivership on February 16, 2009, the total principal amount of outstanding SIB CDs was approximately $7.2 billion (U.S.), according to SIB records. …[B]ased on my analysis to date, the combined assets of all Stanford Entities (SIB included) for which we have financial records have a total value of less than $1 billion."). The maxim "equality is equity" applies with even greater urgency in this case.

In practice, once it is proven that distributions were made from Ponzi scheme proceeds, the courts shift the burden to the relief defendant to establish a legitimate right to retain the funds, such as a right to compensation for services that were *not in furtherance of the scheme*:

> Alternatively, the Relief Defendants contend that the district court could not proceed against them as nominal defendants because they have asserted an ownership interest in the funds through Samuel Kingsfield's testimony during the preliminary injunction hearing that the funds were received as compensation for his services. We agree that receipt of funds as payment for services rendered to an employer constitutes one type of ownership interest that would preclude proceeding against the holder of the funds as a nominal defendant. However, a claimed ownership interest must not only be recognized in law; it must also

---

> without any legitimate claim to that money or property. In this case, Harris undeniably received $506,000 of other investors' money, which he has been able to use for his own benefit since he received it.
>
> Harris also argues that he gave Thorn valuable consideration – the $540,000 he invested. However, the fact that Harris invested with Thorn does not give him a legitimate claim to the other investors' money he received. All the victims of this fraud invested money with Thorn. Yet none of them, including Harris, has a legitimate basis for claiming that they should be repaid 100-cents-on-the-dollar for even part of their claims, while other victims will receive at best only partial distributions.

Id. at 81.

> be valid in fact. Otherwise, individuals and institutions holding funds on behalf of wrongdoers would be able to avoid disgorgement (and keep the funds for themselves) simply by stating a claim of ownership, however specious.

Kimberlynn Creek Ranch, 276 F.3d at 192; *see Cavanagh*, 155 F.3d at 136; *Cherif*, 933 F.2d at 414 n.11; *Milan Capital Group*, 2000 WL 236374, at *3. None of the financial advisors or investors who have been named as Relief Defendants have any legitimate right to the CD proceeds they received as loans, commissions, bonuses, interest or redemptions. None of them rendered any services that were not in furtherance of the scheme as consideration for the funds they received.

Moreover, even if a Relief Defendant can "trace" his investment to a particular investment, asset, or account that is distinguishable from the other, perhaps more generic, uses to which the defendants put other investors' funds, this does not give rise to a legitimate ownership interest. *See United States v. Durham,* 86 F.3d 70, 73 (5th Cir. 1996) (district court did not abuse its discretion by rejecting plaintiff's request to trace and recover investment funds and holding that "all the fraud victims were in equal positions and should be treated as such"); *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (noting that "the facts did not support a remedy that would elevate the [relief defendants'] claim above the other victims" even though the relief defendants *could* trace the funds they received to a segregated account containing only their investment); *Infinity Group*, 226 Fed. Appx. at 219 (upholding a pro rata distribution plan and refusing to let an investor keep 100% of his principal even though his money was directly traceable because "there is no equitable basis to distinguish between early investors and those, like Roberts, who invested shortly before TIGC's account was frozen, and that all investors should thus be treated the same").

For these reasons the Relief Defendants are not entitled to retain money that they received from the Stanford defendants, and which was stolen from other investors. The Receiver is entitled to exclusive possession and control of those funds, to be used for the benefit of all Stanford claimants. *George*, 426 F.3d at 798 (investors in Ponzi scheme had no legitimate claim to payments from the scheme); *Kimberlynn Creek Ranch*, 276 F.3d at 190-92 (relief defendant had no legitimate claim to gratuitously transferred proceeds of securities fraud); *Cavanagh*, 155 F.3d at 137 (donee of proceeds from securities fraud had no legitimate claim to the funds); *Colello*, 139 F.3d at 676 (relief defendant who received proceeds of fraud had no legitimate claim to the funds); *SEC v. China Energy*, 2009 WL 1940794, at *8 (E.D.N.Y. July 6, 2009) (relief defendants had no legitimate claim to proceeds of securities fraud); *Byers*, 2009 WL 33434, at *4 (occupants had no legitimate claim to house whose mortgage was paid with proceeds of securities fraud); *CFTC v. Nations Invs*., LLC, 2008 WL 4376887, at *6 (S.D. Fla. Aug. 25, 2008) (relief defendants had no legitimate claim to proceeds of fraud used to pay off their home equity loans); *SEC v. Amerifirst Funding, Inc*., 2008 WL 1959843, at *5 (N.D. Tex. May 5, 2008) (relief defendant had no legitimate claim to proceeds of securities fraud despite having provided consulting services to defendant); *FTC v. Holiday Enters, Inc*., 2008 WL 953358, at *12 (N.D. Ga. Feb. 5, 2008) (relief defendant had no legitimate claim to properties purchased with proceeds of fraud); *CFTC v. Foreign Fund*, 2007 WL 1850007, at *5, 7 (M.D. Tenn. June 25, 2007) (relief defendants who did not dispute receipt of proceeds from Ponzi scheme had no legitimate claim to the funds); *FTC v. Transnet Wireless Corp*., 506 F. Supp. 2d 1247, 1273 (S.D. Fla. 2007) (relief defendant had no legitimate claim to proceeds of fraud); *CFTC v. Schiera*, 2006 WL 4586786, at *6 (S.D. Cal. Dec. 11, 2006) (same); *CFTC v. Int'l Berkshire Group Holdings, Inc.*, 2006 WL 3716390, at *10 (S.D. Fla. Nov. 1, 2006) (same);

