

# STANFORD VICTIMS COALITION

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December 2, 2011

Ira Hammerman, Esq.  
General Counsel  
Securities Industry and Financial Markets Association  
1101 New York Ave NW # 800  
Washington D.C., DC 20005-4279

Re: SIFMA's August 2011 Memo to the SIPC Board of Directors

Mr. Hammerman,

As the Director and Founder of the Stanford Victims Coalition, a member of the District Court-appointed Stanford Investors Committee, and more generally as an investor, I am astounded by the Securities Industry and Financial Markets Association's (SIFMA) oppositional response to the Securities and Exchange Commission's (SEC) recommendation to the Securities Investor Protection Corporation (SIPC) to liquidate Stanford Group Company (SGC) and satisfy customer claims for net investments in Stanford International Bank (SIB) certificates of deposit.

Your August 17, 2011 memo to the SIPC Board of Directors clearly demonstrates SIFMA's inherent conflict of interest in protecting the industry it represents over the investing public. Apart from the complete *misinformation* used as the basis of SIFMA's recommendation the SIPC Board "reject" the SEC's analysis regarding the status of SGC customers under the Securities Investor Protection Act (SIPA), SIFMA fails to acknowledge any "legitimate expectations" of the investors who relied on the SIPC logo and the "professionals" in the industry SIFMA represents.<sup>1</sup>

While SIFMA publicly claims to support fostering "an environment of trust and confidence in the financial markets," your memo exposes SIFMA's true intention—to prevent an increase in fee assessments on SIPC member companies. In essence, SIFMA opposes *real* investor protection, and would rather give investors the *false* sense of confidence conveyed by the use of the SIPC logo.

Simply put, when an investor who is sold securities by a Registered Representative of a SIPC Member (like SGC) cannot rely on SIPC to uphold its statutory requirements under the SIPA, *any* use of the SIPC logo is misleading and the only confidence an investor might have is false confidence. SIFMA should be ashamed of its lobbying position to perpetuate investor deception.

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<sup>1</sup> In *New Times Securities*, the Second Circuit gave deference to the SEC's position that a customer's "legitimate expectations," based on written confirmations of transactions, ought to be protected

Your memo makes numerous references to the SEC's "unprecedentedly broad" interpretation of SIPA's "narrow mandate" and "limited purpose," but the reality is the SIPA has always protected customers whose funds were stolen by a SIPC member. It is only in the aftermath of regulatory failure to protect investors from insolvent broker dealers like Madoff and SGC that SIFMA and SIPC have decided to defend a much more "limited" perspective of the SIPA.

I would like to address some of the specific points made in your memo, and the position SIFMA has taken that protecting SGC customers contravenes "public policy" and the legislative intent of SIPA.

### **SIFMA does not have oversight authority over SIPC**

Congress did not give SIFMA legislative authority over SIPC; Congress granted that power to the SEC. It is not SIFMA's position to interpret the statute and make recommendations to SIPC. Congress put SIPC's direction in the hands of a publicly chosen board of directors—not SIPC's and SIFMA's member firms.

It is manifestly contrary to the public policy of the United States for a private, self-interested organization to undermine the government's legislative authority or intervene in their administration of a law. SIPA was enacted to protect customers of registered broker dealers, and more than 100 members of Congress have weighed in on this issue over the past 33 months—all seeking for their constituents the mandated protections SIPA was created to provide.

### **SIFMA's erroneous analysis of the SEC's recommendation**

SIFMA's memo states, "Crucially, unlike the situation in the cases relied upon in the SEC Analysis, including the liquidation of Bernard L. Madoff Investment Securities LLC, the purchasers of SIBL CDs actually purchased the very security they sought to acquire." That statement could not be more inaccurate.

