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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3-09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
Defendants.	§	

RECEIVER'S RESPONSE TO BUKRINSKY MOTION TO INTERVENE AND AMEND OR MODIFY CERTAIN PORTIONS OF THE COURT'S AMENDED RECEIVERSHIP ORDER

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Federal Rule of Civil Procedure 24 23-25

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RECEIVER'S RESPONSE TO BUKRINSKY MOTION TO INTERVENE AND AMEND OR MODIFY CERTAIN PORTIONS OF THE COURT'S AMENDED RECEIVERSHIP ORDER

The Bukrinsky Movants[1] ask this Court to amend its Receivership Order to permit them to intervene in the case and file an involuntary bankruptcy petition against Stanford International Bank, Ltd. ("SIB") or any of the other Defendants.[2] They seek, in essence, to wrest one or more of the Defendants from this Court's jurisdiction during what are still the early stages in this large and complicated fraud case.[3] Granting this relief would permit the Bukrinsky

[1] The "Bukrinsky Movants" are Dr. Samuel Bukrinsky, Jaime Alexis Arroyo Bornstein, and Mario Gebel. *See* Motion: (i) to Intervene; (ii) to Amend or Modify Certain Portions of this Court's Amended Receivership Order; (iii) in Support of the Antiguan Receivers-Liquidators' Request to Coordinate Proceedings Under Chapter 15 of the Bankruptcy Code; and (iv) in the Alternative, for Extension of Time to Appeal (the "Bukrinsky Motion").

[2] Technically, the Bukrinsky Movants are seeking to lift the injunction contained in paragraph 11 of the Amended Receivership Order, which enjoins "[c]reditors and all other persons . . . from seeking relief from the injunction contained in paragraph 10(e) of this Order for a period of 180 days from the date of entry of this Order." Paragraph 10(e) enjoins all persons other than the Receiver from filing "any case, complaint, petition, or motion under the Bankruptcy Code (including, without limitation, the filing of an involuntary bankruptcy petition under chapter 7 or chapter 11 of the Bankruptcy Code, or a petition for recognition of foreign proceeding under chapter 15 of the Bankruptcy Code)." However, for all intents and purposes, the Bukrinsky Movants are asking this Court to lift the injunction so that they can file an involuntary bankruptcy petition against SIB. *See* Brief in Support of Bukrinsky Motion at 1 n.2.

[3] On February 17, 2009, the Court entered an Order Appointing a Receiver, Ralph S. Janvey ("Receiver"), over the assets, monies, securities, properties of whatever kind and wherever located (the "Receivership Assets") and the books, account statements, computers, servers, and other informational sources of all entities owned or

Movants to file an involuntary bankruptcy petition, as to any or all of the Defendants, immediately upon entry of the order granting that relief, thereby putting an end to the Receivership as to those Defendants. Granting the relief also would run counter to the decades-long practice in virtually all circuits, including the Fifth Circuit, of using the vehicle of an equity receivership to accomplish the winding up of entities that were the subject of Ponzi schemes and other frauds.[4]

The Court previously decided—correctly—that the Receiver is in the best position to determine whether any of the Stanford entities should be placed into bankruptcy. That still holds true. The Receiver, by virtue of more than three months of direct management of the myriad entities in the Stanford enterprise, has more knowledge than the Bukrinsky Movants or anyone else about whether it is better to continue to administer this particular estate as a receivership or in bankruptcy. And the Receiver's best judgment is that a bankruptcy at this time would be counter-productive and not in the best interests of Stanford investors and creditors.

The following are among the reasons a bankruptcy at this time would be an inferior vehicle for addressing the many complex issues involved in untangling the massive fraud that lies at the heart of this case:

- Receivership generally is more efficient and cost-effective than bankruptcy. Although the administrative fees and expenses associated with a receivership dealing with a fraud such as the Stanford scheme can be substantial, the cost of administering bankruptcy cases for one or more of the Stanford entities would dwarf the administrative costs of the Receivership outside bankruptcy.

- The particular circumstances of this Receivership would add even more costs to a bankruptcy filed at this time. Bankruptcy now would result in substantial transition costs associated with the turnover of assets and information from the

controlled by Defendants, or in the possession of their agents and employees (the "Receivership Records") (together with the Receivership Assets, the "Receivership Estate"). Docket No. 10. The Receiver was ordered to locate and take control of all Receivership Estate property, assets, and records.

[4] *See infra* notes 17 &18 and accompanying text.

Receiver to a potential superseding trustee. A bankruptcy filing now would delay or halt ongoing efforts to liquidate assets, increasing the estate's exposure to ongoing liabilities. In addition, depending on certain rulings made by the Bankruptcy Court after a bankruptcy is filed, such as whether to convert to a chapter 7 case, a bankruptcy now also would result in substantial additional costs associated with the potential need for retention of new counsel and professionals. In bankruptcy, it is likely that multiple committees would be formed, each with its own set of attorneys and other professionals whose fees and expenses would be charged to the bankruptcy estate as administrative expenses.

- The Receivership's cost and efficiency advantages over bankruptcy do not sacrifice the due process rights of investors and other creditors. Creditors will be given notice of, with an opportunity to object to, the distribution plan that the Receiver ultimately will propose. In the meantime, the Receiver, through his website, provides notice to creditors of actions that may materially affect them, and he takes their comments into account in determining what action to take. Additionally, the court-appointed Examiner reviews all of the Receiver's proposed actions that require Court approval, and this Court closely monitors the Receiver's actions to ensure that creditors' and investors' due process rights are respected and preserved.

- Receivership provides needed flexibility in formulating a plan of distribution that is fair and equitable for all stakeholders. Generally, equity receiverships distribute assets to creditors on a pro rata basis. Like the Bankruptcy Code, equity receiverships typically ensure that persons similarly situated receive similar treatment. In a case such as this involving massive deception, however, a searching evaluation of the facts is required to discern relevant differences between and among categories of creditors. The Receiver can take into account relative fault within a class of creditors, and fashion an equitable plan of distribution that does not treat all creditors within a class identically if they are not deserving of equal treatment. For example, the Receiver recently discovered the possibility that multiple investors had CDs purchased for them without their permission. The Bankruptcy Code's generally fixed, one-size-fits-all statutory priority scheme is less able to take such potentially relevant differences into account.

- Additionally, the Bankruptcy Code's rigidity can have negative consequences for investors, including the Bukrinsky Movants. Because their claims are related to the sale or purchase of a security, the Bankruptcy Code mandates that their claims be subordinated. 11 U.S.C. § 510(b). This likely would result in a much lower recovery for SIB CD investors in bankruptcy than they can achieve in a distribution by the Receiver outside of bankruptcy.

Public policy also strongly favors maintaining the injunction against involuntary bankruptcy filings. If the Bukrinsky Movants succeed in forcing SIB or the other Stanford

defendants into bankruptcy, it may have a chilling effect on equity receiverships in future securities fraud cases. The equity receivership has long been an effective tool used by the SEC and federal courts to administer securities fraud cases. A few creditors should not be allowed to force a company in receivership into bankruptcy against the best judgment of the Receiver, thereby wresting jurisdiction away from the court overseeing the SEC's civil action. Such a notion threatens to undermine the long-standing use of equity receiverships in securities fraud cases.

For these reasons, the Receiver respectfully asks the Court to deny the Bukrinsky Motion and keep intact the Amended Order Appointing Receiver, including the injunction against filing petitions in bankruptcy and seeking relief from that injunction for 180 days. The Bukrinsky Movants should not be permitted to intervene, as their interests in the case are adequately represented by the Receiver, the court-appointed Examiner, the SEC, and this Court.

I. Background

On March 12, 2009 the Court entered the Amended Order Appointing Receiver (Docket No. 157), which, among other things, granted the Receiver the sole and exclusive authority to seek bankruptcy protection on behalf of the Stanford defendants. The Amended Order Appointing Receiver ensured that the Receiver would have a full range of options available to administer the Receivership Estate. In his motion seeking entry of the amended order, the Receiver observed that while bankruptcy may turn out to be the best option for one or more of the Defendants, it was too early in the Receivership process for anyone to accurately assess the potential benefits a bankruptcy might provide for the Defendants. The requested relief was necessary at that time because, if bankruptcy petitions were permitted to be filed at this stage, any such filing would implicate the automatic stay under Bankruptcy Code section 362, adding an additional layer of complexity to an already extraordinarily complex undertaking.

Additionally, prohibiting involuntary bankruptcy filings and giving the Receiver the sole authority to file, should it become necessary, would allow for a smooth and orderly transition into bankruptcy. Permitting bankruptcy filings at that stage of the Receivership would have been unduly disruptive.

One of the provisions requested by the Receiver, and approved by this Court, was a 180-day moratorium on challenges to the injunction against bankruptcy filings by anyone other than the Receiver. The Receiver sought 180 days to carry out his many duties to "conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate," Amended Order Appointing Receiver ¶ 5, without having to fend off bankruptcy filings and to have enough time to gather the information and perform the analysis necessary to determine whether filing bankruptcy would be in the best interest of one or more of the Stanford entities.

On April 20, 2009, the Court issued an order appointing John J. Little as examiner in the case (the "Examiner"). The order directs the Examiner to convey to the Court such information as the Examiner, in his sole discretion, shall determine is helpful to the Court in considering the interests of the investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any of the Defendants.

II. Argument & Authorities

A. The law and facts support preserving the Court's stay of bankruptcy filings.

In factual circumstances similar to this case, the Southern District of New York recently enjoined the filing of bankruptcy petitions and denied a challenge to an injunction against bankruptcy filings. The court held that the injunction was proper and should not be lifted because doing so would interfere with a receivership established in connection with a securities fraud case brought by the SEC. *SEC v. Byers*, 592 F. Supp. 2d 532, 536 (S.D.N.Y. 2008).

In *Byers*, the court held that the equitable power to fashion an appropriate remedy for a securities law violation included the authority to enjoin the filing of a bankruptcy petition. *Id.* The SEC had filed a complaint alleging defendants participated in a Ponzi scheme that involved 240 affiliates on three continents. *Id*. at 534. The receivership order enjoined any person, except the receiver, from filing a bankruptcy petition. *Id*. at 534-35. The court observed that if the court lacked this authority, it would undermine the purpose of a receivership and disrupt the receiver's efforts to discharge his duties. *Id*. at 535-36.[5]

Having concluded that it had the power to enter the stay, the court considered whether the movants had demonstrated the stay nonetheless should be lifted. Applying a three-factor test, the court held that it should not be lifted because: (1) maintaining the stay would maintain the status quo; (2) it was early in the receivership and filing bankruptcy petitions would hinder the receiver's ongoing investigation; and (3) the court did not have enough information regarding the merits of the movants' underlying claim to outweigh the first two factors. *Id*. at 536-37.

The same is true in this case. "It is especially appropriate in an action like this one that the federal courts have the power, if necessary, to take control over an entity and impose a receivership free from interference in other court proceedings." *SEC v. Wencke*, 622 F.2d 1363, 1372 (9th Cir. 1980). The law allows, and the unique facts and circumstances of this case justify, maintaining the injunction against any bankruptcy filings that would prematurely wrest

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[5] *Byers* cited two Circuit-level cases in support of its decision to maintain an injunction against bankruptcy filings that would have interfered with a receivership. As the Sixth Circuit explained in the *Liberte Capital* case, because "[t]he receivership court has a valid interest in both the value of the claims themselves and the costs of defending *any* suit as a drain on receivership assets," the court "may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained." *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) (emphasis added). And as the Ninth Circuit held in the *Wencke* case, such an injunction can even bind all non-parties who have notice, far exceeding normal limits on the scope of injunctions. *See SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). Furthermore, the power to enjoin "extends to the institution of *any* suit." *Liberte Capital*, 462 F.3d at 551 (emphasis added).

jursidiction away from this Court at the expense of the creditors and investors the Receiver is working diligently to protect. Claimants are amply protected by the Receivership and by this Court's continuing oversight, and the Bukrinsky Movants should not be permitted to disturb the status quo.

B. Receivership is well suited for investigating fraudulent schemes and formulating a fair and equitable distribution in a cost-efficient manner.

Contrary to what the Bukrinsky Movants argue, bankruptcy does not provide a superior vehicle for addressing the numerous complex issues associated with investigating the Stanford fraudulent enterprise and developing a plan for the liquidation of assets and subsequent distribution to stakeholders. Though bankruptcy might be appropriate in some fraud cases (and, if circumstances change dramatically, at some point in this case might become a viable option for certain entities eligible to be bankruptcy debtors), maintaining the status quo and staying out of bankruptcy for the time being is, in the best judgment of the Receiver, preferable. The Receiver believes that the Receivership's cost savings, efficiencies, and flexibility to develop a plan of distribution that is fair and equitable to all make it superior to bankruptcy. Bankruptcy offers no advantages over the Receivership that justify the increased costs and inefficiencies that bankruptcy would entail. Outside of bankruptcy, the Receiver and the Court can tailor remedies that are fair to all in an expeditious manner. Bankruptcy simply does not offer the same flexibility to work out a plan that is fair and equitable to all in a cost-effective and efficient manner.

1. Receivership is more efficient and cost-effective than bankruptcy.

Allowing the Receiver to continue to function outside of bankruptcy most likely will save the Receivership Estate money and preserve more assets for distribution to investors and creditors. Receiverships are generally less expensive than bankruptcies. *See Scholes v.*

Lehmann, 56 F.3d 750, 755 (7th Cir. 1995) (noting that "[c]orporate bankruptcy proceedings are not famous for expedition"); *SEC v. Wang*, 944 F.2d 80, 86-87 (2d Cir. 1991); *SEC v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir. 1992).[6] Statutory mandates and complex procedural rules contribute to the high administrative expenses generated in large bankruptcies. Receiverships, on the other hand, can employ abbreviated summary processes and procedures. *See SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001) (finding that the broad powers and wide discretion derived from the inherent powers of an equity court make the use of abbreviated summary processes possible); *SEC v. Hardy*, 803 F.2d 1034, 1040 (9th Cir. 1986) (holding that "the use of summary proceedings to determine appropriate relief in equity receiverships, as opposed to plenary proceedings under the Federal Rules, is within the jurisdictional authority of a district court").[7]

The summary procedures of a receivership are more efficient and cost-effective than bankruptcy procedures. *See Elliott*, 953 F.2d at 1566-67 ("A summary proceeding reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets."); *Basic Energy*, 273 F.3d at 668 (noting that the abbreviated procedures, including the use of a single receivership to resolve all claims, "advance the government's

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[6] *See also SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1036-37 (C.D. Cal. 2001) (concluding that (1) liquidation by the receiver, rather than by a bankruptcy court, was proper because evidence demonstrated that the entities' liabilities were greater than their assets and that "ongoing management alone [would] drain money out of the estate, money that otherwise could be returned to investors"; (2) the receiver should not follow bankruptcy procedures because opening up the process would lead to lower sale prices and delayed approval of transactions, which would not benefit investors; and (3) appointment of a creditors' committee, as allowed in bankruptcy, would be duplicative and wasteful because the receiver already represented the interests of all investors).

[7] *United States v. Ariz. Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984) (finding that a receiver "may proceed summarily to recover money belonging to the receivership" and that receivership courts have the power to use summary procedure "in allowing, disallowing, and subordinating the claims of creditors"); *United States v. Fairway Capital Corp.*, 433 F. Supp. 2d 226, 241 (D.R.I. 2006) ("Federal district courts have wide discretion in granting relief in an equity receivership and may use summary proceedings in fashioning such relief.").

interest in judicial efficacy by reducing the time needed to resolve disputes, decreasing the costs of litigation, and preventing the dissipation of receivership assets").[8]

Additionally, in this case, a bankruptcy filing almost certainly would result in multiple committees being formed, each with its own retained counsel and professionals. Creditors' committees and various other committees of interested parties are a staple of bankruptcy cases. Creditors' committees play no role in receiverships, presenting a substantial cost savings to the administered estate.[9]

Generally, expenses incurred by committees are entitled to priority treatment as administrative claims of the bankruptcy estate. 11 U.S.C. § 503(b); *see also In re Am. 3001 Telecomm., Inc.*, 79 B.R. 271 (N.D. Tex. 1987). Even individual committee members, in some circumstances, can have their expenses reimbursed. *See* 11 U.S.C. § 503(b); *In re White Motor Credit Corp.*, 50 B.R. 885 (N.D. Ohio 1985).[10] Such fees and expenses, likely to be incurred by multiple committees and their respective legal counsel and other retained professionals, would present a substantial cost to the administration of a Stanford bankruptcy case. None of these fees and expenses will be required if the Stanford entities remain outside of bankruptcy.

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[8] *See also Hardy*, 803 F.2d at 1040 (upholding summary proceedings because they avoid formalities that slow down dispute resolution, promote judicial efficacy, and reduce litigation costs to the receivership); *SEC v. Wencke*, 783 F.2d 829, 837 n.9 (9th Cir. 1986) ("The primary purpose of allowing courts to establish receiverships in securities fraud actions is to prevent further dissipation of the assets of the defrauded investors; the use of summary post-judgment proceedings helps to effectuate this."); *Fairway Capital Corp.*, 433 F. Supp. 2d at 241 ("Summary proceedings allow for the consolidation of all litigation concerning the receivership before a single district court and the efficient resolution of disputes.").

[9] Under the Bankruptcy Code, committees of creditors holding unsecured claims may be appointed in both chapter 7 and chapter 11 cases. *See* 11 U.S.C. §§ 705 & 1102. Recent cases also have seen appointment of a number of "special interest" committees, including landlord committees, employee committees, and ratepayer committees. A committee of creditors appointed by the United States Trustee ordinarily consists of persons willing to serve and who hold the seven largest claims against the debtor. *See* 11 U.S.C. § 1102(b)(1). In a large case, committees can be expected to play an active role in the reorganization process. Upon the creation and selection of a committee, the committee, with court approval, may select and authorize the employment of attorneys, accountants, or other agents to represent the committee in the bankruptcy case. *See* 11 U.S.C. § 1103(a).

[10] *See also* Thomas Fusco, *Reimbursement of Expenses, Other than for Professional Services, to Official Creditors' Committees, or Members Thereof, in Chapter 11 Bankruptcy Proceedings, under Bankruptcy Reform Act of 1978 (11 U.S.C.A. § 101 et seq.)*, 109 A.L.R. Fed. 842 (1992).

Finally, a bankruptcy at this time would cost the estate both time and money unnecessarily. The Receiver is in the midst of negotiating settlements with creditors and engaging in the sale of assets, including aircraft and real estate, in accordance with procedures approved by this Court. Converting the Receivership to a bankruptcy at this time would slow the progress that has been made and result in substantial transition costs associated with the turnover of property and information.[11]

2. Receivership protects the due process rights of creditors and investors.

The efficiencies and resulting cost savings of an equity receivership do not come at the sacrifice of anyone's due process rights. Indeed, receiverships are required to and do protect the due process rights of creditors and investors. *See Basic Energy*, 273 F.3d at 670 (holding that the district court's procedures—considering evidence and arguments along with providing ample opportunity to rebut—"were well within the limits of . . . equitable discretion"); *Elliott*, 953 F.2d at 1566-67 (determining that (1) even though the term "summary" connotes brevity, it does not mean the parties received improper procedure, and (2) "[s]ummary procedures are inappropriate when parties would be deprived of a full and fair opportunity to present their claims and defenses");[12] *Hardy*, 803 F.2d at 1040 (determining that the procedures, including enforcement of an objection deadline, "were a reasonable and practicable attempt to

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[11] Depending on certain rulings made by the Bankruptcy Court after a bankruptcy is filed, such as whether to convert to a chapter 7 case, significant additional costs would be incurred if the Receiver and his team of attorneys and professionals were replaced by a superseding trustee and new team of professionals. A superseding trustee and a new team of professionals would have an extremely steep "learning curve" compared to the institutional knowledge of the Receiver and his professionals.