CFTC v. Valko, 2006 WL 2582970, at *6 (S.D. Fla. Aug, 16, 2006) (same); *SEC v. Cavanagh*, 2004 WL 1594818, at *131-32 (S.D.N.Y. July 16, 2004) (same); *SEC v. Renaissance Capital Mgmt., Inc*., 2003 WL 23353464, at *4 (E.D.N.Y. Aug, 25, 2003) (relief defendant did not have legitimate claim to funds obtained from investors by fraud, despite the fact that the transfer of funds constituted repayment of a loan); *Elfindepan*, 2002 WL 31165146, at *6-7 (relief defendants who obtained proceeds of fraud pursuant to a separate fraudulent transaction had no legitimate claim to the funds); *SEC v. Lybrand*, 200 F. Supp. 2d 384, 398 (S.D.N.Y. 2002) (relief defendants who received proceeds of illegal securities sales had no legitimate claim to the funds); *SEC v. Chem. Trust*, 2000 WL 33231600, at *11 (S.D. Fla. Dec. 19, 2000) (relief defendant had no legitimate claim to proceeds of Ponzi scheme); *IBS, Inc.*, 113 F. Supp. at 855 (relief defendants had no legitimate claim to funds obtained from investors by fraud); *Milan Capital Group*, 2000 WL 236374, at *3 (recipient of funds fraudulently obtained from investors had no legitimate claim to the funds); *SEC v. Antar*, 15 F. Supp. 2d 477, 533 (D.N.J. 1998) (relief defendants who received proceeds of fraudulent stock offering did not have legitimate claim and "should not be permitted to retain funds derived from the multifarious frauds" when "their enrichment came at the expense of defrauded investors"); *SEC v. Cavanagh*, 1 F. Supp. 2d 337, 386 (S.D.N.Y. 1998) (relief defendants had no legitimate claim to proceeds of securities fraud); *Infinity Group*, 993 F. Supp. 324, 331 (E.D. Pa. 1998) (same); *SEC v. Antar*, 831 F. Supp. 380, 401–02 (D.N.J. 1993) (same).

III. PRAYER

For these reasons, the Receiver respectfully requests expedited consideration of the motion for a freeze on certain assets and an order from the Court directing that as to those investor Relief Defendants who have accounts frozen at Pershing, JP Morgan or SEI under prior Court orders, assets in those accounts equal to the value of CD Proceeds –purported principal

redemptions and fictitious interest payments – the Relief Defendants received from SIB CDs shall remain frozen pending this Court's final adjudication of the Estate's rights to the assets.

The Receiver also requests an order of disgorgement against the investor Relief Defendants:

(1) Directing that payments made directly or indirectly to investors in connection with fraudulent SIB CDs are subject to a constructive trust for the benefit of the Receivership Estate;

(2) Identifying the specific amount of ill-gotten proceeds received by each investor Relief Defendant (excluding the Custodian Relief Defendants) in connection with fraudulent SIB CDs;

(3) Providing that each of the investor Relief Defendants (excluding the Custodian Relief Defendants) is liable to the Receivership Estate for an amount equaling the amount of proceeds he or she received from fraudulent CDs;

(4) Allowing the Receiver to withdraw the assets contained in the Pershing, JP Morgan and SEI accounts in the names of or controlled by the investor Relief Defendants and add those assets, up to the amounts of fraudulent CD proceeds received by the Relief Defendants, to the assets of the Receivership Estate;

(5) That the escrow account at JP Morgan holding CD Proceeds pursuant to stipulations with investors is property of the Receivership Estate available for distribution to claimants;

(6) Requiring the investor Relief Defendants (excluding the Custodian Relief Defendants) to pay to the Receiver the difference between the amounts contained in their Pershing, JP Morgan and SEI accounts and the total amount of fraudulent CD proceeds received by the Relief Defendants; and

(7) Such other and further relief as the Court deems proper under the circumstances.

