NOTICE OF INTENT

TO SUBMIT A CLAIM TO ARBITRATION

UNDER SECTION B OF CHAPTER 10 OF THE

DOMINICAN REPUBLIC - CENTRAL AMERICA - UNITED STATES

FREE TRADE AGREEMENT

GUATEMALAN, COSTA RICAN AND DOMINICAN VICTIMS OF THE STANFORD PONZI SCHEME

INVESTORS / CLAIMANTS

and

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

PARTY / RESPONDENT

Pursuant to Article 10.16(2) of the Dominican Republic - Central America - United States Free Trade Agreement ("DR-CAFTA"), the Claimants hereby serve this Notice of Intent to Submit Claims to Arbitration for breach by the Government of the United States of America (the "U.S.A.," the "United States" or the "Respondent") of certain of its obligations under the DR-CAFTA.

I. NAME AND ADDRESS OF THE DISPUTING INVESTORS

1. The name and address of each Claimant/Investor is listed in Annex I, attached.

II. BREACH OF OBLIGATIONS

2. The Claimants allege that the United States has acted inconsistently with its obligations under Section A of Chapter 10 of the DR-CAFTA, with respect to the following provisions:

   i) Article 10.3 – National Treatment;

   ii) Article 10.4 – Most-Favored-Nation Treatment; and

   iii) Article 10.5 – Minimum Standard of Treatment.

3. In relevant part, the text of each applicable DR-CAFTA provision is as follows:

Article 10.3. National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 10.4. Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 10.5. Minimum Standard of Treatment[1]

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

   (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

   (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

   Note 1: Article 10.5 shall be interpreted in accordance with Annex 10-B.

Annex 10-B Customary International Law

> The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Articles 10.5, 10.6, and Annex 10-C results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

III. FACTUAL BASIS FOR THE CLAIM

4. Claimants allege that Respondent failed to provide even a rudimentary level of protection or legal security to them as Dominican, Guatemalan or Costa Rican investors in the Houston, Texas-based Stanford Financial group of companies, which directly led Claimants to lose their investments as the victims of a massive United States based Ponzi scheme. The decision taken by U.S. regulatory officials to "do nothing" after identifying the fraudulent nature of the Stanford enterprise violated the legitimate expectations of these investors and discriminated against them on the basis of their foreign nationality.

The Investors and their Investments in the Territory of the United States

5. Hector Hugo Garcia and Victoria Aracely Penate are nationals of Guatemala. Maria Soledad Uribe, Magda Uribe, Laura Uribe, Margarita Saenz Herrero, Maria Soledad Uribe Saenz and Laura Uribe Saenz are nationals of Costa Rica. Alvaro M. Giraldo, Doris M. Giraldo, Bienvenido Antonio Abreu Garcia and Elsa Violeta Lawrence de Abreu are nationals of the Dominican Republic.

6. The Claimants made investments, directly and/or indirectly, in and through the Stanford Financial Group of companies in the United States, primarily in (what were later revealed to be) fraudulent certificates of deposit issued by Stanford International Bank ("SIB CDs"), an Antiguan-based instrumentality of the Stanford Financial Group of companies ("SFG") which was managed and controlled, and had its principal base and center of main interest, in the United States.

7. SFG was established and operated by Allen Stanford - and others - for the purpose of defrauding investors, primarily foreign nationals from Latin America, including the Claimants. As the fraud expanded, the targets of SFG's scheme expanded to include U.S. and foreign nationals from other parts of the world. The scheme involved SFG's principals (primarily Allen Stanford) directing a portion of the funds invested to pay returns to earlier investors, while absconding with the remainder. In short, it was a classic "Ponzi scheme."

8. SFG's principals induced Latin American foreign investors, including the Claimants, to invest with SFG by touting SFG as a U.S. operation with FINRA registration, SIPC insurance coverage, and protected by the celebrated credibility of the U.S. financial regulatory system.[1] As part of the sales pitch they received, the Claimants were repeatedly assured that they were investing with broker-dealers licensed (and therefore regulated) by the United States Securities and Exchange Commission ("SEC").

