

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

SCOTTISH HOLDINGS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 18-10160 (LSS)

Jointly Administered

**Requested Hearing Date:**

**February 26, 2019, at 11:30 a.m. ET**

**Requested Objection Deadline:**

**At or before the Hearing**

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 (I) APPROVING PROPOSED FORM OF EXCLUSIVITY LETTER WITH HUDSON STRUCTURED CAPITAL MANAGEMENT LTD., (II) AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM UNDER SUCH AN EXCLUSIVITY LETTER, AND (III) GRANTING RELATED RELIEF**

Scottish Holdings, Inc. ("SHI") and Scottish Annuity & Life Insurance Company (Cayman) Ltd. ("SALIC"), debtors and debtors in possession (together, the "Debtors") in the above-captioned chapter 11 cases, hereby move (this "Motion"), pursuant to sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), for entry of an order, substantially in the form attached as **Exhibit A**, granting the following relief: (i) approving the proposed form of a letter agreement with Hudson Structured Capital Management Ltd. ("Hudson"), in substantially the form attached hereto as **Exhibit B** (as such form of letter agreement may be further revised prior to the hearing on this Motion, the "Exclusivity Letter");<sup>2</sup>

<sup>1</sup> The Debtors, along with the last four digits of their federal tax identification numbers, are as follows: Scottish Holdings, Inc. (4408) and Scottish Annuity & Life Insurance Company (Cayman) Ltd. (3285). The Debtors' mailing address for purposes of these chapter 11 cases is 11006 Rushmore Drive, Suite 125, Charlotte, North Carolina 28277.

<sup>2</sup> At this time the Debtors are seeking approval of the Exclusivity Letter in substantially the form attached **Exhibit B** to the Motion as such form may be further revised prior to the hearing on the Motion because the Exclusivity Letter remains the subject of ongoing discussions among the Debtors, Hudson and the

(ii) authorizing the Debtors to execute and perform under the Exclusivity Letter; and (iii) granting related relief.

In support of this Motion, the Debtors respectfully state as follows:

**JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Debtors consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory bases for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code.

**BACKGROUND**

4. On January 28, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On February 20, 2018, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee") pursuant to section 1102(a) of the Bankruptcy Code (D.I. 81). No trustee or examiner has been requested or appointed in these chapter 11 cases.

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Committee. For the avoidance of doubt, the Debtors acknowledge that the Debtors' filing of this Motion does not obligate Hudson to execute the Exclusivity Letter, nor does it impose any legal or other obligations or liabilities on Hudson. Debtors acknowledge further that Hudson reserves complete discretion as to whether it will execute the Exclusivity Letter or proceed with an Alternative Proposal (as defined in the Exclusivity Letter).

6. Additional information regarding the Debtors, including their business operations and the events leading to the filing of the Chapter 11 Cases is set forth in detail in the *Declaration of Gregg Klingenberg in Support of First-Day Relief* (D.I. 3), the Disclosure Statement (as defined below) and the *Declaration of Gregg Klingenberg in Support of Confirmation of the Debtors' Third Amended Plan of Reorganization* (D.I. 453).

7. Just prior to filing their chapter 11 petitions, and following extensive prepetition marketing efforts, the Debtors entered into a stalking horse stock purchase agreement (the "Stalking Horse SPA") with Hudson Structured Capital Management, Ltd. ("Hudson"). The Stalking Horse SPA formed the baseline terms under which the Debtors' businesses would be restructured and recapitalized through a chapter 11 plan, subject to higher and better bids or alternative transactions. By order (D.I. 119) (the "Bidding Procedures Order") entered on February 28, 2018, the Court approved bidding procedures (the "Bidding Procedures") for the purpose of soliciting higher or better offers to serve as plan sponsor or for an alternative transaction that maximizes value.

8. Following the Court's approval of the Bidding Procedures, the Debtors, with the assistance of their investment banker, engaged in a postpetition marketing process that resulted in two Qualified Bids (as defined in the Bidding Procedures Order), comprising of Hudson's stalking horse offer and a competing offer from Hildene Re Holdings, LLC ("Hildene").

9. The Debtors commenced an Auction on May 30, 2018. At the conclusion of the Auction, in consultation with the Committee, the Debtors designated Hildene as the

Winning Bidder (Hildene or its designee, in such capacity, the “Purchaser”) and Hudson as the Backup Bidder.<sup>3</sup>

10. Following the Auction, the Debtors and the Purchaser entered into the certain Stock Purchase Agreement dated June 11, 2018 (D.I. 342) (as amended, the “Stock Purchase Agreement”).

