

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

In re

SCOTTISH HOLDINGS, INC., et al.,

Debtors.¹

Chapter 11

Case No. 18-10160 (LSS)

Jointly Administered

**SUPPLEMENTAL DECLARATION OF GREGG KLINGENBERG IN SUPPORT
OF: (I) DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING
BIDDING PROCEDURES IN CONNECTION WITH AN AUCTION FOR PLAN
SPONSORSHIP; (B) APPROVING CERTAIN STALKING HORSE PROTECTIONS;
AND (C) AUTHORIZING AND SCHEDULING A DATE AND TIME FOR AN
AUCTION PURSUANT TO SUCH PROCEDURES; AND DEBTORS' MOTION FOR
(A) ORDER AUTHORIZING DEBTORS' ASSUMPTION OF RESTRUCTURING
IMPLEMENTATION AGREEMENT AND GRANTING RELATED RELIEF AND
(B) ORDER AUTHORIZING DEBTORS' ASSUMPTION OF PLAN SPONSORSHIP
AGREEMENT AND GRANTING RELATED RELIEF**

I, Gregg Klingenberg, hereby declare under penalty of perjury, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I am Chief Executive Officer of the above-captioned debtors and debtors in possession, Scottish Holdings, Inc. (“SHI”), and Scottish Annuity & Life Insurance Company (Cayman) Ltd. (“SALIC,” and together with SHI, the “Debtors”), and certain of their non-debtor affiliates (collectively with the Debtors, “Scottish Re”). I refer to the *Declaration of Gregg Klingenberg in Support of First Day Relief*, dated January 28, 2018 [D.I. 3] (the “Initial Declaration”), which I re-affirm and incorporate herein by reference. In this supplemental declaration, capitalized terms not otherwise defined herein shall have the meanings I ascribed to such terms in my Initial Declaration.

¹ 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 14120 Ballantyne Corporate Place, Suite 300, Charlotte, NC 28277.

2. I submit this supplemental declaration in support of the contemporaneously filed: (a) *Debtors' Motion For Entry Of An Order (A) Approving Bidding Procedures In Connection With An Auction For Plan Sponsorship; (B) Approving Certain Stalking Horse Protections; And (C) Authorizing And Scheduling A Date And Time For An Auction Pursuant To Such Procedures* (the "Bidding Procedures Motion"); and (b) *Debtors' Motion For (A) Order Authorizing Debtors' Assumption Of Restructuring Implementation Agreement And Granting Related Relief And (B) Order Authorizing Debtors' Assumption Of Plan Sponsorship Agreement And Granting Related Relief* (the "RIA/PSA Assumption Motion").

3. Except as otherwise indicated herein, all of the facts set forth in this supplemental declaration are based upon my personal knowledge, information supplied to me by other members of the Debtors' management or professionals, information learned from my review of the relevant documents, or my experience and knowledge of the Debtors' operations and financial condition and the reinsurance industry generally. If called as a witness, I could and would testify to the facts set forth in this supplemental declaration. I am authorized to submit this supplemental declaration on behalf of the Debtors.

4. In my current capacity as the Chief Executive Officer of SALIC, SHI and other Scottish Re entities and my prior capacity as their General Counsel and Executive Vice President, I have become familiar with the Debtors' day-to-day operations, business, and financial affairs.

5. As discussed in my Initial Declaration, as part of Scottish Re's ongoing efforts to address its financial situation, in early April 2017, SALIC engaged Keefe Bruyette & Woods, Inc. ("KBW"), an investment banking firm specializing in the financial services and insurance sectors, as its exclusive investment banker to market the company for a potential sale

or a capital raise. KBW contacted approximately fifty potential strategic and financial buyers and investors regarding both potential out-of-court or in-court transactions. Approximately twenty-three potential buyers or investors expressed interest and executed non-disclosure agreements to gain access to a confidential data room with additional information on the Debtors. Unfortunately, none of the parties contacted by KBW was willing to pursue an out-of-court transaction with the Debtors, given their indicative valuation, current capital structure and financial distress.

6. A small number of interested parties, however, were willing to consider a potential transaction with the Debtors, conditioned on the Debtors seeking bankruptcy relief to right-size the Debtors' balance sheet as part of such a transaction. In the initial round of bidding, Scottish Re received three bids. Two of those bidders submitted revised proposals in a second round of bidding. Ultimately, in the fall of 2017, the Debtors, in consultation with KBW and their legal advisors, identified the bid made by Hudson Structured Capital Management Ltd. ("HSCM" or "Purchaser") as the proposal most likely to maximize the value achievable for the Debtors' creditors under the circumstances.

