

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Securities and Exchange Commission,)
100 F Street, NE)
Washington, DC 20549)
)
Applicant,)
)
v.)
)
Securities Investor Protection Corporation,)
805 Fifteenth Street, NW)
Suite 800)
Washington, DC 20005)
)
Respondent.)

Misc. No. _____

APPLICATION OF THE SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission (“SEC” or “Commission”) hereby applies to this Court, pursuant to the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. § 78aaa, *et seq.* (“SIPA”), for an order requiring the Securities Investor Protection Corporation (“SIPC”) to file an application for a protective decree with the federal district court for the Northern District of Texas pursuant to Section 5(a)(3) of SIPA with respect to Stanford Group Company and to otherwise discharge its obligations under SIPA. In support of its Application, the Commission alleges as follows:

SUMMARY

1. Faced with colorable claims by thousands of customers of an insolvent SIPC-member securities brokerage (Stanford Group Company) that the brokerage had failed or was in danger of failing to meet its obligations to customers, the Commission, pursuant to its plenary power over SIPC, requested SIPC to take steps to initiate a SIPA liquidation proceeding for that brokerage. Initiation of a SIPA liquidation proceeding

would allow the brokerage customers to, among other things, present to a trustee their claims for SIPC coverage for some or all of the losses they may have sustained, and if necessary to appeal any objections to their claims to a court. SIPC, however, has refused to apply for an order initiating a SIPA liquidation proceeding for Stanford Group Company. Accordingly, the Commission brings this application for a court order compelling SIPC to apply for an order initiating a SIPA liquidation proceeding for that brokerage.

2. In support of this Application, the Commission submits the accompanying Declaration of Matthew T. Martens (“Martens Declaration”) and Memorandum of Points and Authorities.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to Section 11(b) of SIPA [15 U.S.C. § 78ggg(b)]. Venue properly lies within the District of Columbia pursuant to Section 11(b) of SIPA.

THE STANFORD FRAUD

4. Stanford Group Company (“SGC”) is and was a broker-dealer registered with the Commission under Section 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o], and a member of SIPC. SGC is and was a wholly-owned subsidiary of Stanford Group Holdings, Inc., which was owned by Robert Allen Stanford (“Stanford”).

5. Stanford was also chairman of the board and sole shareholder of Stanford International Bank, Ltd. (“SIBL”), a purported private international bank chartered and domiciled in St. Johns, Antigua.

6. SGC operated through 29 offices located throughout the United States, and its principal business was the sale of securities issued by SIBL that were marketed as

certificates of deposit (“CDs”). The CD sales in the United States were made pursuant to Regulation D. As of February 16, 2009, SGC had approximately 32,000 active customer brokerage accounts.

7. On or about February 16, 2009, the Commission filed a civil enforcement action in the federal district court for the Northern District of Texas against Stanford, SGC, SIBL, and others alleging that, for at least a decade, they had executed a massive Ponzi scheme centered on the sale of SIBL CDs. Also on or about February 16, 2009, the district court appointed a receiver (“Receiver”) for the assets of Stanford, SGC, SIBL, and others.

8. According to the Receiver’s report dated April 23, 2009 (“Receiver Report”):

- a. As of February 2009, approximately \$7.2 billion of SIBL CDs were outstanding and held by approximately 21,500 investors worldwide, including the United States. *Id.* at 12.
- b. SGC, SIBL, and Stanford Group Holdings, Inc. were three entities within “a complex, sprawling web of more than 100 companies, all of which were controlled and directly or indirectly owned by Allen Stanford.” *Id.* at 5.
- c. The companies controlled and directly or indirectly owned by Allen Stanford (collectively referred to hereafter as “the Stanford companies” or “Stanford”) “were operated in a highly interconnected fashion” to advance the selling of SIBL CDs. *Id.*

- d. “Stanford’s financial advisors used the apparent legitimacy offered by U.S. regulation of Stanford’s U.S. brokerage subsidiary [SGC] in order to generate sales of SIBL CDs.” *Id.* at 7.

A copy of the Receiver Report is attached as Exhibit 2, Attachment 2, to the Martens Declaration.

9. SGC was in industry parlance an “introducing broker” because, as stated in the declaration of the Receiver’s forensic accountant dated July 28, 2009 (“Accountant Declaration”), SGC’s customer accounts were cleared and carried by third-party broker-dealers. *See* Accountant Declaration ¶ 6. Notwithstanding this status, SGC’s registered representatives could and did promote investment products, including SIBL CDs, to customers, as described below in paragraph 11. A copy of the Accountant Declaration is attached as Exhibit 2, Attachment 4, to the Martens Declaration.

10. The Receiver and his accountant have described how the proceeds from SIBL CD sales flowed among the Stanford’s companies. Specifically:

- a. The proceeds variously were diverted to Stanford’s personal use, disbursed to Stanford-controlled entities, used to purchase private equity and other investments, and to pay CD redemptions and interest. Receiver Report at 7.
- b. At SGC, the proceeds were used to support SGC’s operations and to compensate its personnel, who were “highly incentivized” to sell CDs. Receiver Report at 7-9, Accountant Declaration ¶¶ 50-54.
- c. Although interest and redemptions from pre-existing CDs should have been paid from earnings, liquid assets, or reserves, these

obligations were instead paid by new CD sales proceeds.