11. On June 12, 2018, the Court entered the *Order: (I) Approving Debtors’ Designation of (A) Winning Bid and Winning Bidder and (b) Backup Bid and Backup Bidder; and (II) Granting Related Relief* (D.I. 346) (the “Winning Bidder Order”) approving, among other things, the Debtors’ designation of the Purchaser as the Winning Bidder and Hudson as the Backup Bidder.

12. On June 29, 2018, at the Debtors’ request, the Court entered the *Order: (I) Approving Disclosure Statement; (II) Scheduling Confirmation Hearing and Related Deadlines; (III) Establishing Procedures for Solicitation, Temporary Allowance of Claims and Vote Tabulation; (IV) Approving Form of Ballots; (V) Approving Form, Manner and Sufficiency of Notice of Confirmation Hearing and Related Deadlines; and (VI) Granting Related Relief* (D.I. 380) (the “Disclosure Statement Order”), which established, among other things, procedures for soliciting votes to accept or reject the Plan (as defined below) and approved the *Disclosure Statement for Second Amended Joint Chapter 11 Plan of Reorganization of Scottish Holdings, Inc., and Scottish Annuity & Life Insurance Company (Cayman) Ltd.* (D.I. 382) (together with all exhibits and schedules thereto, the “Disclosure Statement”).

13. On August 9, 2018, the Debtors filed the *Third Amended Chapter 11 Plan of Reorganization of Scottish Holdings, Inc., and Scottish Annuity & Life Insurance Company (Cayman) Ltd.* (D.I. 437, Ex. A) (as it may be altered, amended, modified or supplemented from

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<sup>3</sup> Hudson’s obligations as Backup Bidder ended on August 20, 2018.

time to time in accordance with its terms and together with the Stock Purchase Agreement and the Plan Supplement, the “Plan”).

14. The Court held a hearing to consider confirmation of the Plan on August 22, 2018 (the “Confirmation Hearing”), and at the Confirmation Hearing, the Court found that the Plan met all of the applicable requirements for confirmation, and the Court ruled that it would confirm the Plan.

15. On August 27, 2018 (the “Confirmation Date”), the Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming Third Amended Joint Chapter 11 Plan of Reorganization of Scottish Holdings, Inc., and Scottish Annuity & Life Insurance Company (Cayman) Ltd.* (D.I. 492) (the “Confirmation Order”), confirming the Plan.

16. The Stock Purchase Agreement contained an “Outside Closing Date” of December 9, 2018, for closing the transactions thereunder and thus the transactions contemplated by the Plan. Although the Debtors and the Purchaser worked diligently to close the Stock Purchase Agreement in advance of the Outside Closing Date, for the reasons discussed on the record at the status conference held in these cases on December 20, 2018, the Stock Purchase Agreement did not close on or before December 9, 2018.

17. In particular, the inability to close by December 9 was primarily due to: (1) certain of the necessary regulatory approvals from the Delaware Department of Insurance (the “Department”) remaining pending and (2) the Debtors’ non-debtor subsidiary, Scottish Re (U.S.), Inc. (“SRUS”), was experiencing adverse financial results due to unprecedented levels of current and projected future adverse mortality experience predominantly in respect to the business ceded to SRUS by a particular third-party ceding company (“Cedent One”). Furthermore, because SALIC reinsures a significant portion of SRUS’s business, the continued

levels of actual and projected increased adverse mortality experience not only negatively impacted capital and surplus at SRUS, but also increased the strain on liquidity at SALIC. Therefore, absent a significant modification of the economics associated with Cedent One's business, the funding required of Purchaser at closing and in the future would have been prohibitively high, and the Stock Purchase Agreement would not close. Thus, as the parties' indicated at the December 20 status conference, the Debtors and the Purchaser continued to work toward a resolution of the issues created by Cedent One's business.

18. On January 4, 2019, Hudson filed a motion seeking enforcement of the stalking horse protections and directing the Debtors to pay the Expense Reimbursement Amount (D.I. 649) (the "Hudson Motion"). In response, the Debtors and the Committee filed objections to the Hudson Motion (D.I. 660 & 662).

19. On January 25, 2019, the Court held an *in camera* status conference at the Debtors' request to allow the Debtors to provide a further status update on the closing of the Stock Purchase Agreement in a confidential setting due to the sensitive nature of ongoing negotiations. At that conference, the Debtors informed the Court that they had reached an agreement in principle with Cedent One. The Debtors also announced, however, that a new obstacle to closing had emerged: the fourth quarter 2018 financial results of SRUS and the Debtors were far worse than originally expected, and, without renegotiating additional business negatively impacting SRUS and the Debtors, the capital contributions required of the Purchaser at closing and in the future would remain prohibitively high and be subject to an unacceptable level of risk of depletion. As a result, the Purchaser required as a further condition to proceeding with the transaction, at a minimum, that the Debtors favorably resolve the business with another third-party ceding company ("Cedent Two") adversely affecting SRUS's capital and surplus and

SALIC's liquidity. Following the *in camera* conference, the Debtors continued actively negotiating with Cedent Two, the Purchaser, and other parties in interest in an effort to secure a path to closing the Stock Purchase Agreement.