7. In parallel with this process, the Debtors, in consultation with their restructuring advisors, also considered and analyzed liquidation scenarios, in which, instead of proceeding with any of the bids then available to the Debtors, SALIC would be liquidated and non-debtor SRUS would enter a rehabilitation or liquidation proceeding conducted by the Delaware Insurance Commissioner. Under such liquidation scenarios, SALIC's liabilities could be expected to balloon because it, of necessity, would be breaching obligations under net worth maintenance agreements with SRUS and other subsidiaries and would be breaching obligations to insurer cedents under all of its reinsurance contracts. Based on these analyses, in the reasoned

business judgment of the Debtors, the magnitude of the anticipated increase of claims made pursuing such liquidation scenarios unattractive to the Debtors and not in the best interests of their creditors. Accordingly, after consultation with their restructuring advisors, the Debtors determined that continuing to pursue the current restructuring transactions was the best path forward.

8. Over the several months that followed, the Debtors and HSCM negotiated intensely with one another concerning the terms of a proposed binding letter of intent and, ultimately, the Stalking Horse SPA that is the subject of the Bidding Procedures Motion. I was directly involved in these negotiations on behalf of the Debtors with the assistance of the Debtors' professionals, including KBW, Mayer Brown LLP, Hogan Lovells (US) LLP, and Morris, Nichols, Arsh & Tunnell LLP. It is my belief that, at all relevant times, the negotiations between the Debtors and HSCM were conducted at arms'-length and in good faith.

9. In my experience, several factors contributed to prolong the duration of these negotiations and increase the expense associated with these negotiations and the resulting restructuring transactions. First, as is likely evident from my Initial Declaration, Scottish Re's financial situation, businesses, and operational structures are exceedingly complex. Scottish Re's insurance and reinsurance companies are subject to insurance laws and regulations in the jurisdictions in which they operate, as well as varied corporate law requirements. I perceive that it required a significant investment of time and resources by HSCM and its professional advisors just to diligence Scottish Re's businesses. Indeed, I am aware that through the course of the negotiations, HSCM involved outside actuarial advisors, as well as outside legal counsel in several jurisdictions.

10. Notably, it is my understanding, after consultation with Scottish Re's Cayman Islands counsel, that HSCM's acquisition of reorganized SALIC (assuming HSCM is the Winning Bidder for SALIC after completion of the Court-supervised competitive bidding process) cannot be accomplished consistent with Cayman Islands law by using the more expedient method, often employed in chapter 11 reorganization cases, of simply canceling all existing equity interests and issuing new equity interests to creditors or an acquiror of the company. As I explain in my Initial Declaration, SALIC is a wholly-owned subsidiary of Scottish Re Group Limited ("SRGL"), a holding company organized under the laws of the Cayman Islands with a permit to carry on business from Bermuda. SALIC's ordinary shares, therefore, constitute assets of SRGL. As I understand it, Cayman Islands law will not recognize any "cancellation" of those assets by a foreign (*i.e.*, non-Cayman Islands) court. In addition, I am informed that Cayman Islands law does not permit a Cayman Islands chartered company to accept the surrender of all of its shares when the effect of doing so would be to leave the company with no issued shares other than treasury shares.

11. In view of the limitations of Cayman Islands law and the Debtors and HSCM have agreed to structure HSCM's acquisition of reorganized SALIC through multiple, discreet steps, including: (a) the pre-closing surrender to SALIC by SRGL, as SALIC's sole shareholder, of all but one of SALIC's issued and outstanding ordinary shares; (b) the issuance by SALIC of new ordinary shares to HSCM at closing of the Stalking Horse SPA (which will also be the Effective Date of the Plan); and (c) immediately after closing, SRGL's surrender to reorganized SALIC of its sole remaining SALIC ordinary share. This structure ensures that at all relevant times, at least one ordinary share of SALIC will remain issued and outstanding, which I understand is a key requirement of Cayman Islands law.

12. A consequence of the structure of this transaction, however, is that SRGL's cooperation and participation in the restructuring transaction, as SALIC's sole shareholder, is critical to its success. As discussed more fully below, a principal purpose served by the RIA is to secure the cooperation of, and the participation by, SRGL in the contemplated restructuring transaction.