The SIB CDs did not exist as anything more than a vehicle to steal customer funds. By all definitions, the SIB CDs were never legitimate securities, and customer funds never went to SIB in Antigua.<sup>2</sup> SGC customers had the legitimate expectation they were purchasing actual securities and instead, as the SEC and DOJ have alleged, their funds were stolen in a Ponzi scheme. SGC management, including Chief Financial Officer James Davis, were fully aware of the misappropriation of customer funds and that the CDs were entirely

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<sup>2</sup> The February 15, 2011 Declaration of Karyl Van Tassel, forensic accountant for the Stanford Receiver, states customer's funds intended to purchase the SIB CDs were misappropriated to pay: (i) previous customers; (ii) the expenses of SGC, including the salaries and commissions of its registered representatives; and (iii) Allen Stanford, the sole owner of SGC. According to Van Tassell, a majority of SGC's revenue came from the SIB CD funds acquired by the broker dealer after its registered reps sold the securities.

fictitious, yet enticed its Registered Representatives to sell the SIB CDs in order to fund SGC's operations and pay previous customers.<sup>3</sup>

The SEC has alleged in its civil suit against Stanford, et al, the Stanford Financial Group of Companies operated a "massive Ponzi scheme." Additionally, the SEC has taken the position in litigation related to the Stanford Receivership that an entity that operates as a Ponzi scheme "is, as a matter of law, insolvent from its inception."<sup>4</sup> An insolvent entity cannot issue real securities and the SIPA has previously been used to protect investors "regardless of the fact that that the securities were fictitious."<sup>5</sup>

### **SGC customers do not have "ordinary losses"**

There is nothing "ordinary" about SGC customers' losses. SGC was an insolvent broker dealer and SIPC member that misappropriated customers' funds for more than a decade. SGC sold its customers fictitious securities, then acquired its customers' funds to pay for commissions and bonuses for the Registered Representatives who sold the CDs; SGC's marketing and advertising; professional endorsements for SGC; and generally all of the expenses of the SIPC member.<sup>6</sup>

In *Old Naples Securities*, the court reasoned that whether a claimant deposited cash with the debtor "does not ... depend simply on to whom the claimant handed her cash or made her check payable, or even where the funds were initially deposited."<sup>7</sup> Rather, the issue was one of "actual receipt, acquisition or possession of the property of a claimant by the brokerage firm under liquidation."<sup>8</sup>

SGC customers did not simply make a bad investment; a SIPC member stole our funds. We understand that SIPC was not created to protect investors from worthless securities or securities that decline in value; however, the SIB CDs have no value because the funds were stolen in a Ponzi scheme.

The SIB CDs did not exist and cannot be replaced. When missing securities cannot be replaced by SIPC, a customer is entitled to compensation of their net equity investments.

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<sup>3</sup> Stanford Group Company's Chief Financial Officer James Davis pleaded guilty to criminal charges in August 2009.

<sup>4</sup> In a brief the SEC filed in one of the Stanford Receivership cases in the Fifth Circuit Court of Appeals, the Commission argued that a Ponzi scheme is insolvent from its inception, and quoted *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006) (citation omitted). Br. of the SEC, *Amicus Curiae*, In Support of Appellees at 14, *Janvey v. Gaines, et al.*, 09-10761 (5th Cir. Oct. 8, 2009).

<sup>5</sup> In re *New Times Securities Services, Inc.*, 371 F.3d 68, 76 (2nd Cir. 2004)

<sup>6</sup> The Feb. 15, 2011 Declaration of Karyl Van Tassel, forensic accountant for the Stanford Receiver, states SGC customers' funds intended to purchase the SIB CDs were misappropriated to pay: (i) previous customers; (ii) the expenses of SGC, including the salaries and commissions of its registered representatives; and (iii) SGC's owner, Allen Stanford. According to Van Tassel, a majority of SGC's revenue came from the SIB CD funds.

<sup>7</sup> *Id.* at 1302.

<sup>8</sup> *Id.* quoting *SEC v. Kenneth Bove & Co.*, 378 F. Supp. 697, 700 (S.D.N.Y. 1974).

## **SGC customers did not bypass the brokerage**

SIFMA's memo states, "However, there are also facts that provide strong arguments against extending the *Old Naples Securities* precedent to the SIBL CD investors. Most significantly, unlike the customers in *Old Naples Securities* and *Primeline Securities*, investors in SIBL CDs sent their funds directly to the issuer of the securities they intended to purchase.....These investors transferred funds to SIBL for the purchase of SIBL CDs, and SIBL CDs were in fact purchased with those funds."

This is absolutely false. SGC directed all transfers to SIB accounts.