20. Also on January 25, 2019, the Court held a hearing on the Hudson Motion and took the matter under advisement.

21. During the weeks leading up to February 15, 2019, the Debtors engaged in extensive negotiations with Cedent Two in an effort to reach a resolution acceptable to both Cedent Two and the Purchaser. Despite these efforts, on February 15, 2019, Cedent Two delivered to the Debtors a settlement offer in an amount that the Debtors expected would far exceed what the Purchaser would accept. Nevertheless, later that day, the Debtors informed the Purchaser of Cedent Two's position, and requested that the Purchaser inform the Debtors within 24 hours whether, in light of the current inability to reach a resolution with Cedent Two on terms acceptable to the Purchaser, it would continue to pursue closing the Stock Purchase Agreement.

22. On February 16, 2019, the Purchaser informed the Debtors that it would not pursue closing the Stock Purchase Agreement.

23. Accordingly, that same day, the Debtors' boards of directors met and unanimously determined that the Debtors would send a notice of termination of the Stock Purchase Agreement to the Purchaser and thereafter contact Hudson to explore the possibility of reengaging on a transaction. Consistent with this board action, the Debtors sent a notice of termination to the Purchaser on February 16, 2019, and contacted Hudson that evening regarding the potential to negotiate a new transaction.

24. Over the next several days, the Debtors and Hudson engaged in discussions regarding reengaging to pursue a new transaction. Hudson has indicated a

willingness to consider pursuing a new transaction with the Debtors, but only with written and Court approved undertakings by the Debtors in furtherance of such discussions (subject to certain terms and conditions). The specific terms and conditions under which Hudson will re-engage in negotiations about a potential new transaction continue to be the subject of ongoing discussions among the Debtors, Hudson and the Committee, but are expected to include, among other material provisions, the following terms that are contained in the form of Exclusivity Letter attached as Exhibit B to this Motion: (i) Hudson shall receive a satisfactory period of exclusivity; (ii) the Debtors will reimburse Hudson's affiliate, HSCM Bermuda Fund Ltd., up to \$125,000 for reasonable and documented out-of-pocket costs, fees and expenses incurred up to the date required by the Exclusivity Letter for Hudson to submit a Binding Commitment (regardless of whether one is actually submitted) in connection with the Proposed Transaction (as such terms are defined in the Exclusivity Letter); and (iii) the Debtors, without further delay, shall pay HSCM Bermuda Fund Ltd. immediately the \$1.25 million Expense Reimbursement Amount owed pursuant to Section 8.3 of the Stalking Horse SPA.

25. The Debtors, in their business judgment, believe that meeting such terms and conditions in order to be able to pursue a possible transaction with Hudson is, at this stage, the best and possibly only viable alternative to achieve value for unsecured creditors.

26. As they have done at all stages in these cases, the Debtors have kept key parties in interest—including the Committee, the Department, the joint official liquidators (the “JOLs”) of Scottish Re Group Limited, and the insolvency receiver (the “Receiver”) of Scottish Financial (Luxembourg) S.á r.l.—apprised of the foregoing developments.

27. Because of the fluidity of the current situation, the Debtors have not yet been able to confirm whether the Committee, the JOLs and/or the Receiver will support or



consent to the relief requested in this Motion. Between now and the hearing on this Motion the Debtors intend to continue their efforts to garner the support and/or consent of their various stakeholders with respect to the relief requested by this Motion. In addition, the Debtors understand that the Department continues to monitor closely these proceedings in connection with its supervision and regulation of SRUS, and the potential exists for additional near term regulatory action in respect of SRUS.

**RELIEF REQUESTED**

28. By this Motion, the Debtors seek the entry of an order, in substantially the form attached hereto as **Exhibit A**, granting the following relief: (i) approving the proposed form of the Exclusivity Letter; (ii) authorizing the Debtors to execute and perform under the Exclusivity Letter, as well as making the immediate payment by the Debtors to HSCM Bermuda Fund Ltd., an affiliate of Hudson, of the Expense Reimbursement Amount of \$1,250,000 under Section 8.3 of the Stalking Horse SPA; and (iii) granting related relief.

**BASIS FOR RELIEF REQUESTED**

29. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts in the Third Circuit have approved a debtor’s use of property outside the ordinary course of business when such use has a “sound business purpose” and is proposed in good faith. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Co. (In re Montgomery Ward Holding Co.)*, 242 B.R. 147, 153 (D. Del. 1999).

