

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

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In re : Chapter 15

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Stanford International Bank, Ltd., : Case No. 09-0721 (DCG)

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Debtor in a Foreign Proceeding. :

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**SUPPLEMENTAL DECLARATION OF NIGEL HAMILTON-SMITH
IN SUPPORT OF THE PETITION FOR RECOGNITION OF A FOREIGN
MAIN PROCEEDING PURSUANT TO CHAPTER 15 OF THE BANKRUPTCY CODE**

1. I, Nigel Hamilton-Smith, am making this supplemental declaration in further support of the Official Form Petition and the Petition for Recognition of a Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code (the "Petition"),¹ filed in this case on April 20, 2009. I refer to my previous declaration, the Declaration of Nigel Hamilton-Smith in Support of the Petition for Recognition of a Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code (the "Previous Declaration"), also filed in this case on April 20, 2009.

2. As explained in the Previous Declaration, through my extensive work as a Joint Receiver-Manager and now as a Liquidator of Stanford International Bank, Ltd. ("SIB," or the "Debtor"), I have become familiar with SIB's day-to-day operations, assets, financial condition, business affairs and books and records. Except as otherwise indicated, all facts set forth in this Declaration are based upon: (a) my personal knowledge; (b) my review of relevant documents; (c) information supplied to me by other members of the Vantis Business Recovery team and other professionals retained to assist in identifying, securing and preserving the

¹ Capitalized terms not otherwise defined herein shall have the meaning given to them in the Petition.

Debtor's assets and books and records; (d) interviews with certain of the Debtor's remaining employees — Juan Rodriguez-Tolentino (President); Miguel Pacheco (Senior Vice President); Sascha Mercer (Senior Protocol Officer); Beverly Jacobs (Vice President Client Support); Eugene Kipper (Vice President Operations); Omari Osbourne (Finance Manager); and Jennifer Roman (Human Resource Manager); (e) interviews with former employees of Stanford Trust Company; or (f) my opinion based upon my experience and knowledge of the Debtor's operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

3. I make this Supplemental Declaration to present additional evidence regarding SIB's center of main interest ("COMI"). I also make this Supplemental Declaration to provide some initial details regarding the Liquidators' plans in the event the Antigua Proceeding is recognized as a foreign main proceeding by this Court, and to outline a framework for the cooperation of the U.S. Receiver and the Liquidators in the liquidation of SIB pursuant to Antigua law.

SIB Should Not Be Aggregated With the Other Stanford Entities

4. The U.S. Receiver has consistently suggested that all of the Stanford entities should be treated as a single enterprise because they were allegedly collectively used to perpetrate a fraud. Although I do not dispute that SIB and other Stanford entities were likely engaged in a Ponzi scheme — indeed, my own findings to date are consistent with that allegation — I take issue with the assertion that the companies in the Stanford group were in fact operating as a single entity, at least so far as SIB is concerned. SIB was a freestanding corporate entity with its own business, assets and creditors. It had many thousands of investors, for whom it was the only Stanford entity in which they could directly invest.

5. I have not seen any evidence, nor to my knowledge has the U.S. Receiver provided any, suggesting that the aggregation of any of the Stanford entities with SIB would benefit those investors. Indeed, since the majority of the assets appear to be SIB assets, any aggregation of one or more of the Stanford entities with SIB, and certainly the aggregation of all other Stanford entities with SIB, would likely injure investors by requiring that monies deposited by investors at SIB be used to pay the liabilities at other Stanford entities. Upon information and belief, those liabilities could include significant claims for taxes and penalties by the Internal Revenue Service, claims from landlords for damages resulting from breached leases, claims by brokers or financial advisors for unpaid commissions or other contract damage claims and claims from various trade and judgment creditors.

6. There was a clear distinction — particularly so far as customers were concerned — between SIB and the other principal Stanford companies, and creditors seem to have understood that they were dealing with separate and distinct entities. In the course of my responsibilities as a Liquidator of SIB, I have talked to many investors, and those investors did not believe that they had invested their money with a collective Stanford enterprise. They clearly understood that they were dealing with SIB, and they are asserting their claims solely against SIB. I disagree that the Stanford group was, as the U.S. Receiver has contended in other pleadings, a "single economic unit." The Stanford Financial Group ("SFG") was not a legal entity but merely a concept. Customers did not contract with SFG, but with one of the specific entities within the group.

