STANFORD VICTIMS COALITION

May 28, 2014

Dear Senator Vitter,

On behalf of Stanford Financial Group Ponzi scheme victims in 45 states across country, I would like to both applaud and thank you for your unwavering leadership in holding the Securities Investor Protection Corporation (SIPC) accountable for fulfilling their mandate to protect investors under the Securities Investor Protection Act (SIPA).

As you are well aware, SIPC has vehemently opposed the Securities Exchange Commission's (SEC's) interpretation of SIPA that was used to determine that Stanford Group Company (SGC) customer funds were missing when SGC became insolvent due to a massive Ponzi scheme. Congress gave the SEC—not SIPC—the legislative authority to interpret SIPA[1]; however, SIPC's misguided sense of authority has resulted in an organization that essentially claims it can operate above the law without oversight by the federal government.

SIPC's abuse of its perceived authority to interpret the law doesn't stop with its dispute with the SEC. It extends to dismissing the decisions of the U.S. District Court for the Northern District of Texas (the Receivership Court) and the Fifth Circuit Court of Appeals, which determined more than five years ago that SGC customers' funds were not used to purchase securities, and instead were stolen by their broker—along with the rest of Stanford's fraudulent network of companies. SIPC's arguments against the SEC even defy the factual basis for which the Supreme Court of the United States used to render its February 2014 opinion regarding the application of the Securities Litigation Uniform Standards Act in lawsuits filed by Stanford victims.

Unfortunately for investors like the Stanford victims, SIPC's misperception that it has broad authorities to interpret its narrow statute[2] has extended to its Board of Directors, currently led by Commodities and Futures Trade Commission nominee Sharon Bowen. The SIPC Boards legislative mandate is to act independently of SIPC in order to prevent SIPC's inherent conflict of interest from interfering with SIPC carrying out is mandate to protect investors (rather than its Wall Street member firms).

The far-reaching results of SIPC's and the SIPC Board of Directors' protection of Wall Street has caused further financial devastation to thousands of Stanford and Madoff victims. Despite SIPC's assurances it protects investors whose funds are stolen by their broker, Stanford victims have been unfairly denied the protections Congress intended when SIPA was passed in 1970. That denial is a direct result of Wall Street's undue influence over SIPC and its Board because Wall Street doesn't want to pay for real investor protection, and would rather deceive

[1]Congress did not intend for the Commission's interpretations of SIPA to be overruled by deference to the entity that was made subject to the Commission's oversight."Letter from Prezioso, General Counsel, SEC, to the 2nd Circuit, 7/21/03, in support of debtors in *SIPC v. Times Securities Services, Inc. and New Age Financial Services*

[2] SIPC has been frequently criticized for taking the narrowest possible construction of its ability to compensate victims of brokerage house theft and misappropriation, raising serious questions as to whether SIPC (with a billion dollar fund) is completely adrift from its mandate. Morgenson,Gretchin, "Many Holes Weaken Safety Net for Victims of Failed Brokerages," *The New York Times*, September 25,2000, at A-1

investors with the false sense of security the SIPC logo instills.[3]

SIPC's May 27, 2014, response to the questions you posed to SIPC Chairwoman and Commodities and Futures Trade Commission (CFTC) Commissioner nominee Sharon Bowen several months ago further exemplifies SIPC's irreverent attitude toward not only the federal government, but also toward Congress. In its letter answering the questions you asked Ms. Bowen[4], SIPC intentionally manipulated the facts in the Stanford case in order to justify its decision to protect Wall Street instead of middle-class investors who relied on the guarantees of protection that are represented by the SIPC logo that SGC was required to display on all communications with investors and in all marketing materials. I have outlined below some of the misrepresentations made in SIPC's response.

<u>There is New Evidence</u>

SIPC's most noteworthy and substantial misrepresentation of the facts in the Stanford case is in its statement that there has been "no new evidence" that would alter the District Court for the District of Columbia's decision to deny the SEC's request for an order to compel SIPC to discharge its obligations under SIPA.

SIPC is well aware that the most significant evidence against their arguments surfaced AFTER the District Court's ruling on <u>July 3, 2012</u>. [5]

On <u>July 30, 2012</u>, the Receivership Court rendered a landmark decision that negated the corporate separateness of SGC—the broker dealer and SIPC member—and Stanford International Bank (SIB) that is at the core of SIPC's arguments denying protection to Stanford victims.

The Receivership Court's (uncontested) opinion denying the Antiguan-appointed SIB liquidators' request for recognition under Chapter 15 of the U.S. Bankruptcy code invalidates SIPC's arguments that SGC customers are the victims of an Antiguan bank fraud[6]; and substantiates the SEC Commissioners' June 2011 analysis that SGC customer are in need of protection under SIPA.

The Chapter 15 opinion was absolutely "new evidence" that warranted review by the SIPC Board of Directors as it negated the "factual" determinations used by the SIPC Board to vote against complying with the SEC's recommendation to initiate a SIPA liquidation proceeding.

SIPC's primary arguments against the SEC and Stanford victims has been the notion there are no "customers" of the broker dealer according to SIPA's "statutory term of art,"[7] which SIPC argues is much narrower than the common definition. SIPC has argued that Stanford victims are not SGC customers and instead are SIB customers. The Receivership Court has determined there is no difference between the two entities—they are one and the same.

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[3] SIPC does what it does because it's owned by brokerage firms, not the government. "Many Unhappy Returns / Ex-Stratton customers still fighting to recoup $130M," Kowalski, R., *Newsday*, December 20, 1998

[4] The questions were not asked of SIPC; but nonetheless, SIPC responded to most of the questions asked of Chairwoman Bowen. SIPC speaking for Ms. Bowen further demonstrates the SIPC Board of Directors is not fulfilling its legislative mandate to act independently from SIPC in order to represent the public's interests. If Ms. Bowen was acting independently, she would have answered the questions herself.