30. Once a debtor has articulated a valid business purpose, courts consider whether relief is justified under the business judgment rule. *See Montgomery Ward*, 242 B.R. at 153. “The business judgment rule ‘is a presumption that in making a business decision the

directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). The business judgment rule has “vitality” in chapter 11 cases and presumes that a debtor’s management decisions are reasonable. *See Integrated Resources*, 147 B.R. at 656; *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

31. Additionally, section 105(a) of the Bankruptcy Code provides, in pertinent part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a).

32. Although the Debtors vigorously and in good faith pursued solutions to issues facing the Debtors and SRUS to reach closing of the Stock Purchase Agreement, the Debtors ultimately were unable to obtain solutions satisfactory to the Purchaser in the time available to seek to avoid a liquidation of the Debtors and irreversible regulatory action in respect of SRUS. As a result, the Debtors terminated the Stock Purchase Agreement to no longer be bound by the “no shop” provisions therein and to seek a possible alternative transaction that would avoid liquidation and achieve value for unsecured creditors. The Debtors believe that granting exclusivity to Hudson, reimbursing (subject to caps to be agreed upon) reasonable out-of-pocket costs, fees and expenses that have been or may be incurred by HSCM Bermuda Fund Ltd. in accordance with the Exclusivity Letter, and making the payment of the Expense Reimbursement Amount as provided for under Section 8.3 of the Stalking Horse SPA are

necessary actions in order to be able to pursue a possible transaction with Hudson, which is, at this stage, the best and possibly only viable path to avoid liquidation and achieve value for unsecured creditors. Accordingly, the Debtors have determined, in an exercise of their business judgment, that entering into and performing under the Exclusivity Letter are in the best interests of their estates, creditors and parties in interest. The Exclusivity Letter preserves the possibility of a transaction in which the Debtors' unsecured creditors may receive value above what would be available in a chapter 7 liquidation. Therefore, the interests of the Debtors' estates and creditors are best served by approving the Debtors' entry into the Exclusivity Letter.

33. Moreover, approval for the Debtors to pay HSCM Bermuda Fund Ltd. the Expense Reimbursement Amount owed pursuant to Section 8.3 of the Stalking Horse SPA will resolve the Hudson Motion.

34. For these reasons, the Court should authorize the Debtors to enter into and perform under the Exclusivity Letter.

**WAIVER OF BANKRUPTCY RULE 6004(h)**

35. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Debtors' current liquidity and worsening financial condition make it imperative that the Debtors begin working toward a new transaction immediately. Accordingly, to allow the Debtors to promptly negotiate and pursue a transaction with Hudson, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h).

**NOTICE**

36. Notice of this Motion has been provided to (a) counsel for the U.S. Trustee; (b) counsel for the Committee; (c) counsel for Hudson; (d) counsel for Hildene; and (e) all parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**WHEREFORE**, the Debtors respectfully request the entry of an order, substantially in the form attached as **Exhibit A**, granting the following relief: (i) approving the proposed form of the Exclusivity Letter; (ii) authorizing the Debtors to execute and perform under the Exclusivity Letter, and to make the immediate payment by the Debtors to HSCM Bermuda Fund Ltd., an affiliate of Hudson, of the Expense Reimbursement Amount of \$1,250,000 under Section 8.3 of the Stalking Horse SPA; and (iii) granting related relief.

Dated: February 22, 2019  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ Paige N. Topper  
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*Counsel for Debtors and Debtors in Possession*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

SCOTTISH HOLDINGS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 18-10160 (LSS)

Jointly Administered

**Requested Hearing Date:**

**February 26, 2019, at 11:30 a.m. (ET)**

**Requested Objection Deadline:**

**At or before the Hearing**

**NOTICE OF DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(A) AND 363 (I) APPROVING PROPOSED FORM OF EXCLUSIVITY LETTER WITH HUDSON STRUCTURED CAPITAL MANAGEMENT LTD., (II) AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM UNDER SUCH AN EXCLUSIVITY LETTER, AND (III) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on February 22, 2019, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed **Debtors' Emergency Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363 (I) Approving Proposed Form of Exclusivity Letter with Hudson Structured Capital Management Ltd., (II) Authorizing the Debtors to Enter into and Perform Under Such an Exclusivity Letter, and (III) Granting Related Relief** (the "Motion").

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order granting the relief requested in the Motion may file a response or objection ("Objection") if any, to the Motion with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, or respond or object to the Motion, **at or before the Hearing (the "Objection Deadline")**.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **FEBRUARY 26 2019 at 11:30 A.M. (ET)** BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM #2, WILMINGTON, DELAWARE 19801.