13. Second, owing at least in part to this complexity, the parties experienced significant difficulty reaching consensus on several material terms of the contemplated transactions. Initially, the Debtors and HSCM sought to negotiate a binding letter of intent as a predicate to preparing definitive documentation. However, because of the novel and complex issues involved in structuring a transaction of this nature, the parties found themselves unable to finalize a binding letter of intent containing terms that both parties considered acceptable to move forward. The Debtors and HSCM returned to the bargaining table in December 2017, and what followed was nearly two months of intense, arms'-length negotiations concerning the terms of HSCM's proposed acquisition of SALIC and certain of its subsidiaries and work to memorialize those terms in the Stalking Horse SPA and related transaction documents.

14. In furtherance of the restructuring transactions, the Debtors and HSCM also negotiated and prepared the PSA, pursuant to which HSCM has committed to pursue the transactions contemplated by the Stalking Horse SPA and to sponsor the Debtors' plan of reorganization in accordance with the Stalking Horse SPA. The PSA functions to, among other things, ensure that the Debtors and HSCM are appropriately coordinating their actions, and cooperating with and supporting one another in other aspects of the restructuring outside of the scope of the Stalking horse SPA, including in connection with the Winding Up Proceedings. I understand that the Debtors' entry into the PSA and their prompt assumption of the PSA

pursuant to the proposed order annexed to the RIA/PSA Assumption Motion are conditions to HSCM's willingness to proceed with these restructuring transactions.

15. Concurrently with the negotiation and drafting of the SPA, SALIC worked with SRGL, the JPLs (as defined below) and their U.S., Bermuda and Cayman Islands legal advisors to agree upon the terms of and prepare the RIA. As noted above, the RIA is a critical component of these restructuring transactions. As explained in my Initial Declaration, SRGL has been the subject of Winding Up Proceedings in Bermuda and the Cayman Islands since May of 2017. On May 18, 2017, the Bermuda Court entered an order appointing John C. McKenna of Finance & Risk Services Ltd., and Eleanor Fisher of Kalo (Cayman) Limited as joint provisional liquidators of SRGL (together, the "JPLs") with limited powers. While the provisional nature of the JPLs' appointment during this period meant that SRGL's board and management remained in place, preparing the RIA involved the delicate task of balancing the interests and concerns of the JPLs in their roles as court-appointed fiduciaries for SRGL with the broader needs of the transaction. At all relevant times during the negotiation of the RIA, the JPLs were represented by the international law firm, Shearman & Sterling LLP. It is my belief that these negotiations, as well, were conducted with the JPLs and HSCM at arms'-length and in good faith.

16. Like the Stalking Horse SPA and the PSA, the RIA is an integral component of the Debtors' proposed restructuring transactions. Importantly, without the RIA, the Debtors and their creditors would have no assurances that SRGL would surrender the SALIC shares in the manner necessary for the Debtors to consummate these restructuring transactions and thereby unlock value for the Debtors' estates. Pursuant to the RSA, SRGL has undertaken to request the Cayman Islands Court's sanction of the RIA, which will ensure SRGL's continued

performance under the RIA. Equally critical to the success of these restructuring transactions is that the Debtors be authorized to assume the RIA.

17. Third, all of this has occurred against a backdrop of enhanced regulatory oversight. As mentioned above, SALIC, as a Cayman Islands chartered reinsurance company, is regulated by the Cayman Islands Monetary Authority (“CIMA”). Similarly, SRUS, as a Delaware reinsurance company, is regulated by various U.S. state insurance regulators, with the Delaware Department of Insurance as its primary insurance regulator. During the relevant period, I and other members of Scottish Re’s management, as well as its professionals, communicated frequently with the Insurance Commissioner for the State of Delaware and representatives of CIMA in an effort to keep them apprised of developments impacting Scottish Re and the progress of its restructuring efforts. Thus, in documenting these novel restructuring transactions, the parties had to consider what would be acceptable to Scottish Re’s multiple regulators.

18. Furthermore, throughout the above-described negotiations concerning, and preparation of, the relevant transaction documents, I, with the assistance of the Debtors’ professionals, provided periodic updates to, and when appropriate sought direction from, the Debtors’ boards of directors. For most of this period, members of the Debtors’ boards included Michael L. Vild, serving as an independent director. Mr. Vild is trained as an attorney and has significant prior experience in Delaware insurance regulatory matters.