Most, if not all, of the SGC customers who purchased SIB CDs conducted traditional brokerage business with SGC through its third-party clearing firm, Pershing LLC.<sup>9</sup> The CDs were typically transacted through the customer's SGC brokerage account at Pershing. Some SGC customers rolled over IRAs from other accounts, and distribution checks were made out to Stanford Group Company or Stanford Trust Company, a Louisiana trust company managed by a Board of Directors comprised of SGC employees. Other customers wrote checks directly to Stanford Group Company, Stanford, or Stanford International Bank; however, customers did not send those checks directly to SIB. The checks were taken by SGC representatives, deposited in U.S. bank accounts and the funds never left the U.S.<sup>10</sup>

Customer checks made out to SIB were initially deposited into an account in the name of SIB, but then transferred to an account in the name of the Stanford Financial Group ("SFG"), the parent company for all Stanford entities—including SIB and SGC.<sup>11</sup> Once in the SFG accounts, the funds were then dispersed to the various Stanford entities as needed—including, primarily, SGC.<sup>12</sup>

SGC customers did not interface with SIB staff in any way, shape or form. If an SGC customer contacted SIB, they were instructed to contact their SGC Representative. If a customer wanted to renew or redeem their CDs, it was handled by the SGC Registered Representative, and redemption funds were typically directed back into the customers brokerage account held at Pershing. If a customer wanted change their address with SIB, SGC reps also handled all of the paperwork. For all intents and purposes, we were customers of SGC and had no interaction whatsoever with SIB.

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<sup>9</sup> Pershing is a defendant in a class-action lawsuit for its role in transferring more than \$500 million from SGC brokerage accounts to Toronto Dominion Bank to purportedly fund SIB CDs. On Dec. 12, 2008, the day Madoff confessed to operating a Ponzi scheme, Pershing told SGC it could no longer wire funds to purchase SIB CDs until SIB could produce an independent audit. Pershing Chairman Richard Brueckner currently serves on SIFMA's Board of Directors.

<sup>10</sup> SGC did not send customer checks to SIB. SIB in Antigua did not accept or hold customer funds. It did not have a vault, or even a safe. If checks did arrive at SIB in Antigua, they were sent to Houston for the SFG accounting staff to deposit in U.S. bank accounts.

<sup>11</sup> All of the bank accounts were controlled by SGC CFO James Davis and/or Allen Stanford, SGC Chairman.

<sup>12</sup> Declaration of Karyl Van Tassel

## **SIPC membership should be limited**

SGC customers in 46 states across the country relied on the assurances represented by the SIPC logo, as well as the fiduciary duties of some of the most experienced advisors in the industry. Many of those advisors are *currently* members of SIPC and SIFMA and they will be greatly affected by the outcome of this case as their customers face significant losses that will be arbitrated by FINRA or litigated in court.

If SIPC's scope is so limited that it does not protect customers of introducing broker dealers whose funds are stolen, then those firms should not be members of SIPC. Anything else is pure misrepresentation to investors.

Sincerely,

A handwritten signature in black ink that reads "Angela Shaw". The signature is written in a cursive, flowing style.

Angela Shaw  
Director and Founder  
Stanford Victims Coalition

Cc: SEC Chairman Mary Schapiro  
SEC Commissioner Luis Aguilar  
SEC Commissioner Daniel Gallagher  
SEC Commissioner Troy Paredes  
SEC Commission Elisse Walter  
SIPC Chairman Orlan Johnson  
SIPC Board of Directors  
SIPC Modernization Task Force

Enclosure: Declaration of Karyl Van Tassel



personally involved in, FTI's forensic accounting and cash tracing activities for the Stanford Entities. The purposes of FTI's work have been, in part, to (a) determine the roles the various Stanford Entities played in the fraud alleged by the SEC and specifically in the sale and redemption of Stanford International Bank ("SIB") certificates of deposit ("CDs"); (b) identify the source(s) of income and cash flows for the various Stanford Entities; and (c) trace those funds to determine how they were allocated and disbursed throughout the Stanford Entities.

4. This declaration is being made in connection with the Stanford Victims Coalition's ("SVC") request to the SEC to direct the Securities Investor Protection Corporation ("SIPC") to initiate a liquidation of Stanford Group Company ("SGC") under the Securities Investor Protection Act ("SIPA") to compensate SGC customers whose funds were lost through SGC.