Dated: July 28, 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 CONFERENCE

I hereby certify that on July 27-28 counsel for the Receiver has conferred with (a) counsel for the SEC, Kevin Edmundson; (b) counsel for Divo Milan Haddad and Singapore Puntamita Pte. Ltd., David Bryant; (c) Gene Besen, counsel for Jay Stuart Bell, Gregory Alan Maddux, David Jonathon Drew, Andruw Rudolf Bernardo Jones, Carlos Felipe Pena, Johnny David Damon and Bernabe Williams; and (d) the Examiner, John Little. Each of them indicated they are opposed to the relief sought in this Motion. Counsel for the receiver also attempted to contact Pro Se Relief Defendant, Hank Mills, but has insufficient information to make telephone contact with Mr. Mills. Accordingly, this Motion is opposed.

/ s / Kevin M. Sadler
Kevin Sadler

CERTIFICATE OF SERVICE

On July 28, 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 will serve the Relief Defendants individually or through their counsel of record, electronically, or by other means authorized by the Court or the Federal Rules of Civil Procedure.

/ s / Kevin M. Sadler
Kevin M. Sadler

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

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.	§	
Plaintiff,	§	Case No. 03:09-CV-0724-N
v.	§	
JAMES R. ALGUIRE, ET AL.	§	
Relief Defendants.	§	

ORDER FREEZING ASSETS HELD
IN THE NAMES OF CERTAIN RELIEF DEFENDANTS

Before the Court is the Receiver's Motion for Order Freezing Assets Held in the Names of Certain Relief Defendants. It appears that the requested Order is both necessary and appropriate.

It is therefore ORDERED that:

1. The Motion for Order Freezing Assets Held in the Names of Certain Relief Defendants is GRANTED in all respects;

2. As to those investor Relief Defendants who have accounts frozen at Pershing, JP Morgan or SEI under prior Court orders, assets in those accounts equal to the value of CD Proceeds – purported principal redemptions and interest payments – the Relief Defendants received from SIB CDs shall remain frozen at Pershing, JP Morgan and SEI;

3. Pershing and SEI are restrained and enjoined from disbursing such funds or securities pending this Court's final adjudication of the Receivership Estate's rights to the assets; and

4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

So ordered and signed, this ____ day of _____, 2009 at _____.

_____
HONORABLE DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE

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

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.	§	
Plaintiff,	§	Case No. 03:09-CV-0724-N
v.	§	
JAMES R. ALGUIRE, ET AL.	§	
Relief Defendants.	§	

ORDER GRANTING RECEIVER'S MOTION FOR DISGORGEMENT

Before the Court is the Receiver's Motion for Disgorgement of Assets Held in the Names of Certain Relief Defendants. Having considered the motion, evidence and argument of counsel, the Court concludes that the requested order of disgorgement is both necessary and appropriate.

It is therefore ORDERED that:

1. The Receiver's Motion for Disgorgement of Assets Held in the Names of Certain Relief Defendants is GRANTED in all respects;

2. The Relief Defendants subject to this Order, unless otherwise indicated, are investor Relief Defendants who have accounts frozen at Pershing, JP Morgan or SEI or who have transferred funds to the Receiver's escrow account pending final adjudication of rights to those funds;

3. SIB CD Proceeds -- purported CD interest and CD redemption payments from SIB -- received by the Relief Defendants are subject to a constructive trust for the benefit of the Receivership Estate;

4. Each of the Relief Defendants is liable to the Receivership Estate for an amount equaling the amount of SIB CD Proceeds that Relief Defendant received;

5. The Receiver may withdraw the assets contained in the Pershing, JP Morgan and SEI accounts in the names of or controlled by the Relief Defendants and add those assets, up to the amounts of SIB CD Proceeds received by the Relief Defendants, to the assets of the Receivership Estate;

6. The funds contained in the Receiver's escrow account at JP Morgan, transferred pursuant to stipulations with certain Relief Defendants, are property of the Receivership Estate available for distribution to claimants;

7. The Relief Defendants are ordered to pay to the Receiver the difference between (a) the amounts contained in their Pershing, JP Morgan and SEI accounts and/or the amounts they transferred to the Receiver's escrow account and (b) the total amount of SIB CD Proceeds received by the Relief Defendants; and

8. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

So ordered and signed, this ____ day of _____ 2009.

_____
HONORABLE DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE