

**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.,     | § |                         |
| STANFORD GROUP COMPANY,                | § |                         |
| STANFORD CAPITAL MANAGEMENT, LLC,      | § |                         |
| R. ALLEN STANFORD, JAMES M. DAVIS, and | § |                         |
| LAURA PENDERGEST-HOLT,                 | § |                         |
|  | § |                         |
| Defendants.                            | § |                         |

**RECEIVER'S MOTION TO APPROVE SALE OF  
INVESTMENT INTERESTS IN SENESCO**

**I. INTRODUCTION**

Ralph S. Janvey, as Receiver for the assets of Defendants and all Stanford-controlled entities, respectfully moves the Court for an order approving the sale of certain private equity interests held by Stanford Venture Capital Holdings, Inc. (“SVCH”) and Stanford International Bank, Ltd. (“SIBL” and, together with SVCH, “Stanford”). As explained in detail below, the Receiver has obtained an offer from prospective buyers who wish to purchase Stanford’s collective investments in Senesco Technologies, Inc. (“Senesco”). The Receiver has reviewed and analyzed this offer, and has sought a recommendation from Park Hill Group (“PHG”) concerning it.<sup>1</sup> Based upon his independent evaluation and PHG’s recommendation, the Receiver believes that the liquidation of these investments pursuant to the pending offer will

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<sup>1</sup> On July 16, 2009, the Receiver filed his Motion to Appoint Private Equity Advisor and requested the approval of the Court to retain PHG to manage the Investment Portfolio (as defined below). Due to the time sensitivity surrounding these potential divestments, PHG agreed to review the Senesco investments and provide a recommendation to the Receiver regarding their disposition. PHG will receive a 3% commission for its work on Senesco, totaling \$53,400, should the Court approve the proposed transactions.

achieve the maximum benefit from the holdings and is in the best interest of the Receivership Estate.

## II. FACTUAL BACKGROUND

On February 16, 2009, the Securities and Exchange Commission (the “Commission”) commenced a lawsuit in this Court against R. Allen Stanford, two associates, James M. Davis and Laura Pendergest-Holt, and three of Mr. Stanford’s companies, Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLC (collectively “Defendants”). The Commission alleges, in its First Amended Complaint filed on February 27, 2009, that Defendants perpetrated a multi-billion-dollar fraudulent scheme by (1) promising high return rates on “certificates of deposit” that exceeded those available through true certificates of deposit offered by traditional banks and (2) selling a proprietary mutual fund wrap program known as Stanford Allocation Strategy using materially false and misleading historical performance data. Am. Comp. (Doc. 48) ¶¶ 3, 6.

The Court found good cause to believe that Defendants violated federal securities laws. Accordingly, on February 17, 2009, the Court entered an order appointing Ralph S. Janvey Receiver over all the assets of Defendants and all the entities they own or control. Order Appointing Receiver (Doc. 10). On March 12, 2009, the Court entered an Amended Order Appointing Receiver that contained changes not material to this motion (the “Receivership Order”). Amended Order Appointing Receiver (Doc. 157).

The Receivership Order charged the Receiver with marshaling and preserving the assets of the Receivership Estate. In conducting his duties, the Receiver identified numerous debt and equity investments made in nearly 40 different companies (the “Investment Portfolio”). While the Receivership Estate’s records reflect that approximately \$650,000,000 was initially invested in the Investment Portfolio, these figures have not been audited, and the Receiver and

PHG expect that the Receivership Estate will realize far less for these investments. Many of these investments are in entities with negative equity, market conditions or adverse events have reduced the value of others, and a number include contractual commitments that would require the Receivership Estate to contribute additional millions of dollars or face significant dilution or total loss of the investment.

Included in the Investment Portfolio are direct investments by SVCH and SIBL in Senesco. SVCH, SIBL, and their holdings are part of the Receivership Estate, and the Receiver now seeks Court authority to liquidate these investments.

### III. ARGUMENT AND AUTHORITIES

A common-law equity receiver has the power to dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver “should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors.” *Id.* (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2d Cir. 1931)).

The liquidation of the Senesco investments is in the best interest of the Receivership Estate. The offer, as described below, and related agreements are the product of significant negotiations between the Receiver and the prospective buyers. The Receiver and PHG have analyzed the offer and have determined that it is fair and equitable given the totality of the circumstances surrounding the investments. While the offer does not rise to the level of Stanford’s initial investment, it represents a fair market cash price when accounting for liquidity discounts and the economic uncertainties inherent in today’s market. Given the current market conditions, the negative performance and uncertain outlook of the investments, and Senesco’s

risk of insolvency, this offer represents the best opportunity for the Receiver to maximize the actual cash value of these investments for the Receivership Estate.

Continuing to hold these investments carries a high level of risk for the Receivership Estate. The Stanford entities have collectively invested \$8,000,000 in Senesco. Looking forward, Senesco faces considerable financial and operational difficulties, and Senesco has been unable to secure adequate funding to sustain its ongoing operations. Under the terms of the proposed sale, the Receivership Estate would receive an aggregate cash payment at the respective closing dates from the potential buyers totaling \$1,780,000. If Stanford does not divest these assets now, it faces a substantial risk of further devaluation of its holdings. Liquidation, therefore, is in the best interest of the Receivership Estate.

**A. Stanford's Investments in Senesco.**

Senesco, a biotechnology company headquartered in New Brunswick, New Jersey, is engaged in the development of proprietary gene-based technology for use in human therapeutic and agricultural applications. Senesco bases its technology on the characterization of two regulatory genes normally present in the genomes of animal and plant cells that play a fundamental role in controlling apoptosis, or programmed cell death. Senesco seeks to modulate the expression of these two key genes to treat human diseases, including cancer and certain inflammatory conditions, and to improve agricultural products.

Stanford holds a substantial investment interest in Senesco. In December 2007, SVCH invested \$5,000,000 in Senesco's convertible notes (the "Notes"). The Notes have an annual interest rate of 8% and mature on December 31, 2010. Pursuant to the terms of a Securities Purchase Agreement dated August 29, 2007, the Notes will convert into shares of Senesco common stock on December 20, 2009 at a fixed rate of \$0.90 per share or 80% of the lowest daily volume-weighted average price of the common stock during the five trading days

prior to the conversion date. However, Senesco recently raised approximately \$1 million from inside investors. The additional capital raise triggered an anti-dilution provision in the Asset Purchase Agreement, which reduced the conversion price for the Notes from \$0.90 per share to \$0.83 per share, or, on an as converted basis, to 6,024,096 shares of common stock.

In addition to the Notes, SVCH owns (i) an additional 969,199 shares of Senesco common stock, (ii) warrants to purchase up to 2,083,334 shares of common stock at a price per share of \$0.83 and (iii) warrants to purchase up to 2,833,334 shares of common stock at a price per share of \$1.01. Further, SIBL owns 1,714,287 shares of common stock. In total, the Stanford entities have invested \$8,000,000 in Senesco, and beneficially own a total amount of 8,707,582 shares of common stock equivalents (excluding warrants), representing approximately 28.3% of the total common stock equivalents issued by Senesco (excluding warrants).

At this time, Senesco is experiencing significant operational and financial difficulties, and doubt exists with regard to its continued viability. From an operational standpoint, Senesco's technology remains in the early developmental phases, and may not be ready for commercialization for several more years. As a result, Senesco's current expenditures on research and development significantly exceed its revenues, and it expects to continue to incur losses on its balance sheet until its technology finally reaches the commercialization stage.

Senesco's challenges stemming from a technology in the early stages of development are further compounded by a limited supply of capital. Senesco's operations to date have required significant cash expenditures. Moreover, PHG estimates that Senesco will need to raise a significant amount of capital through September 2010 to perform the necessary research and development work to support Senesco's technology, as well as to conduct the requisite pre-clinical and clinical studies. As of June 30, 2009, Senesco had only \$1.4 million of

cash and cash equivalents. As stated in Senesco's recently-filed annual report on Form 10-K, as amended, Senesco disclosed that it should be able to cover expenses through December 31, 2009 by relying on the approximately \$1 million of financing it recently raised. However, if Senesco is unable to acquire additional capital past that point, it may be required to cease operations or declare bankruptcy. On the other hand, if Senesco is able to secure capital through the issuance of additional equity or debt securities, Stanford will be forced to infuse additional capital or have its current interests significantly diluted.

As a publicly-traded company on the NYSE Amex Exchange ("AMEX"), Senesco's operational difficulties have negatively impacted its share price.<sup>2</sup> Since December 31, 2008, Senesco's public share price has fallen over 65%. As of November 4, 2009, Senesco was trading at \$0.30 per share, which is at the lower end of its 52-week range (\$0.30 - \$1.15). While Senesco is a publicly-traded company, its stock is thinly traded on AMEX, carrying an average three-month volume of approximately 72,595 traded shares. Because Stanford owns the equivalent of over 8.3 million shares of common stock (excluding warrants), a public market exit for Stanford's investments is not an option.

Since the early part of 2009, Senesco has been working to raise the necessary funds to strengthen its balance sheet. To date, Senesco has only been able to raise approximately \$1,000,000 from unaffiliated persons. Senesco engaged two investment banks to assist it in its fundraising effort. The banks contacted over 50 potential investors, including numerous institutional investment groups and venture capital firms. To date, neither of the investment banks has been successful in raising the necessary capital for Senesco. A successful fundraising effort could potentially have provided an exit opportunity for Stanford.

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<sup>2</sup> On November 4, 2009, Senesco also disclosed that it received notification from AMEX that Senesco did not meet one of AMEX's continued listing standards, and that, as a result, Senesco ultimately may be delisted.

**B. The Senesco Insiders' Offer**

Due to Senesco's troubled financial condition and declining share price, the Receiver engaged PHG to actively market Stanford's holdings in Senesco. Due to the lack of a public market exit option, PHG instead focused on a targeted group of potential investors within the secondary market in an attempt to locate potential buyers.

In addition to the numerous potential investors contacted by the two investment banks, PHG, with the assistance of Senesco, contacted over 15 pre-qualified potential investors in an attempt to market Stanford's holdings, including existing investors in Senesco, venture funds, high net worth individuals, and secondary funds. PHG identified potential buyers' due diligence requirements, and maintained an electronic data room to provide further information regarding Senesco's projected overall financial condition, operating costs, and capitalization. Based upon the afore-mentioned risk factors, including Senesco's high risk of insolvency, the majority of the potential investors contacted declined to bid.

PHG's extensive marketing efforts resulted in multiple offers. First, a group of existing Senesco investors and several members of Senesco's Board of Directors (collectively, "Senesco Insiders") submitted an initial offer comprised of multiple payments spread out over a one-year period from the date of closing. Subsequently, the Receiver received additional interest, which allowed PHG to create a multi-stage auction. Utilizing this process, PHG negotiated with the potential buyers and successfully obtained increased offers for the Receivership Estate. Ultimately, the Senesco Insiders proposed the highest final offer of \$1,780,000, constituting an increase to the initial offer of over 75%. Additionally, the entire cash

purchase price of \$1,780,000 would be due on the respective closing dates, rather than in a series of payments.<sup>3</sup>

After conducting an analysis of the final offer received from the Senesco Insiders, PHG recommended that the Receiver accept the offer because (i) the Senesco Insiders' offer was the highest received after extensive marketing efforts and a multi-stage auction; (ii) Senesco's risk of insolvency remains high; and (iii) Senesco's ongoing financial and operational difficulties make it highly unlikely that the Receiver can obtain a more attractive offer from a suitable buyer. As a result, PHG concluded that the pending offer from the Senesco Insiders represented the highest dollar value available for the Receivership Estate.

Based upon the recommendation of PHG, attached as Exhibit 1 (Appendix at 3-4), the Receiver believes that the Receivership Estate will realize the maximum benefit of this investment by accepting the pending offer from the Senesco Insiders and liquidating Stanford's holdings in Senesco. Consequently, the Receiver seeks the Court's approval to complete this sale of investment interests held by SVCH and SIBL for a total payment of \$1,780,000 to the Receivership Estate. The terms of the sale and assignment are reflected in material attached as Exhibits 2 and 3. (Appendix at 5-24 and 25-44).

#### **IV. CONCLUSION AND PRAYER FOR RELIEF**

After significant consultation with his team and PHG, the Receiver believes that the liquidation and sale of the aforementioned investment interests in Senesco would inure maximum benefit to the Receivership Estate. As a result, the Receiver respectfully requests that the Court approve the respective sale of these holdings pursuant to the terms contained in

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<sup>3</sup> Under the Senesco Insiders' proposal, the funds will be split evenly between SVCH and SIBL in accordance with the terms of two separate Purchase and Sale Agreements.



Exhibits 2 and 3. (Appendix at 5-24 and 25-44), and grant such other relief that the Court may deem just and equitable.

Dated: November 16, 2009.

Respectfully submitted,

Baker Botts L.L.P.

By: /s/ Kevin M. Sadler

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**ATTORNEYS FOR RECEIVER  
RALPH S. JANVEY**

**CERTIFICATE OF CONFERENCE**

Counsel for the Receiver conferred with David B. Reece, counsel for the SEC, who stated that the SEC does not oppose the motion and the relief sought herein. Counsel for the Receiver conferred with John Little, Court-appointed Examiner, who stated that he is not opposed to this motion and the relief sought herein. Counsel for the Receiver conferred with Manuel P. Lena, Jr. counsel for U.S.D.O.J. (IRS) who stated that the IRS has no position on the relief sought herein. Counsel for the Receiver conferred with Greg Weselka, counsel for the Antigua Liquidators, who stated that his clients oppose the motion and relief sought herein. Counsel for the Receiver conferred with Ruth Schuster, counsel for R. Allen Stanford, who stated that her client opposes the motion and the relief sought herein. Counsel for the Receiver conferred with Jeff Tillotson, counsel for Laura Pendergest-Holt, who stated that his client has no position on the relief sought herein. Therefore, this motion is opposed.

/s/ Kevin M. Sadler

Kevin M. Sadler

**CERTIFICATE OF SERVICE**

On November 16, 2009 I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler

Kevin M. Sadler