7. As a Liquidator of SIB, my responsibilities include the identification of SIB's assets and liabilities. In the exercise of that responsibility, my team and I have been carrying out international investigations to identify assets, including cash balances, investment

assets and non-investment assets, held by SIB. To date, we have identified slightly less than \$1 billion in SIB assets located around the globe and have not encountered any difficulty segregating SIB's assets from the assets of other Stanford entities.

8. Similarly, we have established communications with SIB investors and have been able to produce statements of account for them. As mentioned in the Previous Declaration, our information technology advisors are in the process of developing an on-line claims management system to process claims from the various creditors of SIB. We have also preserved all of SIB's physical records to allow us to cross-check creditors' claims. We have not had any difficulty to date, nor do we anticipate difficulty in the future, identifying SIB's liabilities as separate and distinct from the liabilities of the other Stanford entities.

SIB's Affairs Were Not Controlled and Directed from the United States

9. The U.S. Receiver has argued in other jurisdictions that SIB's COMI is in the United States because Stanford and a few others controlled and directed the operations of SIB from the United States, and because the management of SIB was largely provided by affiliated Stanford entities in the United States. While I do not dispute that Stanford and a small group of confidantes appear to have exerted overall control over all the entities in the group, I disagree with the suggestion that Stanford, and his confidantes, "controlled and directed" the operations of SIB from the United States.

10. Stanford was an Antiguan citizen and a resident of Antigua. Although he was also a citizen of the United States and had a home there, he had extensive business holdings in Antigua, and, in my opinion, Antigua, at least as much as any other place, served as his base of operations. It is, I believe, incorrect to say that Stanford controlled the Stanford enterprises from the United States. Stanford traveled extensively between Antigua, St. Croix, Europe and the United States, and it is difficult to attribute his actions to a particular jurisdiction.

Additionally, while it may well be true that certain decisions at a strategic level were made by Stanford and Davis (for example as to the nature of the products to be offered by SIB), the implementation of those strategic decisions was undertaken to a large extent within Antigua.

11. Although sales of SIB CDs to American investors were made through financial advisors working for a Stanford entity in the United States, the vast majority — more than 80% — of SIB's CDs were sold to citizens of other countries. Financial advisers working for Stanford entities in Antigua, Aruba, Canada, Colombia, Ecuador, Mexico, Panama, Peru, Switzerland, and Venezuela also marketed SIB CDs to investors. Additionally, there were a number of independent financial advisers located in, inter alia, Canada, Peru and Panama that marketed SIB CDs. Finally, CDs were sold to investors by SIB directly from its headquarters in Antigua. Although certain of SIB's customers traveled directly to SIB's headquarters in Antigua to purchase CDs, the majority of its business was introduced to it by the financial advisers who were working under management agreements for various Stanford group companies in the jurisdictions listed above.

12. Not only did financial advisers in the U.S. sell fewer than 20% of the total outstanding number of SIB CDs, but they lacked the authority to contract on behalf of SIB or to approve the opening of a new account. Once a customer expressed a desire to invest in SIB, the financial advisers merely completed the standard paperwork and forwarded it to SIB's Antiguan headquarters for additional review. All client applications were reviewed in Antigua, first, by the Antiguan client accounts team, and second, for the purposes of credit and money laundering checks. These checks were thorough and independent, were crucial to the opening of new accounts and were not a rubber-stamp process. The application for the opening of the

account was then approved or disapproved at SIB's Antigua headquarters, not in the United States.

13. I should also point out that as an offshore bank, offering international private banking services, it is hardly surprising, and, indeed, it was inevitable, that SIB relied on a network of financial advisors located throughout the countries in which it solicited investors. The fact that fewer than 20% of SIB's CDs were sold by American-based financial advisors can not reasonably establish, in my opinion, that SIB was directed and controlled from the United States, particularly when U.S. advisors lacked the capacity to contract and their sales were subject to review and approval by personnel in SIB's Antigua headquarters.

14. SIB contracted with certain Stanford-affiliated entities to provide marketing and management support services, including Stanford Financial Group Global Management LLC ("SFGGML"), Stanford Caribbean Limited ("SCL") and Stanford Financial Group Company ("SFGC"). Pursuant to the terms of those agreements, SIB paid significant fees to SFGGML, SCL and SFGC for certain support services.