<sup>1</sup> The Debtors, along with the last four digits of their federal tax identification numbers, are as follows: Scottish Holdings, Inc. (4408) and Scottish Annuity & Life Insurance Company (Cayman) Ltd. (3285). The Debtors' mailing address for purposes of these chapter 11 cases is 11006 Rushmore Drive, Suite 125, Charlotte, North Carolina 28277.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 22, 2019  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

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12585387.1

**EXHIBIT A**

[Proposed Order]



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

SCOTTISH HOLDINGS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 18-10160 (LSS)

Jointly Administered

Re: **D.I.** \_\_\_\_\_

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 (I) APPROVING  
PROPOSED FORM OF EXCLUSIVITY LETTER WITH HUDSON  
STRUCTURED CAPITAL MANAGEMENT LTD., (II) AUTHORIZING THE  
DEBTORS TO ENTER INTO AND PERFORM UNDER SUCH AN  
EXCLUSIVITY LETTER, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “Debtors”), pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), for entry of an order (this “Order”) granting the following relief: (i) approving the proposed form of a letter agreement with Hudson Structured Capital Management Ltd. (“Hudson”), in substantially the form attached hereto as **Exhibit 1** as may have been further negotiated with Hudson (the “Exclusivity Letter”); (ii) authorizing the Debtors to execute and perform under the Exclusivity Letter and to make immediate payment to HSCM Bermuda Fund Ltd. of the Expense Reimbursement Amount of \$1,250,000 under Section 8.3 of the Stalking Horse SPA; and (iii) granting related relief; and adequate notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need

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<sup>1</sup> The Debtors, along with the last four digits of their federal tax identification numbers, are as follows: Scottish Holdings, Inc. (4408) and Scottish Annuity & Life Insurance Company (Cayman) Ltd. (3285). The Debtors’ mailing address for purposes of these chapter 11 cases is 11006 Rushmore Drive, Suite 125, Charlotte, North Carolina 28277.

<sup>2</sup> Capitalized terms not defined herein are defined in the Motion.

be given; and it appearing that the Motion and the entry of this Order are in the best interest of the Debtor, its bankruptcy estate and creditors thereof; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Exclusivity Letter in substantially the form annexed hereto as **Exhibit 1** is hereby approved.
3. The Debtors are authorized to enter into and perform under the Exclusivity Letter.
4. The Debtors are authorized and directed to pay the Expense Reimbursement Amount within two (2) business days of entry of this Order.
5. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to negotiate and implement the terms of this Order and the Exclusivity Letter.
6. For the avoidance of doubt, the entry of Order, without more, does not obligate Hudson to execute the Exclusivity Letter or otherwise obligate it in any manner. Hudson retains sole and absolute discretion as to whether it will execute the Exclusivity Letter or proceed with an Alternative Proposal.
7. This Order shall be effective immediately notwithstanding any stay provided in the Bankruptcy Rules.

8. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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THE HONORABLE LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**ORDER EXHIBIT 1**

Exclusivity Letter

**EXHIBIT B**

**[Exclusivity Letter]**

[On HSCM Letterhead]

**CONFIDENTIAL**  
**DELIVERY VIA EMAIL**

February [●], 2019 (the “*Execution Date*”)

Gregg Klingenberg  
Chief Executive Officer  
Scottish Annuity & Life Insurance Company (Cayman) Ltd.  
Crown House, 1st Floor  
4 Par-la-Ville Road  
Hamilton Bermuda HM MX

**Re: Acquisition of Scottish Annuity & Life Insurance Company (Cayman) Ltd.**

Dear Gregg,

The purpose of this letter (the “*Letter*”) is to (i) summarize certain principal terms and conditions upon which Hudson Structured Capital Management Ltd. (“*HSCM*”), through one or more clients, would consider entering into a transaction to acquire (the “*Proposed Transaction*”) 100% of the common stock of Scottish Annuity & Life Insurance Company (Cayman) Ltd. (“*SALIC*,” and together with HSCM, the “*Parties*”) or one or more of its subsidiaries, or other assets of SALIC or such subsidiaries, through bankruptcy proceeding(s), and (ii) facilitate the good-faith negotiation and settlement of Definitive Agreements (as defined below) effecting the Proposed Transaction, which the Parties would expect to substantially reflect the terms and conditions agreed to by the Parties in this Letter. Nothing set forth in this Letter requires any Party to enter into the Proposed Transaction.

SALIC and its wholly-owned subsidiary, Scottish Holdings, Inc. (“*SHI*,” and together with SALIC, the “*Debtors*” and each a “*Debtor*”), are debtors and debtors in possession under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in bankruptcy cases (together, the “*Chapter 11 Cases*”) before the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”). The Proposed Transaction, if effected, would occur as part of a plan of reorganization (the “*Plan*”) in the Chapter 11 Cases.