9. Referring to itself as "the Investor's Advocate," the SEC publicly confirms that its "primary mission [is] to protect investors and maintain the integrity of the securities markets" and that its "enforcement authority" is "critical to the SEC's effectiveness." Exchange Commission (SEC) is to protect investors and maintain the integrity of the securities markets. As more and more first-time investors turn to the markets to help secure their futures, pay for homes, and send children to college, these goals are more compelling than ever. On a web page entitled "How the SEC Protects Investors and Maintains Market Integrity," it has explained:

> [The Securities Act of 1933 and the Securities Exchange Act of 1934] were designed to restore investor confidence in our capital markets [following the 1929 stock market crash] by providing more structure and government oversight. The main purposes of these laws can be reduced to two common-sense notions:
>
> - Companies publicly offering securities for investment dollars must tell the public the truth about their businesses, the securities they are selling, and the risks involved in investing.
>
> - People who sell and trade securities – brokers, dealers, and exchanges – must treat investors fairly and honestly, putting investors' interests first.
>
> Monitoring the securities industry requires a highly coordinated effort. Congress established the Securities and Exchange Commission in 1934 to enforce the newly-passed

[1] FINRA is the United States Financial Industry Regulatory Authority. SIPC is the United States Securities Investor Protection Corporation.

> securities laws, to promote stability in the markets and, most importantly, to protect investors.[2]

10. The Respondent has reaped the benefits of inbound foreign investment for many decades, thanks in no small part to the stellar reputation of its financial regulatory regime. The high esteem in which United States financial regulators were held seemed well deserved to the Claimants, abetted as it was by regular updates from the SEC itself, which still promotes its enforcement victories on its web site. It was not until the financial crisis of 2008-2009 that the truth began to emerge. Since that time, report after report revealed deep fissures running through the façade of strength and reliability long portrayed about U.S. financial markets, and about the government officials who police them.

11. Under customary international law the host State is required to meet a standard of due diligence, in providing protection and security to the property rights of foreigners. The Respondent has promised to accord even better treatment to other foreign investors. At a bare minimum, the Claimants should have been entitled to expect that the people entrusted with enforcing securities regulation in the United States would act with due diligence in carrying out their duties. Had Enforcement staff from the SEC's Dallas-Fort Worth Regional Office exercised even a scintilla of diligence in this case, the Claimants would have not have suffered, as they did, from one of the largest financial frauds in U.S. history.

A Shocking and Egregious Story of Systemic Regulatory Failure

12. In 1997, the SEC's Fort Worth District Office commenced the first of many investigations into the structure, financing and operations of SFG through its examination of SFG's registered broker/dealer and investment adviser company, Stanford Group Company ("SGC"). Staff from the SEC's Examination Division concluded that it was probable that SFG, by and through its constituent companies (including SIB) was operating a Ponzi scheme. The SEC Examination staff accordingly referred these findings to their colleagues in the Fort Worth District Office's Enforcement Division for follow-up.

13. In 1998, Enforcement staff quickly opened and closed a cursory investigation of SGC. Examination staff accordingly undertook a second examination of SGC investment adviser operations in 1998, concluding once again that it was probable that SFG's sales of SIB CDs to Latin American foreign investors, including the Claimants, were fraudulent. Nevertheless, staff from the Enforcement Division decided once again not to follow up with any further investigation of SGC/SFG.

14. Regulators took no further interest in SGC until 2002, when the Examination staff conducted a third examination of SGC's investment adviser operations and referred the file to the SEC's Enforcement staff in December 2002, on the grounds that SGC was violating the Investment Advisers Act because SGC advisers and brokers were clearly

[2] See, e.g.: the following U.S. SEC web site page archived for December 1999: http://web.archive.org/web/20011002001944/http://www.sec.gov/about/whatwedo.shtml, last visited: 25 November 2012.

failing to perform necessary due diligence before selling SIB CDs to investors, including some of the Claimants.