[12] The court also held that the objecting party "must show how they would have been better able to defend their interests in a plenary proceeding." *Elliott*, 953 F.2d at 1567. Also, the court concluded that "a district court does not generally abuse its discretion if its summary procedures permit parties to present evidence when the facts are in dispute and to make arguments regarding those facts." *Id*.

administer the receivership without depriving the creditors of fair notice and a reasonable opportunity to respond.”).[13]

Courts have broad power to fashion equitable relief to the particular circumstances of each case. *Fed. Savings & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 563 (5th Cir. 1987) (finding that because the receiver is concerned “with the savings of many depositors [and] the investments of numerous stockholders . . . equity’s powers to aid [the receiver] in its endeavors are even broader than for private claims”). These powers include the ability to enjoin non-parties to protect the public interest. *SEC v. Hickey*, 322 F.3d 1123, 1131 (9th Cir. 2003) (authorizing the district court to freeze the assets of a non-party “so long as doing so was necessary to protect and give life to” other orders entered against the defendants).

The Bukrinsky Movants rely on *Jordan v. Independent Energy Corp*., 446 F. Supp. 516 (N.D. Tex. 1978) for the proposition that the injunction against the filing of a bankruptcy petition violates their due process rights. But in *Jordan* the court actually stated that “[i]n the absence of specific Congressional guidance to the contrary, a federal district court may theoretically restrain voluntary or involuntary access to the bankruptcy court by issuing a blanket receivership injunction.” *Id*. at 529. The court stated that a broad litigation stay in a receivership order should be evaluated in light of the following factors:

> (1) a substantial likelihood that the plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable

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[13] The court also noted that a “district judge supervising an equity receivership faces a myriad of complicated problems in dealing with the various parties and issues involved in administering [a] receivership” and that “reasonable administrative procedures, crafted to deal with the complex circumstances of each case, will be upheld.” *Hardy*, 803 F.2d at 1038. *See also Fairway Capital Corp.*, 433 F. Supp. 2d at 241 (stating that summary proceedings “should afford creditors fair notice and an opportunity to be heard” and “allow parties to present evidence when the facts are in dispute and to make arguments regarding those facts”); *TLC Invs. & Trade Co.*, 147 F. Supp. 2d at 1034-35 (finding that summary procedures satisfy due process as long as there is adequate notice and an opportunity to be heard); *FDIC v. Bernstein*, 786 F. Supp. 170, 177-78 (E.D.N.Y. 1992) (noting that “[a]lthough the use of summary proceedings, in some cases, would deprive parties of a full and fair opportunity to prepare their claims and defenses, such a danger is not present here as both parties have been given an ample opportunity to prepare and present their contentions).

> injury if the injunction is not granted, (3) a threatened injury to plaintiff that outweighs the threatened harm the injunction may do to defendant, and (4) granting of the preliminary injunction will not disserve the public interest.

Id.

This Court has already found that the SEC has shown a substantial likelihood that it will prevail on the merits of its case. In the absence of the litigation stay, including the injunction on filing a petition in bankruptcy, anyone could file a petition at any time—even one day after the Receiver was appointed in any SEC fraud case. This would irreparably disrupt the Receivership and fracture the SEC's case. The public interest is better served, as discussed *infra*, by this Court and this Receiver than by segregating SIB, its assets, records, and claimants and subjecting them to an involuntary bankruptcy petition. Indeed, it is not even possible to factually separate SIB from the remaining entities and an attempt to do so would be extremely costly and ineffective in the end.

Jordan is also distinguishable in at least three fundamental, factual respects. First, *Jordan* arose out of a suit by private investors, not an SEC civil enforcement action. Case law makes it clear that a receivership established in connection with an SEC civil enforcement action, such as this one, is subject to different policy considerations. "There is a strong federal interest in insuring effective relief in SEC actions brought to enforce the securities laws." *SEC v. Wencke*, 622 F.2d 1363, 1372 (9th Cir. 1980). "The appointment of a receiver is a well-established equitable remedy available to the SEC in its civil enforcement proceedings for injunctive relief," and is often necessary "to insure complete enforcement of the federal securities laws." *SEC v. First Fin. Group of Tex.*, 645 F.2d 429, 438 (5th Cir. 1981).

Second, the scope of both the fraud and the receivership here are vastly different than in *Jordan*. *Jordan* involved the allegedly fraudulent sale of fractional interests in oil wells.

A receiver was appointed to operate the oil leases until conclusion of the case. Here, the SEC filed suit to halt a more than $8 billion fraud spanning five continents and involving more than 100 separate entities. Continued operations depended upon the continued sale of the fraudulent CDs issued by SIB. When the Court enjoined the Stanford fraud, there was no longer a going concern to operate, as there had been in *Jordan*. Instead, the task was, and remains, shutting down massive, far-flung operations and identifying and taking control of assets for eventual liquidation and distribution to claimants under the Court's direction and supervision. Given the enormity of the task assigned to the Receiver and the difficulties posed by flawed and deceptive record-keeping, a stay of litigation, including the Bukrinsky Motion, is vital.

Third, the *Jordan* case did not address issues like those in this case, in which liquidators appointed by an offshore tax-haven jurisdiction seek to fracture an SEC receivership. The *Jordan* holding simply did not consider, and is therefore not applicable to, a case like this one involving an injunction designed to preserve the status quo to allow the Receiver to fulfill his duties free from outside interference.

3. Receivership is the best vehicle for providing a fair and equitable plan of liquidation and distribution for all stakeholders.

Outside of bankruptcy, equity receiverships—under close judicial supervision—enjoy broad flexibility in determining the most equitable distribution scheme. Overall, a distribution plan developed in an equitable receivership provides a more flexible option for achieving equitable distribution. In an SEC receivership, a plan need only be reasonable and approved by the court as equitable. *See SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (stating that a court acts pursuant to its inherent equitable powers when approving a plan); *Wang*, 944 F.2d at 85 (holding that "once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is

at an end"). Before determining that a proposed plan is fair and equitable, of course, the Court would address any objections and consider the interests of affected interested parties.