**1. The Proposed Transaction**

1.1 The Parties agree that they will negotiate in good faith to agree upon the terms of the Proposed Transaction, including (i) a stock purchase agreement (the “*SPA*”), pursuant to which clients of HSCM (collectively, the “*Purchaser*”) would acquire newly issued stock of reorganized SALIC (and all other issued and outstanding stock of SALIC will be surrendered to SALIC and cancelled) or one or more of its subsidiaries, or other assets of SALIC or such subsidiaries, and (ii) such other agreements as may be considered necessary by any Party to effect the Proposed Transaction (together with the SPA, the “*Definitive Agreements*”). Each of the Definitive Agreements must be in form and substance satisfactory to each Party in its sole discretion. Without limiting the foregoing, the purchase price for the Purchaser’s acquisition (the “*Aggregate Consideration*”), and the manner in which such consideration would be allocated (i) to creditors as a plan funding payment and (ii) to SALIC and its subsidiaries as a recapitalization funding payment, respectively (the “*Consideration Allocation*”), would be subject to the mutual agreement of the Parties.

1.2 The Definitive Agreements would include representations, warranties, covenants and conditions customary for a transaction of this nature and be in form and substance mutually satisfactory to each of SALIC and the Purchaser in its sole discretion. In connection with drafting the SPA, the Parties intend, but will not be required, to be guided by the provisions (other than with respect to the financial elements) set forth in the Stock Purchase Agreement, dated as of January 28, 2018, by and among the Debtors and HSCM Bermuda Fund Ltd. ("*HSCM Bermuda Fund*"), which HSCM Bermuda Fund terminated on August 20, 2018 (the "*Reference SPA*").

1.3 The Proposed Transaction would be subject in all respects to, among other things: (a) satisfactory due diligence conducted by the Purchaser, (b) the negotiation and execution of the Definitive Agreements, which shall be in form and substance acceptable to each Party in its sole discretion; (c) any required approvals of the Bankruptcy Court and other courts of competent jurisdiction; and (d) any required regulatory approvals.

## 2. Exclusivity

2.1 In consideration of the expenses and time commitment that HSCM has already incurred and will incur going forward in connection with the Proposed Transaction, SALIC agrees that for a period beginning on the date that the Bankruptcy Court's order approving this Letter is entered and effective by such order's terms (the "*Approval Date*") (as described in Section 7.1) and ending on the date that is 90 days after the Approval Date (the "*Exclusivity End Date*") (such period, the "*Exclusivity Period*"), neither SALIC, its affiliates (including SRGL), nor any of its or their representatives, officers, employees, directors, agents, stockholders (collectively, the "*Debtor Group*") shall initiate, solicit, entertain, encourage, negotiate, accept or discuss, directly or indirectly, any proposal or offer from any person or group of persons other than HSCM, the Purchaser and their affiliates to acquire all or any part of the business, assets and properties, capital stock or capital stock equivalents of SALIC, SHI, Scottish Re (U.S.), Inc. or their affiliates or subsidiaries, whether by merger, purchase of stock, purchase of assets, tender offer or otherwise, or provide any non-public or other information to any third party in connection therewith (an "*Alternative Proposal*") or enter into any agreement, arrangement or understanding requiring it to abandon, terminate, delay or fail to consummate the Proposed Transaction with HSCM and the Purchaser, except that nothing set forth in this Letter shall prohibit the Debtors from electing to convert the Chapter 11 Cases to cases under chapter 7 of title 11 of the Bankruptcy Code if the Debtors determine such conversion to be necessary or appropriate; provided, that such conversion shall not affect HSCM's rights under the Reference SPA and Sections 3.1 and 3.2 of this Letter.

2.2 Immediately upon the Execution Date, each member of the Debtor Group shall suspend (through the expiration of the Exclusivity Period) any and all existing discussions or negotiations with any person or group of persons regarding an Alternative Proposal. Each Debtor represents and warrants to HSCM and the Purchaser that it is not party to or bound by any agreement with respect to an Alternative Proposal. Each Debtor agrees to notify HSCM and the Purchaser if it receives any unsolicited offer in respect of an Alternative Proposal within two (2) business days after any Debtor's receipt of such an unsolicited offer.

2.3 The Parties agree, subject to the terms and conditions of this Letter, to use good faith efforts during the Exclusivity Period to negotiate and execute binding Definitive Agreements and consummate the Proposed Transaction.

