

**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. 694**

**ORDER PURSUANT TO 11 U.S.C. §§ 105(A) AND 363 (I) APPROVING  
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 consideration of the *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*, filed on February 22, 2019 (D.I. 694) (the "Motion")<sup>2</sup> by above-captioned debtors and debtors in possession (the "Debtors"); and adequate notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need be given; and it appearing that the Motion and the entry of this Order are in the best interest of the Debtors, their bankruptcy estates and creditors thereof; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

<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.

1. The Motion is GRANTED as set forth herein.

2. The letter agreement between Scottish Annuity & Life Insurance Company (Cayman) Ltd. (“SALIC”) and Hudson Structured Capital Management Ltd. (“HSCM”) and consented to by HSCM Bermuda Fund Ltd. (“HSCM Bermuda”) for limited purposes as stated therein, attached hereto as **Exhibit 1** (the “Exclusivity Letter”) is hereby approved, as modified herein.

3. SALIC is authorized to enter into and perform under the Exclusivity Letter.

4. Notwithstanding anything to the contrary in the Exclusivity Letter, with respect to any amounts payable or that may become payable to HSCM Bermuda pursuant to Section 3.2 of the Exclusivity Letter, HSCM Bermuda shall simultaneously deliver a copy of any invoice submitted to the Debtors to counsel for the U.S. Trustee and counsel to the Committee (the “Fee Notice”). Fee Notices shall include information and detail consistent with that provided for HSCM Bermuda’s attorneys and other professionals in the ‘Fee Notice’ email and attachments thereto delivered by HSCM Bermuda pursuant to Paragraph 15 of the Bidding Procedures Order on September 10, 2018. None of such costs, fees and expenses shall be subject to Court approval or required to be recorded or maintained in accordance with the U.S. Trustee guidelines relating to compensation and reimbursement of expenses, and no recipient of any such payment shall be required to file any interim or final fee application with the Court. Further, HSCM Bermuda may redact the Fee Notice to the extent necessary to protect and preserve any applicable privilege; *provided, however*, that the U.S. Trustee reserves the right to seek unredacted copies of the Fee Notices. Subject to the Debtors filing a written objection with this Court to any such costs, fees and expenses within two (2) business days after receipt of the Fee Notice or the U.S Trustee filing a written objection with this Court to any such costs, fees and

expenses within five (5) business days after receipt of the Fee Notice, all amounts chargeable to SALIC under Section 3.2 of the Exclusivity Letter shall constitute valid costs, fees and expenses for purposes of the Exclusivity Letter and this Order and shall be paid by SALIC to HSCM Bermuda within the applicable time periods prescribed by Section 3.2 of the Exclusivity Letter. To the extent an objection is filed by the Debtors or the U.S. Trustee within two (2) business days after the receipt of a Fee Notice, SALIC (a) shall pay such portion of the costs, fees and expenses to which no objection is interposed and (b) shall pay any remaining costs, fees and expenses as ordered by the Court (or upon withdrawal or resolution of the objection). In the event the U.S. Trustee timely files an objection to a Fee Notice more than two (2) business days after his receipt of such Fee Notice and SALIC has already paid HSCM Bermuda in accordance with such Fee Notice and this Order, such payment shall be without prejudice to the U.S. Trustee's ability to seek relief from the Court to recover such payment if determined by the Court to be warranted under the circumstances.

5. For the avoidance of doubt, the Debtors are authorized and directed to make the Reimbursement Payment (as defined in the Exclusivity Letter) in the amount of \$1,250,000 to HSCM Bermuda within two (2) business days after the this Order is entered.

6. Any amounts payable or that become payable to HSCM Bermuda pursuant to Section 3.2 of the Exclusivity Letter 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

7. For the further avoidance of doubt, this Order and the Exclusivity Letter are without prejudice to any right that the Debtor, the Committee, the U.S. Trustee or any other

party in interest with standing to do so may possess to seek to convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; *provided, however*, that any such conversion shall not affect HSCM's rights under the Reference SPA (as defined in the Exclusivity Letter) and Sections 3.1 and 3.2 of the Exclusivity Letter.

8. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order and the Exclusivity Letter.

9. This Order shall be effective immediately notwithstanding any stay provided in the Bankruptcy Rules.

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

**Dated: February 20th, 2019**  
**Wilmington, Delaware**

**LAURIE SELBER SILVERSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE**

**ORDER EXHIBIT 1**  
Exclusivity Letter

**HUDSON STRUCTURED CAPITAL MANAGEMENT LTD.**

**EXECUTION VERSION**

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

February 27, 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 be subject to approval by the Bankruptcy Court, including 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 purchase agreement, 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 (collectively, 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 Definitive Agreements, 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. The Debtors will consult with the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “**Creditors’ Committee**”) on all aspects of the Proposed Transaction, including, without limitation, with respect to the Indicative Offer, the Binding Commitment, the Definitive Agreements and Consideration Allocation, and will copy the Creditors’ Committee on all drafts of the Definitive Agreements and all proposals regarding the Consideration Allocation.

## 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**”), except as ordered by the Court, 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 (i) 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, or (ii) prevent the Creditors’ Committee from seeking conversion; provided, that any 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 (the “*Motion for Reimbursement*”), 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 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 the Motion for Reimbursement, this Letter, 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 through and including the Indicative Offer Deadline (as defined below) (which expenses, for the avoidance of doubt, will be payable regardless of whether or not an Indicative Offer is submitted), and (y) provided that the Letter has not been terminated on the Indicative Offer Deadline pursuant to Section 4.1(viii) of this Letter, an additional \$75,000 through and including the earlier of the termination of this Letter or the Binding Commitment Deadline (as defined below) (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, with a copy to counsel for the Creditors’ Committee and counsel for the United States Trustee for the District of Delaware, 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, (vii) the conversion of these Chapter 11 Cases to cases under chapter 7, (viii) on the Indicative Offer Deadline if an Indicative Offer acceptable to SALIC and consented to by the Creditors’ Committee (which consent shall not be unreasonably withheld or delayed) is not made on or before such date, (ix) on the Binding Commitment Deadline if a Binding Commitment acceptable to SALIC and consented to by the Creditors’ Committee (which consent shall not be unreasonably withheld or delayed) is not made on or before such date, or (x) 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 18, 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 acceptable to SALIC and consented to by the Creditors’ Committee, which consent shall not be unreasonably withheld or delayed (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 acceptable to SALIC and consented to by the Creditors’ Committee, which consent shall not be unreasonably withheld or delayed.
- (iv) “*Indicative Offer Deadline*” means 11:59 pm EST on March 11, 2019.

4.3 Notwithstanding any other provision of this Letter, SALIC may terminate this Letter without liability other than liability arising under the terms of Sections 3.1 and 3.2 of this Letter in the event that (a) SALIC’s board of directors, in the board members’ reasonable judgment in the

exercise of their fiduciary, determines that it is not in the best interests of the SALIC estate to consummate the transaction contemplated under any Indicative Offer or Binding Commitment, or (b) the consummation of the transactions contemplated under any Indicative Offer or Binding Commitment is prohibited by law, rule or regulation.

**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.

**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 or Section 4.3: 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 11:59 pm EST on February 27, 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.

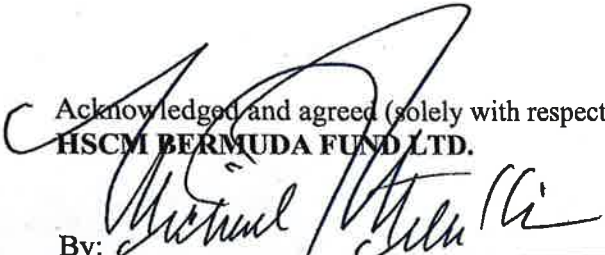
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Yours truly,

  
**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: Michael Millette  
Title: Director.

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

By:

Gregg Klingenberg  
Chief Executive Officer

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