15. In December 2002, the SEC received a letter from a Mexican citizen concerned about her elderly mother's investments in SFG and describing how SFG brokers/advisers had assured her mother (and other investors) that the SIB CDs were backed by private insurance from Lloyd's. The SEC, acting under the directions of Spencer Barasch, once again took no action with respect to that letter. Barasch told his colleagues that he referred the matter to the Texas State Securities Board ("TSSB"), although the TSSB has no record of any such referral. Every SEC witness questioned about this incident expressed incredulity that Barasch would have made such a referral to the TSSB.

16. The SEC's Enforcement staff did not review the 2002 Examination Report prepared by Examination staff and they did not open an inquiry into SGC/SFG.

17. Enforcement staff received two outside complaints in 2003 which raised allegations that SFG was engaged in the conduct of a Ponzi scheme. They did nothing to pursue either complaint.

18. In October 2004, Examination staff conducted a fourth examination of SGC and concluded, for a fourth time, that SGC/SFG's marketing and sale of SIB CDs was part of a Ponzi scheme, conducted from SFG's Houston headquarters.

19. Thereafter, from October 2004 to March 2005 Examination staff conducted significant further investigative work, documenting an inevitable new enforcement referral. Upon learning of the ongoing work of Examination staff, in March 2005 Enforcement staff informed Examination staff that they were not prepared to pursue any enforcement against SGC/SFG.

20. In April 2005, the Examination staff nonetheless referred the SGC matter to Enforcement staff for follow up. No action was taken against SGC as a result. By November 2005, Examination staff asked their colleagues in Enforcement to file an emergency action against SIB, in order to end what was now a mammoth Ponzi scheme. Still, no action was taken.

21. It would not be until October 26, 2006, after a period of intense infighting amongst Enforcement staff members, that a formal order of investigation was obtained with respect to SGC. Unbelievably, sixteen months later Enforcement staff decided to end their perfunctory investigatory activities into SGC and referred the matter to the United States Department of Justice. Any further SEC investigation of SGC by Fort Worth Office Enforcement staff, came to a grinding halt with this decision.

22. Eight months later, in December 2008, the Madoff Ponzi scheme came to light. As a result, the SEC's Dallas Enforcement staff decided to revisit the SGC file. On February 17, 2009 the SEC finally filed an action against SGC, although even by this late date Enforcement staff initially declined to allege that SGC had actually been operating a Ponzi scheme for over a decade.

23. Had the SEC taken reasonable steps to subject SGC to a modicum of appropriate regulatory oversight in the twelve (12) years prior to February 17, 2009, significant losses suffered by all of the Claimants could have been avoided.

24. The U.S. Senate Banking Committee subsequently conducted an investigation into the SEC's conduct with respect to the SFG Ponzi scheme. In answering questions posed to her by Committee Members during an oral hearing held in New Orleans, a senior member of the Enforcement Division from the Fort Worth District Office admitted that Enforcement staff had been disinterested in pursuing any action against SGC sooner because most of the victims appeared to be foreign (Latin American) investors in the United States, rather than U.S. nationals.

25. Up until 2005, the SEC's web site still touted the agency's record of bringing between 400 and 500 civil enforcement actions annually, serving to protect individuals who invested with U.S. broker/dealers licensed by the SEC. The Claimants were entitled to expect that – as soon as Examination staff from the SEC's Fort Worth Office uncovered the Stanford Ponzi scheme – theirs would have been among the interests protected by the SEC.

26. As a direct result of the Respondent's manifest failure to end the Stanford Ponzi scheme over a span of a dozen years from the date its own officials identified the scheme to the date they took meaningful enforcement action, the Claimants lost investments worth hundreds of millions of dollars. Attached at Annex II are estimates of the individual losses suffered by each Claimant.