[5] SIPC opposed the Chapter 15 Opinion being entered into the record in the SEC vs SIPC appeal.

[6]No crime relating to the Stanford Ponzi scheme has been alleged in Antigua; however, as part of SIPC's PR campaign to sensationalize the "foreign bank" angle of the Stanford case, SIPC does not refer to Stanford International Bank by its formal name, rebranding it as "Stanford Antiguan Bank."

[7] In its pleadings in *SEC vs SIPC*, SIPC states that SIPA's use of the word "customer" is a "statutory term of art" rather than plain English.

The Chapter 15 order aggregated all of the Stanford entities and established that the collective Stanford entities' were based in Houston, Texas--NOT Antigua. The Receivership Court stated that *not* aggregating the Stanford entities would “perpetuate an injustice” because the corporate separateness of the Stanford entities was used to perpetrate a fraud on investors.

SIPC has indeed perpetuated an injustice in furtherance of its protection of its members rather than SGC customers. The Chapter 15 opinion determined that corporate disregard doctrine applies to the Stanford case, and SIPC should as well—if it is seeking to fulfill its statutory mandate.

From the Chapter 15 Order:

> “Congress cannot have intended to grant formal recognition to letterbox companies merely because the schemers were adept at pulling the wool over investors, creditors, and regulators’ eyes. Surely, it is against U.S. public policy to reward such gamesmanship and manipulation.”
>
> “... it would defy logic and run afoul of equity to treat a fictitious corporation as a real entity...”
>
> “Court holds that corporate disregard doctrines apply...”
>
> “U.S. investors exclusively purchased CDs through broker-dealers in the United States at SGC. After deposit, Davis would then disburse the funds among the Stanford Entities.”
>
> “Stanford employees managed and directed the CD enterprise from the United States with no meaningful input from Antigua.”
>
> SGC’s “financial advisors were essentially the face of the Stanford enterprise to investors, providing CD applications, CD investment managing, and Stanford brokerage accounts.”
>
> “Commingling of funds among the Stanford Entities was the norm, Stanford and his associates transferred assets among the Stanford Entities in disregard of corporate formalities...”
>
> “Courts have found the requisite level of entwinement where ‘the debtor corporations were operated as a single unit with little or no attention paid to the formalities usually observed in independent corporations, . . . the officers and directors of all, so far as ascertainable, were substantially the same and acted as figureheads for [the owner], . . . funds were shifted back and forth between the corporations in an extremely complex pattern and in effect pooled together, loans were made back and forth, borrowings made by some to pay obligations of others, freights due some pledged or used to pay liabilities and expenses of others, and withdrawals and payments made from and to corporate accounts by [the owner] personally not sufficiently recorded on the books.’ This is clearly analogous to the facts here.”
>
> “To ignore these findings would elevate form over substance – thereby legitimizing the corporate structure that Stanford utilized to perpetrate his fraud and running afoul of Fifth Circuit precedent cautioning courts to look beyond the surface.”
>
> “Further, this Court has previously recognized that Stanford and his affiliates operated as one and there is substantial evidence in the record in this action to support that finding.”

<u>Investor protection should be the default for SIPC, not the exception.</u>

Rather than acknowledging the Receivership Court's disregard of the corporate distinctions of the Stanford entities as a means for SIPC to fulfill its mandate, SIPC has chosen to give credence and legitimacy of Stanford's fraudulent network of companies in order to substantiate its arguments to avoid protecting SGC customers.

SIPC has seemingly gone out of its way to argue every possible angle to avoid allowing Stanford victims who executed a "*Customer* Agreement" with SGC to have a proper judicial review of their individual claims.

<u>SIPC Does Not Have the Legislative Discretion to Oppose the SEC</u>

Congress did not provide SIPC with equal or more authority than the SEC. In SIPA liquidations, SIPA allows for a judicial review of matters in which the investors, the SEC and SIPC disagree. The SEC has argued in *SEC vs SIPC* that SIPA's provisions for a judicial review of disputed matters between the SEC and SIPC does not extend to pre-liquidation proceedings.

SIPA's language that enables the SEC to apply for an order to compel SIPC to discharge its obligations under SIPA does NOT state the SEC must litigate against SIPC in order to obtain such an order. The connotation of the words "to compel SIPC to discharge its obligations" indicates the Court application is a procedural step Congress considered as any application for a protective decree does not involve litigating an entire case prior to the issuance of a decree.

The SEC has argued the unprecedented nature of the *SEC vs SIPC* action is by no means intended to be the procedural standard by which SIPA should be interpreted. The process that has been applied directly contradicts the immediate nature of the protections SIPA was enacted to fulfill.

SIPC refusal to comply with the SEC's order has further victimized Stanford investors, and its perversion of SIPA's language has been carried out in direct contradiction to its statutory mandate to protect investors. Instead of looking to use its discretion to protect investors, SIPC has used a hyper-technical interpretation of SIPA. SIPC's "dancing on the head of a pin" has enabled an absolute injustice to investors who were deceived by the SIPC logo only to be denied protection once their savings were stolen by SIPC's member firm.

The SVC applauds the 48 Members of the House of Representatives and Senators Schumer, Vitter, Landrieu, Cochran, Wicker, Boozman and Casey for their actions to amend SIPA to clarify language that has been misinterpreted in a manner that is in direct opposition to SIPA's goal.

We hope you will continue your dogged pursuit of justice for Stanford victims who have been denied a proper judicial review of their claims and have no other options but to turn our leaders in Congress to help counter SIPC's bullying of Main Street.

Sincerely,

Angela Shaw Kogutt
Director and Founder
Stanford Victims Coalition