**3. Expense Reimbursement Payments**

- 3.1 In consideration of the agreements of HSCM set forth in this Letter, and pursuant to the terms of the Reference SPA and in full and final settlement of the issues raised in connection with the Motion of HSCM Bermuda Fund Ltd. To (I) Enforce Stalking Horse Protections, (II) Direct Debtors to Pay Amounts due to HSCM Bermuda Fund Ltd. As “Expense Reimbursement Amount” Under Stalking Horse Stock Purchase Agreement, and (III) Granting Related Relief and the Debtors responses thereto, SALIC hereby agrees to pay to HSCM Bermuda Fund, within two (2) business days following the Approval Date, an amount equal to one million two hundred fifty thousand dollars (\$1,250,000) (such payment, the “**Reimbursement Payment**”) by wire transfer in immediately available funds to an account specified by HSCM in writing, in full satisfaction of the amount owed by the Debtors to HSCM Bermuda Fund pursuant to Section 8.3 of the Reference SPA.
- 3.2 In consideration of the agreements of HSCM set forth in this Letter, SALIC hereby agrees to pay to HSCM Bermuda Fund, reasonable out-of-pocket costs, fees and expenses incurred from the Execution Date through the date of termination of this Letter (including fees and expenses of legal, accounting and financial advisors) in connection with the Proposed Transaction, including such fees and expenses incurred in connection with legal and actuarial due diligence, negotiation and documentation of the Proposed Transaction, and pursuit of regulatory and Bankruptcy Court approvals of the Proposed Transaction, which amount shall in no event exceed (x) \$50,000 from the Execution Date through and including the Indicative Offer Deadline (which expenses, for the avoidance of doubt, will be payable regardless of whether or not an Indicative Offer is submitted), and (y) \$125,000 from the Execution Date through and including the Binding Commitment Deadline (which expenses, for the avoidance of doubt, will be payable regardless of whether or not a Binding Commitment is submitted)), which expenses (subject to the foregoing caps) shall be entitled to superpriority administrative expense status pursuant to Sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code, senior to all other general administrative expense claims and superpriority administrative expense claims granted such status pursuant to Sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code and shall be paid (x) within two (2) business days following any termination of this Letter and delivery to SALIC of documentation supporting the request for reimbursement of such reasonable out-of-pocket costs, fees and expenses or (y) pursuant to the terms of the Proposed Transaction, if applicable.
- 3.3 If the Purchaser submits a Binding Commitment to SALIC by the Binding Commitment Deadline but the Parties are unable to agree upon the extent to which SALIC must reimburse HSCM Bermuda Fund for its out-of-pocket costs, fees and expenses incurred after the Binding Commitment Deadline, then either Party shall be permitted to terminate this Letter in accordance with Section 4.1.

**4. Termination**

- 4.1 Subject to the proviso set forth in Section 7.2 of this Letter, this Letter shall terminate upon the earliest to occur of (i) the Exclusivity End Date, (ii) the date upon which the Purchaser determines, as a result of its due diligence review or otherwise in good faith, to not proceed with the Proposed Transaction and provides written notice of the same to SALIC, (iii) the date upon which SALIC determines it is necessary to terminate this Letter as a result of a request from the Delaware Department of Insurance (the “**Delaware DOI**”) to so terminate this Letter and provides written notice of the same to HSCM, (iv) delivery of written notice of termination by SALIC to HSCM on or after the Indicative Offer Deadline, if, by the Indicative Offer Deadline, the Purchaser shall not have delivered to SALIC an Indicative Offer (as defined below), (v) delivery



of written notice of termination by SALIC to HSCM on or after the Binding Commitment Deadline, if, by the Binding Commitment Deadline, the Purchaser shall not have delivered to SALIC a Binding Commitment (as defined below), (vi) the date either Party terminates this Letter in the circumstance described in Section 3.3, or (vii) the date mutually agreed upon by the Parties.

4.2 For purposes of this Letter, the following definitions shall apply:

- (i) “**Binding Commitment Deadline**” means 11:59 pm EST on March 14, 2019.
- (ii) “**Binding Commitment**” means a written binding commitment setting forth in reasonable detail the terms and conditions (including the Aggregate Consideration and Consideration Allocation) upon which the Purchaser is willing to proceed with the Proposed Transaction, which terms and conditions are reasonably acceptable to SALIC (it being understood that the Purchaser shall be permitted to include in the Binding Commitment customary conditions to its obligation to proceed with the Proposed Transaction, including confirmatory due diligence and execution and delivery of Definitive Documents in form and substance consistent with the terms of the Binding Commitment and otherwise acceptable to the Purchaser).
- (iii) “**Indicative Offer**” means a non-binding written indication of interest in proceeding with the Proposed Transaction setting forth generally in reasonable detail the terms upon which the Purchaser would be willing to enter into the Proposed Transaction, including the Purchaser’s good faith proposed Aggregate Consideration and Consideration Allocation, based on the due diligence the Purchaser shall have completed through the date of the Indicative Offer, and which indication of interest is reasonably acceptable to SALIC.
- (iv) “**Indicative Offer Deadline**” means 11:59 pm EST on March 6, 2019.