19. Notwithstanding the length and the difficulty of the process that produced the Stalking Horse SPA, the RIA and the PSA, I believe the Debtors have been successful in negotiating Bidding Procedures with HSCM that provide for a meaningful further market check (over and above the nearly six month prepetition process that the Debtors conducted with

KBW's assistance). The proposed bidding and auction process is advantageous to the Debtors' estates, as it will provide a market-based valuation of the Debtors, maximize recoveries to all creditor constituencies and provide the capital necessary to fund a plan. The Bidding Procedures have been agreed to by the Stalking Horse and were developed with the objective of promoting active bidding that should result in the highest and best plan proposal that the market can command. Further, the Bidding Procedures reflect the Debtors' goal of conducting the bidding process in a controlled, fair, and open manner that promotes and encourages interest in the Debtors' businesses from both financially capable and motivated qualified bidders who are capable of funding a plan of reorganization with terms that are superior to those embodied in the Stalking Horse SPA.

20. From and after the date the Bidding Procedures Order is entered, the Debtors and their advisors are free to communicate with interested parties about potential competing transactions, which may, but are not required to, be structured in a manner similar to Stalking Horse SPA and other components of the transaction with HSCM, thereby providing any such potential bidders with a "road map" and fully-negotiated document that already is acceptable to the Debtors, SRGL, the JPLs and their respective advisors. Further, assuming the Bidding Procedures Order is entered on February 21, 2018 (the date that this Court has assigned for the hearing on the Bidding Procedures Motion), interested parties will have more than seven weeks in which to conduct due diligence and submit competing bids. It is my belief that this will be more than sufficient time under the circumstances, especially in view of the already thorough prepetition marketing process that the Debtors commenced in April 2017 with KBW's assistance.

21. Unsurprisingly, given the level of commitment this transaction has required from HSCM, HSCM has required that it have the opportunity to receive a Break-Up Fee and Expense Reimbursement, as well as certain other bidder protections, as a condition to obligating itself under the Stalking Horse SPA. It is my belief that HSCM would not have executed the Stalking Horse SPA without the Break-Up Fee, Expense Reimbursement and other bidder protections set forth in the Stalking Horse SPA and the proposed Bidding Procedures Order.

22. The Break-Up Fee and Expense Reimbursement are capped at an aggregate of \$1.5 million. I acknowledge this is not an insignificant percentage of the \$25 million Purchase Price to be paid by HSCM under the Stalking Horse SPA. But, as I discuss above, in view of the complexity and novelty of these restructuring transactions, HSCM's insistence on having the benefit of the Break-Up Fee and Expense Reimbursement of this magnitude is quite understandable to the Debtors. Further, the Debtors take comfort in the fact that HSCM has agreed to make a \$2.5 million good faith deposit into escrow under the Stalking Horse SPA and has committed pursuant to the Stalking Horse SPA and the PSA to a transaction timeline that could extend through late 2018.

23. Thus, in the Debtors' informed business judgment, formed after consultation with the Debtors' legal and financial advisors, the Debtors have determined that (a) the Bidding Procedures are fair and reasonable and consistent with the Debtors' overriding goal to maximize value for their creditors, (b) the Break-Up Fee and the Expense Reimbursement are fair and reasonable in view of (i) the intensive analysis, extensive due diligence investigation, and significant negotiation and documentation undertaken by HSCM in connection with the proposed restructuring transactions embodied in the Stalking Horse SPA and the PSA and (ii) the

fact that, if the Break-Up Fee is triggered, the Stalking Horse's efforts most likely will have enhanced the Debtors' prospects to successfully reorganize and maximize value for their creditors. Overall, based on their careful consideration and analysis of the proposed restructuring transactions and the Debtors' current circumstances, again after consultation with their restructuring advisors, the Debtors are comfortable that the amounts and other terms of the Break-Up Fee and Expense Reimbursement are objectively reasonable, given the overall complexity and difficulty of these transactions. It is my understanding that the Stalking Horse Protections are material inducements for, and an absolute condition to, HSCM's agreement to enter into the Stalking Horse SPA.

24. In addition, the Debtors believe that the terms of the Restructuring Implementation Agreement and the Plan Sponsorship Agreement are fair and reasonable under the circumstances, and that both the RIA and the PSA are essential for these Chapter 11 Cases to produce successful outcomes for the Debtors and their creditors.

25. For all of the reasons stated herein and in my Initial Declaration, I respectfully request on behalf of the Debtors that the Bidding Procedures Motion and the RIA/PSA Assumption Motion each be granted, together with such other and further relief as this Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: January 31, 2018

/s/ Gregg Klingenberg

Gregg Klingenberg
Chief Executive Officer