Accountant Declaration ¶ 14; Receiver Report at 13.

- d. In late 2008 and early 2009, CD redemptions increased to the point that continuing CD sales could no longer cover redemptions, interest payments and normal operating expenses. This caused a rapid depletion of assets. By the time of the Receiver's appointment, SIBL had already suspended redemptions for certain investors. Accountant Declaration ¶ 12.

11. The Commission also has received correspondence from the Stanford Victims Coalition ("SVC"), which described itself in a November 12, 2009, letter to the Commission as "a non-profit organization representing 28,000 innocent investors from around the world who collectively have lost up to \$7.2 billion in [SIBL] certificates sold to them through the Stanford Financial Group of Companies ('SFG'), a global network of financial services companies based in Houston, Texas, and owned and controlled by R. Allen Stanford." SVC's November 12, 2009, letter alleged that:

- a. SGC registered representatives introduced investors to the CDs, and investors opened brokerage accounts at SGC in order to purchase them. In doing so, many customers entered into an Account Application and Agreement ("Account Agreement"). *Id.* at 3.
- b. One sample Account Agreement includes the Stanford logo and contains language on the first page indicating that customers were

- entering into an Agreement with SGC, an NASD/Financial Industry Regulatory Authority (“FINRA”) and SIPC member. *Id.*
- c. At least some customers received SGC account-related documents that showed their CD balance, were emblazoned with the Stanford logo across the top of the page, and indicated that SGC was an NASD or FINRA member and a member of SIPC. *Id.* at 3-4.

A copy of the SVC letter dated November 12, 2009, is attached as Exhibit 3 to the Martens Declaration.

SIPC’S REFUSAL TO INITIATE A SIPA LIQUIDATION PROCEEDING

12. SIPC is a nonprofit membership corporation created under SIPA.
13. The Commission has plenary authority over SIPC.
14. On or about August 12, 2009, the Receiver sent a letter to SIPC asking for its view on whether SIPC protection was available for SGC customers who had purchased SIBL CDs, based on information provided by the Receiver. A copy of the Receiver’s letter to SIPC dated August 12, 2009, is attached as Exhibit 1 to the Martens Declaration.
15. On or about August 14, 2009, SIPC sent a response letter to the Receiver stating there was no basis for SIPC to initiate a proceeding under SIPA. SIPC declined coverage on the asserted ground (among others) that SGC did not perform a custody function for its customers. A copy of SIPC’s letter to the Receiver dated August 14, 2009, is attached as Exhibit 3, SVC Exhibit 6, to the Martens Declaration.
16. On or about June 15, 2011, the Commission sent a letter to SIPC advising that the “Commission has determined, on the totality of the facts and circumstances of this case, that SIPC member [SGC] has failed to meet its obligations to customers” and,

therefore, that “the Commission has concluded that SIPC should initiate a SIPA liquidation of SGC.” In addition, the Commission supplied SIPC with an analysis of SIPA coverage on which the Commission’s decision was based (“Commission Analysis”). A copy of the Commission’s letter to SIPC dated June 15, 2011, together with the Commission Analysis and supporting materials sent to SIPC, is attached as Exhibit 2 to the Martens Declaration. After receiving the Commission’s request and Analysis, SIPC announced that it would consider the matter and would announce a decision on or about September 15, 2011. This announcement was delayed.

17. To date, SIPC has refused to commit its funds or otherwise to act for the protection of customers of SGC. Specifically, SIPC has refused to take action under SIPA to initiate a liquidation of SGC.

REQUESTED RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

(A) Enter an Order to Show Cause, in the form submitted, directing SIPC to show cause why this Court should not enter an order requiring SIPC to file an application with the federal district court for the Northern District of Texas pursuant to Section 5(a)(3) of SIPA for a protective decree with respect to SGC;

(B) Authorize service of the Order to Show Cause by facsimile, mail, e-mail, overnight delivery, special process server, personal service by any employee of the Commission who is not counsel of record in this matter, or in any other manner authorized by Rule 5 of the Federal Rules of Civil Procedure, on SIPC;

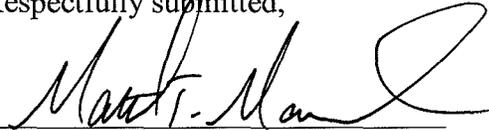
(C) Enter an Order, in the form submitted, directing SIPC to file an application with the federal district court for the Northern District of Texas pursuant to Section 5(a)(3) of SIPA for a protective decree with respect to SGC;

(D) Retain jurisdiction over this proceeding until such time as SIPC fully complies with the terms of the Order; and

(E) Order such other and further relief as may be necessary and appropriate to achieve compliance with the Order.

Dated: December 12, 2011

Respectfully submitted,



Matthew T. Martens
Chief Litigation Counsel
David S. Mendel (D.C. Bar #470796)
Assistant Chief Litigation Counsel
Attorneys for Applicant
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
(202) 551-4481 (Martens)
(202) 772-9282 (fax)
E-mail: martensm@sec.gov
mendeld@sec.gov

Of Counsel:

Michael A. Conley

Deputy General Counsel, Office of General Counsel

Thomas K. McGowan

Deputy Associate Director, Division of Trading and Markets