Such a malleable standard allows a distribution plan to be adapted to the results of a receiver's investigation, including situations where the parties involved have varying degrees of fault or knowledge. A court can approve a plan that provides for strict pro rata distribution to all creditors or a plan that grants certain creditors a higher percentage recovery based on less fault. *See Hardy*, 803 F.2d at 1037-38 (finding that (1) a district court has extremely broad power when supervising an equity receivership, determining the appropriate administrative actions, and granting appropriate relief, and (2) "[r]easonable administrative procedures, crafted to deal with the complex circumstances of each case, will be upheld").[14]

Unlike the Bankruptcy Code, which imposes a rigid classification and priority scheme, a distribution plan in an equity receivership may provide for dissimilar reimbursement payments (including exclusion) among claimants. *Basic Energy*, 273 F.3d at 657-71 (upholding a plan that (1) classified certain investors as defendants and excluded them from recovery of disgorgement proceeds and (2) classified other investors as "marketers" and granted them only a fractional recovery from the disgorgement proceeds); *Wang*, 944 F.2d at 88 ("This kind of line-drawing—which inevitably leaves out some potential claimants—is, unless commanded otherwise by the terms of a consent decree, appropriately left to the experience and expertise of the SEC in the first instance.").[15]

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[14] Additionally, the court noted that "[a] district judge supervising an equity receivership faces a myriad of complicated problems in dealing with the various parties and issues involved in administering the receivership." *Hardy*, 803 F.2d at 1038.

[15] *See also SEC v. Levine*, 881 F.2d 1165, 1173 (2d Cir. 1989) (upholding the exclusion of some claimants from participation in disgorged funds); *SEC v. Certain Unknown Purchasers of the Common Stock of and Call Options for the Common Stock of Santa Fe Int'l Corp.*, 817 F.2d 1018, 1020-21 (2d Cir. 1987) (approving a plan that distributed funds to two separate groups unevenly).

In addition, a plan of distribution in receivership is likely to produce a better outcome for most purchasers of SIB CDs than a plan of distribution approved under the Bankruptcy Code's strict rules because under section 510(b) of the Bankruptcy Code claims of the holders of such securities could be subordinated. Section 510(b) provides that "a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security . . . shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security." 11 U.S.C. § 510(b).

Outside of bankruptcy, however, the Receiver in this case can devise and propose a plan that is fair and equitable without being hamstrung by the rigid priority scheme mandated by the Bankruptcy Code. It is true that bankruptcy generally is designed to provide for an equitable distribution of an insolvent company's assets. But in cases involving massive fraudulent schemes, such as this one, an equity receivership's flexibility makes it better suited to provide an ultimately more fair and equitable distribution. The Bankruptcy Code's subordination provisions and priority scheme simply were not crafted with the amount of flexibility that is useful in addressing the complexities involved in administering the estate of a large fraudulent enterprise.

4. The* Madoff *case cited by the Bukrinsky Movants is inapplicable.

The Bukrinsky Movants make much of the fact that the Southern District of New York recently allowed an involuntary bankruptcy petition to be filed in the case against Bernard L. Madoff ("Madoff"). *See* Brief in Support of Bukrinsky Motion, at 5-6. But the factual circumstances of the Madoff case differ significantly from the circumstances of this case. In *Madoff*, the holdings only apply to property that was never subject to a receivership order.

Moreover, the benefits of bankruptcy highlighted by the *Madoff* court can also be obtained in a receivership like the one already in place here.

In *SEC v. Madoff*, No. 08-10791, 2009 U.S. Dist. LEXIS 30712 (S.D.N.Y. April 10, 2009), the movants sought to modify the Order on Consent Imposing Preliminary Injunction, Freezing Assets and Granting Other Relief Against Defendants (the "Madoff Preliminary Injunction")[16] to allow the filing of an involuntary bankruptcy petition against Madoff. Previously, a trustee had been appointed to liquidate Bernard L. Madoff Investment Securities LLC ("BLMIS"), a registered broker dealer, under the Securities Investor Protection Act of 1970 ("SIPA"). A receiver also had been appointed for certain entities, but that receiver had no authority over the personal assets of Madoff or BLMIS. Madoff Preliminary Injunction at 8-9. Significantly, then, Madoff's personal assets (the subject of *Madoff*), though frozen, had not been subject to any form of receivership. The involuntary petition was aimed only at that personal property.

The court in *Madoff* did not have before it, and thus did not address, the issue of whether bankruptcy was preferable to the receivership created in the case. The court instead discussed the involuntary petition aimed at "those of Mr. Madoff's assets which are not the proceeds of his crime or forfeitable substitute property . . . but should be deployed to meet obligations to his creditors" (the "Madoff Proceeds"). *Madoff*, 2009 U.S. Dist. LEXIS 30712, at *2. The Madoff Proceeds were Madoff's "property that [was] neither forfeitable criminally nor subject to the liquidation of BLMIS under SIPA . . . ." *Id.* at *5. The Madoff Proceeds were not subject to the receivership. Therefore, the court decided that the "movants should be able to seek

[16] *SEC v. Madoff*, 08-10791 (S.D.N.Y. Dec. 18, 2008) (order granting Madoff Preliminary Injunction). The Madoff Preliminary Injunction was incorporated into the February 9, 2009 Partial Judgment on Consent Imposing Permanent Injunction and Continuing Other Relief. *SEC v. Madoff*, 08-10791 (S.D.N.Y. Feb. 9, 2009)

the familiar and established relief set by Congress in the Bankruptcy Code, with its automatic stay of individual suits by platoons of individual litigants." *Id.* at *5-6.

In contrast, the movants in this case are seeking to file an involuntary petition against one or more of the Defendants that are subject to an existing receivership. The Bukrinsky Movants are not targeting the assets of a non-receivership entity or individual, so their reliance on *Madoff* is misplaced. Furthermore, unlike in *Madoff*, the Receiver in this case has been appointed over not just the corporate entities but also the individuals who controlled and managed the fraudulent enterprise.