5. Allen Stanford ("Stanford") was the sole owner of Stanford Group Holdings which is in turn the sole owner of Stanford Group Company ("SGC"). SGC is an SEC-registered broker dealer and SIPC Member with offices throughout the United States. Stanford was also the owner of Stanford International Bank Limited, an offshore bank chartered in Antigua, West Indies; Stanford Trust Company ("STC"), a financial institution chartered in the state of Louisiana where customer accounts were established to hold custody of SIB CDs sold to SGC customers; and, Stanford Financial Group Company ("SFGC"), which provided shared services, including treasury and investment services to the Stanford Entities. Additionally, Stanford also, directly or indirectly, owned more than 130 separate entities which together with SGC, STC, SFGC and SIB comprised a single, commonly-owned financial services network called the Stanford Financial Group, ("SFG"), which was headquartered in Houston, Texas.

6. Stanford, along with a close band of confidantes, controlled SFG (of which SGC, STC, SFGC and SIB were a part). These confidantes included James Davis as CFO for SFGC and SIB, and Laura Pendergest Holt, Chief Investment Officer for SFGC.

7. SIB was nothing like a typical commercial bank. SIB had one principal financial product—certificates of deposit—and one principal source of funds—customer deposits from CD purchases.

8. Most, and perhaps all, of the Stanford Entities, were part of the Ponzi scheme alleged by the SEC or derived benefit from it. The U.S. Stanford entities

that were the most closely involved with the sale and redemption of SIB CDs were SGC and STC. Registered representatives of SGC sold SIB CDs to investors, and STC held custody of SIB CDs sold by SGC to customers who held IRA accounts at STC.

9. The substantial majority of funds received or utilized by the Stanford Entities, in particular SGC and SFGC, were proceeds from the sale of SIB CDs.

10. SGC customer funds sent by wire transfer and intended to purchase SIBL CDs did not go to Stanford International Bank in Antigua. Once the funds were received they were managed by SFGC personnel in the U.S.

11. SGC customer funds were routed through bank accounts in the name of SIB or STC and then disbursed by SFGC personnel among the Stanford Entities, including SGC.

12. A majority of the funds deposited into the operating bank accounts in the name of SGC at Trustmark National Bank came from sources traceable to SIB accounts that were funded almost exclusively by customer deposits intended to purchase SIB CDs. Without income related to SIB CDs, SGC would have been insolvent from at least 2004 forward (and likely before). Referral fees and CD related compensation constituted the majority of SGC's revenue in each year from 2004 thru 2008. Even when this CD related compensation is considered with other income received by SGC in the ordinary course of business, SGC showed negative cash flows from operations in each year from 2004 thru 2008. The only reason SGC's financial statements did not reflect negative cash flows is because SGC received millions of dollars in capital contributions, which consisted primarily of SIB CD funds.

13. The substantial majority of funds used to pay loans, bonuses, "Performance Appreciation Rights Plan" ("PAR") payments and commissions to SGC financial advisors who sold the SIB CDs were the proceeds from the sale of the SIB CDs.

14. CD funds not used to pay interest, redemptions and operating expenses of the Stanford entities, including commissions for the SGC financial advisors, up-front bonuses used to recruit the financial advisors and PAR payments for the financial advisors were either placed in speculative investments (many of them illiquid, such as private equity deals), diverted to other Stanford entities "on behalf of the shareholder," i.e. for the benefit of Allen Stanford, or used

to finance Allen Stanford's lavish lifestyle (e.g. jet planes, a yacht, other pleasure craft, luxury cars, homes, travel, company credit card, etc.).

15. At least from 2004 until the SEC complaint was filed on February 17, 2009, SGC customer funds intended for the purchase of SIB CDs were used to make purported interest and redemption payments on pre-existing CDs because SIB did not have sufficient assets, reserves, and investments available to cover the total customer deposit liabilities, redemptions, and interest payments.

16. Notwithstanding SIB's insolvency, sales of CDs by SGC continued until February 16, 2009 when the SEC and the U.S. Court intervened.

17. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Karyl Van Tassel", is written over a horizontal line.

Karyl Van Tassel, CPA  
FTI Consulting, Inc.

Executed this 15 day of February, 2011