IV. LEGAL BASIS FOR THE CLAIM

27. SEC officials possessed both the authority and the responsibility to ensure that the Stanford Ponzi scheme was stopped as soon as it was discovered. SEC officials, who were responsible for protecting the investments of investors such as the Claimants against criminal enterprises such as SFG, acted with unconscionable negligence and/or manifest incompetence, causing millions of dollars of losses to the Claimants as a result.

28. This shocking and egregious failure to execute the Respondent's duty to provide protection and security to foreign investors and their investments violates the customary international law minimum standard of treatment of aliens, which the Respondent has previously claimed to be represented in DR-CAFTA Article 10.5 (under the full protection and security standard).

29. By repeatedly refusing to take reasonable steps to stop the Stanford Ponzi scheme uncovered by the SEC's Examination staff from the very same office, or even to take the simple step of notifying the public (and foreign investors) of these growing concerns, the Enforcement Division of the SEC's Fort Worth Office acted in a manner inconsistent with the customary international law minimum standard of treatment of aliens, which a North American Free Trade Commission statement, issued on July 21, 2001, states that the text of DR-CAFTA Article 10.5 represents.

30. Such conduct is also manifestly inconsistent with autonomous standards of “fair and equitable treatment” and “full protection and security” – such as those found in Article II:3(a) of the 1994 U.S.A.-Ukraine BIT. The U.S.A. has promised investors from other DR-CAFTA countries that it will accord treatment no less favorable to them than it has accorded to any other foreign investor, pursuant to DR-CAFTA Article 10.4. This promise includes obligations undertaken in bilateral investment treaties between the U.S.A. and third countries, such as (but not limited to) the 1995 *Treaty Between the Government of the United States of America and the Government of Ukraine Concerning the Encouragement and Reciprocal Protection of Investment* (the “U.S.A.-Ukraine BIT”); the 1994 *Treaty between the U.S.A. and Jamaica Concerning the Reciprocal Encouragement and Protection of Investment* (“U.S.A.-Jamaica BIT”); and the *Treaty Between the Republic of Latvia Concerning the Encouragement and Reciprocal Protection of Investment* (the “U.S.A.-Latvia BIT”).[3]

31. Evidence taken under oath during Congressional investigations indicates that the Respondent’s officials declined to take even the simplest of steps to stop the Stanford Ponzi scheme in 1997, or in subsequent years, on the basis of their belief that the majority of SFG’s victims were not U.S. nationals. Yet the Respondent failed to provide any notice to the Claimants in spite of the SEC’s concerns about SFG from 1997 through 2009.

32. Such decisions constituted both an “unreasonable” measure and a “discriminatory” measure, which impaired the Claimants’ ability to sell or otherwise dispose of their investments in this fraudulent Ponzi scheme sooner, or would have prevented them from investing in it. Such conduct was contrary to Article II:2(b) of the 1994 U.S.A.-Jamaica BIT and Article II:3(b) of the 1994 U.S.A.-Ukraine BIT. These same decisions also constituted an "arbitrary" measure, contrary to Article II:3(b) of the 1995 U.S.A.-Latvia BIT.

33. The decisions taken by Respondent, to allow the Stanford Ponzi scheme to continue and to flourish, were also inconsistent with the Respondent’s obligation to accord treatment no less favorable to investors from other DR-CAFTA countries than that which it was prepared to accord to U.S. investors. Such conduct was accordingly also inconsistent with the Respondent’s obligations under DR-CAFTA Article 10.3, because SEC officials applied a nationality based litmus test, which blatantly favoured the interests of U.S. investors over those of foreign investors, in deciding whether to end a fraudulent Ponzi scheme taking place within United States territory.