Moreover, the bankruptcy advantages discussed in *Madoff* (as compared to a SIPC liquidation and criminal forfeiture) do not necessarily transfer to a comparison with an equity receivership. The general advantages of bankruptcy described by the court in the *Madoff* case include: (1) direct rights over an individual's property; (2) the authority to locate assets; (3) the ability to preserve or increase the value of assets through investment or sale; (4) provisions requiring notice to creditors; (5) the claims process; and (6) the transparent manner of distributions made pursuant to the procedures and preferences established by Congress. *Id*. at *4. Though all of these bankruptcy characteristics might be advantages when compared to a SIPA liquidation and criminal forfeiture, they are inapplicable in any comparison to the equity receivership currently imposed over the Stanford entities. All six bankruptcy advantages noted by the court in *Madoff* apply with equal force to the Receivership in this case but, notably, none of the cost disadvantages of bankruptcy do.

C. Public policy favors continuing the Receivership outside of bankruptcy.

The Court should not permit the Bukrinsky Movants' to set aside decades of precedent in which courts have approved the use of receivership to liquidate and distribute recovered assets to claimants in cases like this one. The Court should deny the Bukrinsky

Movants' efforts to wrest the authority to oversee the administration of the Receivership Estate from this Court.

Distribution of a defendant's assets by a receiver is a common remedy, especially in cases like this one, where the overwhelming majority of claimants would be classified in the same class in bankruptcy. *See, e.g.*, *SEC v. Ross*, 504 F.3d 1130, 1133 (9th Cir. 2007) (observing that "the district court appointed a receiver . . . to manage the corporation and preserve its assets for eventual distribution to the injured investors"); *In re SEC*, 296 Fed. App'x. 637, 640 (10th Cir. 2008) (unpublished opinion) (noting that the receiver had been "carrying out his duties of marshaling and liquidating assets for the benefit of defrauded investors and creditors"); *SEC v. Cobalt Multifamily Investors I, Inc.*, 542 F. Supp. 2d 277, 282–83 (S.D.N.Y. 2008) (adopting a distribution plan proposed by the SEC); *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-CV-1188-D, 2008 WL 919546, at *6 (N.D. Tex. Mar. 13, 2008) (approving receiver's interim distribution plan, under which over $25 million would be disbursed to investors); *SEC v. Megafund Corp.*, No. 3:05-CV1328-L, 2008 WL 2856460, at *1, 3 (N.D. Tex. June 24, 2008) (approving receiver's proposed distribution plan, under which over $1.5 million would be disbursed to claimants on a pro rata basis); *SEC v. Funding Res. Group*, No. 3:98-CV-2689-M, 2004 WL 2964992, at *1 (N.D. Tex. 2004) (approving receiver's proposed distribution plan, under which over $1.6 million would be disbursed to claimants on a pro rata basis). Indeed, district courts have frequently ordered liquidation by receivers.[17]

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[17] *See, e.g.*, *SEC v. Merrill Scott & Assoc., Ltd.*, 2008 WL 2787401, *3–5 (D. Utah 2008) (unpublished opinion) (noting that the court had "approved SEC's proposed Plan of Partial Distribution" of the receivership estate, and predicting that "the interim distribution under the Plan likely will not be the last"); *SEC v. Tanner*, 2007 WL 2013606, *3 (D. Kan. 2007) (unpublished opinion) (approving receiver's "general distribution plan," under which several million dollars would be distributed to claimants); *SEC v. Alanar, Inc.*, 2007 WL 2479318, *11–12 (S.D. Ind. 2007) (unpublished opinion) (approving receiver's proposed distribution plan subject to minor modifications); *SEC v. Lewis*, 173 Fed. Appx. 565, 566 (9th Cir. 2006) (unpublished opinion) (noting that the district court had approved a distribution plan for the receivership estate); *SEC v. Euro Sec. Fund*, 2006 WL 1461776, *1 (S.D.N.Y. 2006) (unpublished opinion) (noting that the court had approved a distribution plan for

The large number of cases involving liquidation by a receiver demonstrates that the procedure is proper. An equity receivership often involves an insolvent receivership estate and the need for a receiver, under court supervision, to take control of assets for the benefit of claimants and ultimately distribute them equitably pursuant to a court-approved distribution scheme:

> The receiver's role, and the district court's purpose in the appointment, is to safeguard the disputed assets, administer

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disgorged funds and the appointment of a receiver to implement the plan); *Marwil v. Grubbs*, 2004 WL 2278751, *1, 5 (S.D. Ind. 2004) (unpublished opinion) (noting that, "under supervision by this court and [the receiver]," the defendant has "undertaken a plan to liquidate its assets to meet as many obligations to creditors as possible"); *SEC v. TLC Inv. & Trade Co.*, 147 F. Supp. 2d 1031, 1034–36 (C.D. Cal. 2001) (declining to adopt the bankruptcy code's procedures for a receivership liquidation); *SEC v. The Better Life Club of Am., Inc.*, 1998 WL 101727, *2 (D.D.C. 1998) (unpublished opinion) (directing that the defendants' "assets shall be distributed to defrauded investors pursuant to a plan of distribution to be proposed by the Commission subject to approval by this Court"); *SEC v. Custable*, 1996 WL 745372, *6 (N.D. Ill. 1996) (unpublished opinion) (granting "SEC's Motion for an Order Requiring the Receiver to Distribute Disgorgement Funds to Investors," and granting "the Receiver's Motion for Approval of the Plan of Distribution"); *SEC v. Parkersburg Wireless LLC*, 1995 WL 79775, *4 (D.D.C. 1995) (unpublished opinion) (adopting distribution plan under which over $3 million would be disbursed to claimants, largely on a pro rata basis); *SEC v. Vision Commc'ns, Inc.*, 1994 WL 326868, *2–3 (D.D.C. 1994) (unpublished opinion) (ordering receiver to "marshal the assets of [defendants] at the maximum value attainable, through liquidation or otherwise, and distribute them in accordance with a Plan of Distribution to be submitted by the [SEC] and approved by the Court"); *SEC v. Alpine Mut. Fund Trust*, 824 F. Supp. 987, 989 (D. Colo. 1993) (noting that "[t]he Receiver was empowered to . . . take whatever actions were necessary, subject to approval of the Court, for the protection of shareholders of the Funds and their assets, and to liquidate the Funds' assets"); *SEC v. Sunco Res. & Energy, Ltd.*, 1990 WL 128232, *2 (S.D. Fla. 1990) (unpublished opinion) (approving receiver's proposed distribution plan, under which roughly $87,000 would be disbursed to claimants, largely on a pro rata basis); *In re Dennis Greenman Sec. Litig.*, 829 F.2d 1539, 1540 (11th Cir. 1987) (noting that receiver in SEC fraud suit had made two interim distributions of assets); *SEC v. Elliot*, 1987 WL 46231, *1 (S.D. Fla. 1987) (unpublished opinion) (denying motion to permit filing of bankruptcy petition where "the receivership is in the process of filing a plan of partial distribution and is approaching completion of such plan"); *SEC v. Martin*, 1983 WL 1364, *2 (W.D. Wash. 1983) (unpublished opinion) (ordering individual defendant to turn over all his assets, except those protected under bankruptcy laws, to a receiver charged with proposing a distribution plan); *SEC v. United Fin. Group, Inc.*, 404 F. Supp. 908, 910 (D. Or. 1975) (noting that, in a related SEC fraud suit, "the receivership estate was ordered to be liquidated and distributed as if the entire estate were in bankruptcy" (internal quotation omitted)); *SEC v. Moody*, 374 F. Supp. 465 (S.D. Tex. 1974) (observing that receiver was appointed "to marshal and liquidate Bank's assets to the extent necessary in order to pay its depositors"); *SEC v. Gray Line Corp.*, 1972 WL 3981, *2 (S.D.N.Y. 1972) (unpublished opinion) (approving receiver's proposed distribution plan); *SEC v. Raffer*, 1970 WL 248, *4 (S.D.N.Y. 1970) (unpublished opinion) (granting SEC's motion for appointment of receiver because a receiver "is needed . . . to locate, preserve, and distribute the remaining assets"); *SEC v. Ark. Loan & Thrift Corp.*, 294 F. Supp. 1233, 1247 (W.D. Ark. 1969) (refusing to transfer case to bankruptcy court for liquidation where receivership already pending); *SEC v. Gulf Intecont'l Fin. Corp.*, 223 F. Supp. 987, 996 (S.D. Fla. 1963) (granting SEC's motion for appointment of receiver because "the best interests of public investors is served by the appointment of a receiver and the prompt liquidation of all assets within the jurisdiction of the court, and through proper legal procedure the pro-rata return of monies to the public investors, wherever situated"); *SEC v. Fiscal Fund, Inc.*, 48 F. Supp. 712, 715–16 (D. Del. 1943) (appointing a receiver to "wind up and liquidate" the defendant based on the "well-established power in the Federal Court sitting as a court of equity to order liquidation of a solvent corporation where there is no other course available to remedy a situation which is inequitable to the stockholders").