15. In recent years, the majority of those services were purportedly provided by SFGGML. From my investigation, however, it appears that apart from the production of brochures and other marketing materials and the provision of valuations of tier 2 and tier 3 investments, which came from the United States, the remainder of the "services" purportedly offered by SFGGML were carried out within Antigua at SIB itself. For example, SIB in Antigua had its own accounts, human resources and IT departments, reporting to heads of department in Antigua, and its accounts were prepared and audited in Antigua by C. A. S. Hewlett & Co of St John's, Antigua. As a matter of fact, I have found nothing in SIB's books and records or in the course of my investigation to suggest that any substantial management

services — in terms of IT, human resources, accounting or the running of the business — were provided to SIB from persons outside Antigua.

16. SFGGML, SCL and SFGC were cumulatively paid \$22.5 million for services allegedly provided in 2008. However, my investigation reveals that SFGGML simply ran a group wide purchasing department, which was recharged to the various Stanford companies as appropriate and only provided SIB with ad hoc legal advice and occasional commentary on the quarterly management reports. Apart from this ad hoc assistance, SFGGML, SFGC and SCL had no other involvement in running the day to day operations of SIB in 2008, and did not provide services worth a combined \$22.5 million. It appears that the \$22.5 million that was actually paid to these entities was a substantial overpayment given the lack of tangible services provided to SIB and the fact that most of these services were carried out in-house at SIB.

17. From my investigation, it appears that the only significant managerial function performed in the United States was the management of the tier 2 and tier 3 investment assets. Although SIB delegated significant investment decision-making to Stanford entities in the United States with regard to the management of the investment portfolios, tier 1 investments were managed in Antigua until they were transferred for investment with the tier 2 or tier 3 assets.

18. The Antiguan headquarters of SIB was more than just an administrative center. Since my appointment, I have not needed to utilize or otherwise rely upon any Stanford company in the United States for the continued operation of the IT system, for the running of account statements for every customer to the date of the receivership or for the establishment of a claims management system. We have also managed to process over 4,500 change-of-address

forms from Antigua to enable me to correspond with clients. The most important banking software for the operation of the Bank, Terminus, is also based in Antigua.

19. Additionally, Juan Rodriguez-Tolentino, the President of SIB, worked full time in Antigua. He attended board meetings, some of which were in Antigua, though most were held by telephone. He hosted an annual visit by the investment committee and dealt with important investors. There were also a substantial number of clients or potential clients who visited SIB. The day-to-day management of SIB, including its relationships with its 27,000 customers, was conducted by SIB employees in Antigua. Moreover, senior management, including the President, Juan Rodriguez-Tolentino, the Senior Vice President, Miguel Pacheco, the Vice President of Operations, Eugene Kipper, the Vice President of Client Support, Beverley Jacobs, the Human Resources Manager, Jennifer Roman, the Finance Manager, Omari Osbourne, the Internal Auditor, Trevor Bailey and Compliance Officer, Lisa-Ann Christian and the Quality Control Supervisor, Eloise Matthew, worked from SIB's premises in Antigua and are, with two exceptions, Antiguan citizens.

20. Further, SIB's audits were conducted in Antigua and employees from the Antiguan auditors would spend several weeks annually at SIB's Antiguan headquarters to carry out their review. The audits were normally conducted in late January and early February of each year. Initially, an internal audit team of six individuals would spend several weeks reviewing the financials and the supporting schedules and documentation. Thereafter, SIB's external auditor, C.A.S. Hewlett & Co., would perform their own review and issue their report. While false information and documentation may have been provided to the auditors from the United States, the audits for SIB were conducted exclusively in Antigua, by Antiguan

employees and an Antiguan external auditor without supervision or oversight from any United States entity.

21. Similarly, for several hundred particularly important clients, SIB's private banking services were carried out in Antigua with no involvement by Stanford or any U.S.-based Stanford entity. These clients could request that SIB employees pay bills, mortgages and credit cards on their behalf, and set up standing orders for them. Additionally, at the time of my appointment, \$100.4 million was outstanding in respect of loans granted by SIB to its customers, advanced against the CD balances held on their behalf. Neither Stanford nor Davis nor any other Stanford entity had any involvement in approving these loans. The loan requests were sent to SIB in Antigua, where they were assessed and approved. Of the \$100.4 million in loans outstanding, only \$6.9 million, or 6.88% of the total, were made to U.S. citizens. Finally, SIB's credit card services were provided to 3,500 customers and were managed directly from Antigua through the bill payments department.