V. ISSUES

[3] At page II-US-9 of DR-CAFTA Annex II, the U.S.A. has reserved the right to "adopt or maintain any measure that accords differential treatment to countries under an bilateral or multilateral international agreement in force or signed prior to the date of entry into force of [the DR-CAFTA]." Treaty promises, provided in years past by the U.S.A. to other States -- to refrain from acting in a manner inconsistent with certain, absolute legal standards in respect of the treatment of foreign investors and their investments -- manifestly fall outside the scope of this reservation.

34. Did the Respondent's omissions to act sooner against SFG/SGC constitute a breach of the customary international law minimum standard of treatment of aliens, which the Respondent admits must require full protection and security under DR-CAFTA Article 10.5?

35. Did the Respondent's omissions to act sooner against SFG/SGC constitute a breach of the customary international law minimum standard of treatment of aliens, which the Respondent admits must require fair and equitable treatment under DR-CAFTA Article 10.5?

36. Did the Respondent's omissions to act sooner against SFG/SGC constitute conduct inconsistent with DR-CAFTA Article 10.4, because it was inconsistent with the autonomous versions of either the "fair and equitable treatment" standard or the "full protection and security" standard contained with various other BITs concluded by the United States?

37. Did the Respondent's decision not to act sooner against SFG/SGC, on the grounds that few U.S. nationals were originally being victimized, constitute a breach of DR-CAFTA Article 10.3?

38. Did the Respondent's decision not to act sooner against SFG/SGC, on the grounds that few U.S. nationals were originally being victimized, constitute an arbitrary measure, a discriminatory measure, or an unreasonable measure, which impaired the establishment, use, enjoyment or disposition by the Claimants of their investments, contrary to various provisions of other BITs concluded by the United States, and therefore contrary to DR-CAFTA Article 10.4?

39. Has the Respondent otherwise accorded better treatment to investors from third countries, or to its own investors, in respect of any of the means described above?

VI. RELIEF SOUGHT AND DAMAGES CLAIMED

40. The Claimants will seek the following relief from an Arbitral Tribunal:

(a) A declaration that the Respondent has violated its obligations under DR-CAFTA Article 10.5;

(b) A declaration that the Respondent has violated its obligations under DR-CAFTA Article 10.3;

(c) A declaration that the Respondent has violated its obligations under DR-CAFTA Article 10.4, by acting in a manner inconsistent with the provisions of other U.S. BITs, such as paragraphs (a) or (b) of Article II:3 of the 1994 U.S.A.-Ukraine BIT, or Article II:2(b) of the 1994 U.S.A.-Jamaica BIT;

(d) An order that the Respondent immediately pay to the Investors damages of not less than **US$2,264,369.00**, as compensation for the losses caused by, or arising out of, the U.S.A.'s conduct, found to be inconsistent with its obligations under Part A of DR-CAFTA Chapter 10;

(e) All of the damages incurred in seeking compensation for the Respondent's conduct, including all of the costs incurred in proceeding with this arbitration, including all legal and other professional fees and disbursements;

(f) Pre-award interest at a rate compounded semi-annually;

(g) Post-award interest at a rate compounded semi-annually; and

(h) Such further relief as counsel may advise and that a tribunal may deem appropriate.

29 December 2012

Counsel for the Claimants:

Dr. Todd Weiler
Barrister & Solicitor
#19 - 2014 Valleyrun Blvd.
London, Ontario N6G 5N8
Canada

Counsel for Mr. Garcia and Ms. Penate:

Mr. Edward C. Snyder
Castillo Snyder, P.C.
Bank of America Plaza, Suite1020
300 Convent Street
San Antonio, Texas 78205

Counsel for the Remaining Claimants:

Mr. Edward F. Valdespino
Strasburger & Price, LLP
300 Convent Street, Suite 900
San Antonio, Texas
78205

Served to:

Executive Director
Office of the Legal Advisor
United States Department of State Room 5519
2201 C. Street N.W.
Washington, D.C.
20520