> the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary. . . . The district court may require all . . . claims to be brought before the receivership court for disposition pursuant to a summary process consistent with the equity purpose of the court. . . . The inability of a receivership estate to meet all of its obligations is typically the *sine qua non* of the receivership.

Liberte Capital, 462 F.3d at 551-53.

Where "rightful claims to assets exceed the assets available, the court, with the help of the receiver, must determine how to distribute the assets equitably. . . . [D]istributing . . . assets [of the entity placed in receivership] equitably is one of the central purposes of the receivership." *SEC v. Capital Consultants LLC*, 453 F.3d 1166, 1172 (9th Cir. 2006).

The Fifth Circuit repeatedly has affirmed orders providing for liquidation by receivers. *See, e.g.*, *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 327 (5th Cir. 2001) (affirming district court's distribution plan, under which over $1.1 million would be disbursed on a pro rata basis); *SEC v. Funding Res. Group*, No. 99-10980, 2000 WL 1468823, at *4 n.9 (5th Cir. 2000) (suggesting that claims can be presented in a future liquidation proceeding in the receivership court); *SEC v. Tipco, Inc.*, 554 F.2d 710, 710–11 (5th Cir. 1977) (noting that "[t]his case arises from the receivership proceedings against and liquidation of [the defendant corporation]").

Likewise, courts of appeals from other circuits also have frequently affirmed the distribution of assets of companies liquidated by receivers outside of bankruptcy. *See, e.g.*, *SEC v. Enter. Trust Co.*, 559 F.3d 649, 650 (7th Cir. 2009) (affirming district court's distribution plan, under which over $30 million would be disbursed to claimants); *SEC v. Infinity Group Co.*, 226 Fed. Appx. 217, 218–19 (3rd Cir. 2007) (unpublished opinion) (affirming district court's distribution plan, under which disbursements would be made to investors on a pro rata basis);

SEC v. Capital Consultants, LLC, 397 F.3d 733, 737 (9th Cir. 2005) (affirming district court's distribution plan, under which over $250 million would be disbursed to claimants, with investors compensated on a pro rata basis).[18]

The Bukrinsky Movants cite to a few cases from the Second Circuit—where there is no clear agreement among the courts that have addressed the issue—as purportedly supporting their argument that liquidations and distributions to investors and creditors should only occur in bankruptcy. But the cases the Bukrinsky Movants cite do not stand for such a sweeping proposition. To the contrary, even the cases expressing skepticism about the propriety of distributions outside bankruptcy in certain circumstances do not establish a per se rule against it. Indeed, the Receiver has found no case in which a court overturned a receiver's liquidation and distribution on the basis that such liquidation and distribution could only be accomplished in bankruptcy court. This case is similar to the many cases in which courts have approved the liquidation and distribution of assets by receivers outside of bankruptcy. Given the numerous cases in which liquidations and distributions in receiverships outside of bankruptcy have been

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[18] *See also United States v. Payne*, 62 Fed. Appx. 648, 649 (7th Cir. 2003) (unpublished opinion) (reciting that "a receiver was appointed by the court [in an civil enforcement action brought by the SEC] to oversee the liquidation of [the defendant's company's] inventory/assets and to make distributions to the company's investors and creditors"); *SEC v. First Choice Mgmt. Serv., Inc.*, 66 Fed. Appx. 652, 653 (7th Cir. 2003) (unpublished opinion) (noting that "the district court authorized the receiver to marshal and liquidate all available assets and present a plan of distribution"); *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 82 (2nd Cir. 2002) (affirming district court's distribution plan, under which funds would be disbursed on a pro rata basis); *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 660 (6th Cir. 2001) (observing that "[t]he district court appointed [a receiver] and charged him with marshaling [the defendant's] assets and devising a plan for the disgorgement of the proceeds to [the defendant's] investors"); *SEC v. Elliott*, 953 F.2d 1560, 1565, 1584 (11th Cir. 1992) (affirming vast majority of district court's distribution plan); *SEC v. Hardy*, 803 F.2d 1034, 1035–36 (9th Cir. 1986) (reciting that "[t]he district court appointed an equity receiver . . . to take ownership and liquidate the assets of the [defendant] entities to satisfy the claims of Investors"); *SEC v. First Sec. Co. of Chicago*, 507 F.2d 417, 419 (7th Cir. 1974) (reviewing classifications made by receivership court "in anticipation of the [defendant's] liquidation"); *SEC v. Bartlett*, 422 F.2d 475, 478–79 (8th Cir. 1970) (affirming district court's denial of a motion to vacate the receivership of three insolvent corporations and refer interested parties to bankruptcy court); *SEC v. Charles Plohn & Co.*, 433 F.2d 376, 379 (2nd Cir. 1970) (affirming district court's appointment of receiver because New York Stock Exchange had ceased to oversee defendant's liquidation and receivership was necessary to protect the property of defendant's customers).

approved, the Bukrinsky Movants reliance on dicta from a few cases critical of such a process is misplaced.