## 5. Confidentiality

5.1 The Parties agree that the terms and conditions of that certain Non-Disclosure Agreement, dated May 10, 2017, between HSCM Bermuda Management Company and SALIC (the “**Confidentiality Agreement**”) are hereby incorporated herein by reference as if set forth in full herein and are in full force and effect as between HSCM and SALIC, and are effective, beginning as of the date of this Letter. Each of the Parties agrees on behalf of itself and its affiliates to maintain this Letter, the contents of this Letter and the information exchanged by the Parties in connection with this Letter and the Proposed Transaction confidential in accordance with the Confidentiality Agreement as if each such person was subject to the confidentiality restrictions set forth therein. Disclosure to third parties may only occur in accordance with the terms and conditions of the Confidentiality Agreement; provided, however, that the Parties acknowledge and agree that notwithstanding the foregoing, such disclosure will include (i) the Debtor’s right to provide this Letter and information related to the Proposed Transaction to the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “**Creditors’ Committee**”), (ii) the submission of the Approval Request to the Bankruptcy Court and the discussion of this Letter at any hearing before the Bankruptcy Court in connection therewith and (iii) the provision of this Letter to the Delaware DOI and the discussion of this Letter with the Delaware DOI upon its request.

## 6. Governing Law

6.1 This Letter shall be governed by and construed in accordance with the laws of the State of

Delaware and the federal laws of the United States (including the Bankruptcy Code) applicable therein, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Delaware.

**7. Court Approval; Binding Nature; Survival**

7.1 Within one business day following the execution and delivery of this Letter by the Parties and HSCM Bermuda Fund, SALIC shall, and shall cause SHI to, submit to the Bankruptcy Court a motion to request the Bankruptcy Court's approval of this Letter on an expedited basis, which motion shall attach as an exhibit a fully executed copy of this Letter (the "**Approval Request**"). [The motion seeking such approval shall reflect that the Creditors' Committee supports the Debtors' entry into this Letter.]

7.2 This Letter constitutes a legally binding agreement among the Parties and (solely as to Section 3.1, Section 3.2, Section 6.1, this Section 7.2, and Section 8) HSCM Bermuda Fund upon the execution and delivery of this Letter by the Parties and HSCM Bermuda Fund; provided, however, that if the Bankruptcy Court denies the Approval Request, then upon such denial, this Letter (including Sections 3.1 and 3.2) shall be void and of no force or effect, and HSCM Bermuda Fund's rights to the Expense Reimbursement Amount under the Reference SPA shall continue and be unaffected by the terms of this Letter. For the avoidance of doubt, nothing in this Letter obligates the Parties to enter into the Proposed Transaction.

7.3 Subject to the proviso set forth in Section 7.2, the following provisions of this Letter shall survive any termination of this Letter in accordance with Section 4.1: Sections 3.1, 3.2, 5.1, 6.1, and 8.1 through 8.5.

**8. Miscellaneous**

8.1 This Letter will inure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

8.2 No Party may assign or transfer any of its rights or obligations under this Letter without the prior written consent of the other Parties.

8.3 This Letter may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument. Delivery of a copy by facsimile or other electronic means (including email) will be deemed to be delivery of an original.

8.4 Unless otherwise indicated, all references to dollar amounts (\$) in this Letter refer to the legal currency of the United States of America.

8.5 This Letter constitutes the entire agreement between the Parties, and supersedes all prior agreements, understandings, representations and warranties, negotiations and discussions, whether oral or written, and course of conduct and dealing between the Parties relating to the subject matter of this Letter.

If this Letter is acceptable to you, please sign and return a fully-executed copy of this Letter to us by no later than 5:00 pm EST on February [22], 2019. If not accepted by SALIC by such time, this Letter shall terminate automatically without action or liability on the part of any Party.

We thank you for your consideration and are available at your convenience to discuss the foregoing matters. We look forward to your response.

[Remainder of page intentionally left blank]

Yours truly,

**HUDSON STRUCTURED CAPITAL  
MANAGEMENT LTD.**

By: \_\_\_\_\_  
Michael Millette  
Managing Partner

Acknowledged and agreed (solely with respect to Sections 3.1, 3.2, 6.1, 7.2 and 8 of this Letter):  
**HSCM BERMUDA FUND LTD.**

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and agreed:  
**SCOTTISH ANNUITY & LIFE  
INSURANCE COMPANY (CAYMAN) LTD.**

By: \_\_\_\_\_  
Gregg Klingenberg  
Chief Executive Officer