Upon Recognition of the Antiguan Proceeding as a Foreign Main Proceeding, the Liquidators Plan to Cooperate With the U.S. Receiver in the Administration of SIB's Estate

22. From the outset of our appointment, the Liquidators have sought to cooperate with the U.S. Receiver, believing that cooperation was necessary to the fast and orderly administration of SIB's estate. As recounted in the Previous Declaration, the U.S. Receiver has rejected all attempts at cooperation and instead intervened in the proceedings in Antigua, asking the Antiguan court to rescind our appointment, or in the alternative, appoint the U.S. Receiver as SIB's liquidator in our place.

23. The Liquidators did not file the Petition to supplant the U.S. Receiver. The Liquidators filed the Petition believing that because of the U.S. Receiver's refusal to cooperate, recognition of the Antiguan Proceeding in the United States was the only way to

secure the necessary cooperation from U.S. authorities to collect and administer SIB's assets. The Liquidators continue to believe that cooperation is not only desirable, but necessary, and have continued to work towards that goal since filing the Petition. The Liquidators forwarded a draft cooperation agreement to the U.S. Receiver on May 8, 2009 for his comment and review. We are still awaiting a response.

24. In the event this Court recognizes the Antiguan Proceeding as a foreign main proceeding, the Liquidators do not intend to push the U.S. Receiver aside. The U.S. Receiver has done an enormous amount of work to date and his active participation in the administration of SIB's estate will be necessary to minimize costs and maximize returns to investors. The Liquidators envision a cooperative arrangement roughly as outlined in the ensuing paragraphs.

25. The Liquidators currently believe that SIB's estate should be liquidated separately and not aggregated with the estate of any other Stanford entities. Accordingly, to the extent possible, SIB's assets and liabilities should be segregated, and the U.S. Receiver's costs (professional fees and expenses) should only be charged to SIB to the extent those costs benefited SIB. If the U.S. Receiver can demonstrate that aggregation of SIB with one or more other Stanford entities would be beneficial to SIB investors, the Liquidators agree to such aggregation.

26. The Liquidators and the U.S. Receiver will share details of assets identified to date, including assets held beneficially by SIB. The U.S. Receiver will continue to take the lead in the identification and collection of U.S. assets. The Liquidators and the U.S. Receiver will work together with the assistance of investment banks, financial advisors and international property advisors to realize the value of SIB's equity, real estate and other

investment holdings. Cash held in various bank accounts will be released to accounts in the name of SIB in Liquidation under the control of the Liquidators.

27. The Liquidators and the U.S. Receiver will work together to void the repayment of shareholder loans and to trace claims to assets held by Stanford and others in their individual capacities. The Liquidators and the U.S. Receiver will also share information and work together to establish the amounts owed to SIB by other Stanford entities, and the potential to avoid or claw back payments made from SIB to the other Stanford entities.

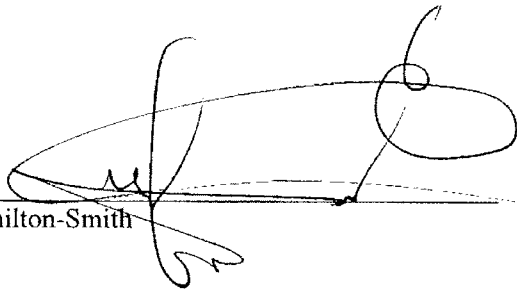
28. Creditor claims will be directed to the Liquidators, who will have completed the development of their on-line claims management system by the end of June 2009. The Liquidators will keep the U.S. Receiver apprised of the level of claims received, and the amount that has been either accepted as valid or rejected. Distributions will ultimately be made to creditors pursuant to Antigua law.

29. The fees and expenses of the U.S. Receiver and his professionals that are attributable to SIB and are approved by this Court will be paid from the assets of SIB. The fees and expenses of the Liquidators that are approved in the Antigua Proceeding would also be paid from the assets of SIB. The Liquidators envision that they would have weekly conference calls and monthly face-to-face meetings with the U.S. Receiver to facilitate communication and cooperation. If the U.S. Receiver does not agree to withdraw all proceedings that attempt to block the recognition of the Antigua Proceeding in other jurisdictions, the Liquidators would request that this Court direct the U.S. Receiver to do so.

I certify pursuant to 28 U.S.C. § 1746 under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: June 2, 2009
St. John's, Antigua

Nigel Hamilton-Smith

A handwritten signature in black ink, appearing to be 'Nigel Hamilton-Smith', written over a horizontal line. The signature is stylized and cursive, with a large loop at the end.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June 2009, I served the foregoing document on the parties receiving notice through the Court's CM/ECF system, and by email and by United States first class mail to the parties listed below:

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/s/ C. Nicholas Bowen

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