Furthermore, granting the Bukrinsky Movants' request to lift the injunction against involuntary bankruptcy filings effectively would put an end to the long-used effective and efficient tool of equity receiverships. If granted, it is possible that in future securities fraud cases, the SEC would be wary of seeking an equity receivership, fearing that the receivership would quickly be converted to a bankruptcy proceeding. Public policy considerations cannot countenance such a result.

D. The Receiver does not have a conflict of interest.

The Receiver has no conflict of interest in this case. The Bukrinsky Movants contend that the Receiver has an inherent conflict of interest in representing all of the Stanford entities. Bukrinsky Motion at 3. But receivers are often appointed for multiple entities involved in a single fraudulent scheme. *See, e.g., United States v. Setser*, No. 07-10199, 2009 WL 1299562, at *1 (5th Cir. May 12, 2009); *SEC v. Megafund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at *1-2 (N.D. Tex. June 24, 2008); *SEC v. Ross*, 504 F.3d 1130 (9th Cir. 2007) (stating that a receiver was appointed for multiple entities involved in a Ponzi scheme); *SEC v. Credit Bancorp, Ltd.*, 297 F.3d 127, 129-30 (2d Cir. 2002) (noting that a single receiver was appointed over multiple entities involved in a Ponzi scheme).

A recent case, in fact, contradicts the Bukrinsky Movants' argument. The court in *In re Petters* decided that no conflict of interest precluded a pre-bankruptcy receiver, appointed for multiple entities, from serving as bankruptcy trustee for the same entities. *In re Petters Co., Inc.*, 401 B.R. 391 (Bankr. D. Minn. 2009). The objecting parties argued that (1) the receiver, because of his status as receiver, could not become trustee for any debtor (an "external conflict"

outside of the bankruptcy cases) and (2) the receiver could not serve as trustee for all the debtors simultaneously (an "internal conflict" within the bankruptcy cases).

First, the court disagreed with the external conflict argument because the receiver—along with the district court—had no interest in the disposition of assets and did not advocate for any party. The receiver's only interest was preventing further losses and maintaining the status quo. *Id*. at 407. Next, the court found that no internal conflict existed. Installing the receiver as trustee was deemed both economical and efficient because of his knowledge of the case. *Id*. at 413. The court also determined that no conflict between the debtors would arise while the trustee sought to recover assets. *Id*.

Similar to *In re Petters*, the Receiver has no inherent conflict of interest representing the Stanford entities in receivership or bankruptcy. The Receiver's knowledge base regarding the Receivership Estate could not be attained by an additional receiver or trustee without considerable delay and cost. Further, if the Bukrinsky Movants believe a future distribution plan is inequitable, they can raise their objection at that time. Finally, because the Stanford entities comprised one inseparable aggregate fraudulent scheme, and should be treated as a single economic enterprise, no conflict of interest is possible from serving as Receiver over multiple Defendants in this case.

E. The Bukrinsky Movants fail to satisfy Rule 24's requirements.

Before a party can intervene in an action, it must establish the right to intervene under Federal Rule of Civil Procedure 24(a) or (b) ("Rule 24"). Rule 24(a) *requires* an applicant for intervention to meet four requirements:

> (1) the application for intervention must be timely;
> (2) the applicant must have an interest relating to the property or transaction which is the subject of the action;
> (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and]

> (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

FED. R. CIV. P. 24(a); *Haspel & Davis Milling & Planting Co. Ltd. v. Bd. of Levee Comm'rs of the Orleans Levee Dist.*, 493 F.3d 570, 578 (5th Cir. 2007) (citing *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984)). Failure to establish any of the four requirements precludes intervention under Rule 24(a). *Id.* (citing *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)).

As with previous rounds of putative intervenors, the Bukrinsky Movants do not establish all four requirements. Though the Bukrinsky Movants allege that the Receiver does not represent their interests, they fail to rebut the presumption of adequate representation that applies in cases like this. *See Baker v. Wade*, 743 F.2d 236, 241 (5th Cir. 1984) (holding that "[a] presumption of adequate representation . . . arises when the representative is a governmental body or officer charged by law with representing the interests of the absentee"); *Johnson v. City of Dallas*, 155 F.R.D. 581, 586 (N.D. Tex. 1994) (holding that "where . . . the existing representative in the suit is the government, there is a presumption of adequate representation which may be overcome by the intervenor only upon a showing of adversity of interest, the representative's collusion with the opposing party, or nonfeasance by the representative"); *see also SEC v. Qualified Pensions, Inc.*, No. 95-1746, 1998 WL 29496, at *4 (D.D.C. Jan. 16, 1998) (holding that the SEC adequately represented putative intervenors' interests because, "[a]fter all, the SEC exposed the fraud at the core of . . . this suit . . . [and] is statutorily commissioned to represent the interests of individual investors in the public at large, such as applicants").

Intervention under Rule 24(b) also has not been established. Rule 24(b) allows a court to deny intervention if it would cause undue delay or prejudice to the existing parties. *Stallworth v. Monsanto Co.*, 558 F.2d 257, 269 (5th Cir. 1977); *see also Kneeland v. Nat'l*

Collegiate Athletic Ass'n, 806 F.2d 1285, 1289-90 (5th Cir. 1987), *cert. denied*, 484 U.S. 817 (1987). The Receiver represents the interests of all who have a stake in the Receivership Estate assets. He does not favor one interest over another. He is not an interested party with any interest adverse to any creditor, investor, or group of creditors or investors. As such, he has no "conflict of interest" that prohibits him from serving as Receiver for multiple entities. The Receiver is in the best position to determine whether bankruptcy is an appropriate option for the Receivership estates. That decision-making authority should not be ceded to a few creditors or a single constituency acting in its own best interest.

III. Conclusion & Prayer

For these reasons, the Bukrinsky Motion to Intervene and to Amend or Modify Certain Portions of the Court's Amended Receivership Order should be denied. The Receiver also requests any further relief to which he is entitled.

Dated: June 1, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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Certificate of Service

On June 1, 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 the Court-appointed Examiner, 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
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