

**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

Re: D.I. 445

ORDER GRANTING DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE 9019 FOR ENTRY OF AN ORDER APPROVING STIPULATION BY AND AMONG SCOTTISH ANNUITY & LIFE INSURANCE COMPANY (CAYMAN) LTD. AND SCOTTISH HOLDINGS, INC., DEBTORS AND DEBTORS IN POSSESSION, AND SCOTTISH FINANCIAL (LUXEMBOURG) S.Á R.L., ACTING THROUGH MAX MAILLIET AS ITS APPOINTED BANKRUPTCY RECEIVER IN ITS LUXEMBOURG BANKRUPTCY PROCEEDING, REGARDING (I) ALLOWANCE OF SFL NOTE CLAIM AS CLASS 6 CLAIM UNDER DEBTORS' PLAN OF REORGANIZATION, (II) VOTING OF SFL NOTE CLAIM FOR DEBTORS' PLAN OF REORGANIZATION, AND (III) RELATED MATTERS

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession for the entry of an order substantially pursuant to sections 105(a) and 502 of the Bankruptcy Code and Bankruptcy Rule 9019 of the Federal Rules of Bankruptcy Procedure, approving the *Stipulation By and Among Scottish Annuity & Life Insurance Company (Cayman) Ltd. and Scottish Holdings, Inc., Debtors and Debtors in Possession, and Scottish Financial (Luxembourg) S.á r.l., Acting Through Max Mailliet as Its Appointed Bankruptcy Receiver in Its Luxembourg Bankruptcy Proceeding, Regarding (I) Allowance of SFL Note Claim as Class 6 Claim Under Debtors' Plan of Reorganization, (II) Voting of SFL Note Claim for Debtors' Plan Of*

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 Capitalized terms used but not defined herein are used as defined in the Motion and the Stipulation.

Reorganization, and (III) Related Matters (the “Stipulation”), a copy of which is annexed to this Order as **Exhibit 1**; and the Court having determined that the Debtors have demonstrated sound justifications for entering into the Stipulation and that the legal and factual bases set forth in the Motion establish just cause for the relief requested in the Motion; and, taking into account the anticipated costs and risks associated with litigating matters resolved by the Stipulation, the Court having determined that the Stipulation and relief requested by the Motion is fair, reasonable and in the best interests of the Debtors, their estates, their creditors and parties in interest; and upon the record in these cases; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are authorized to enter into the Stipulation, and the Stipulation is hereby approved in its entirety.
3. The Debtors are authorized, but not directed, to take any and all actions that may be reasonably necessary or appropriate to perform their obligations and enforce their rights arising under the Stipulation.
4. The failure specifically to describe or include any particular provision of the Stipulation in this Order shall not diminish or impair the effectiveness of such a provision, it being the intent of this Court that the Stipulation be approved in its entirety.
5. The Stipulation and this Order shall be binding upon and inure to the benefit of the Parties to the Stipulation, their affiliated Entities, their successors and assigns (including the Reorganized Debtors, the Distribution Trust and the Distribution Trustee) and each of their respective Representatives.

6. The Debtors, their Voting Agent (Prime Clerk LLC), and the Clerk of this Court are authorized to take all necessary and appropriate actions to give effect to the Stipulation.

7. Notwithstanding any provision in the Bankruptcy Rules to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its entry, (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

8. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August 22nd, 2018
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Stipulation

EXECUTION VERSION

**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

**STIPULATION BY AND AMONG SCOTTISH ANNUITY & LIFE
INSURANCE COMPANY (CAYMAN) LTD. AND SCOTTISH
HOLDINGS, INC., DEBTORS AND DEBTORS-IN-POSSESSION, AND
SCOTTISH FINANCIAL (LUXEMBOURG) S.Á R.L., ACTING
THROUGH MAX MAILLIET AS ITS APPOINTED BANKRUPTCY
RECEIVER IN ITS LUXEMBOURG BANKRUPTCY PROCEEDING,
REGARDING (I) ALLOWANCE OF SFL NOTE CLAIM AS CLASS 6
CLAIM UNDER DEBTORS' PLAN OF REORGANIZATION, (II)
VOTING OF SFL NOTE CLAIM FOR DEBTORS' PLAN OF
REORGANIZATION, AND (III) RELATED MATTERS**

This stipulation (the "Stipulation") is entered into this 15th day of August, 2018 (the "Stipulation Date"), by and among: (a) Scottish Annuity & Life Insurance Company (Cayman) Ltd. ("SALIC") and Scottish Holdings, Inc. ("SHI"), debtors and debtors-in-possession (each, a "Debtor" and together, the "Debtors") in the above-captioned jointly administered chapter 11 cases (the "Chapter 11 Cases"); and (b) Scottish Financial (Luxembourg) S.á r.l., a private limited liability company (*société à responsabilité limitée*) incorporated and existing under the laws of the Grand Duchy of Luxembourg, currently bankrupt (*en faillite*), having its registered office at 412F, route d'Esch, L-1030 Luxembourg, Grand Duchy of Luxembourg and registered with the Luxembourg Trade and Companies' Register (*Registre de Commerce et des Sociétés de*

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.

Luxembourg) under number B 94600 (“SFL”), acting through the SFL Receiver (as defined below) in the Luxembourg Bankruptcy Proceeding (as defined below). The Debtors and SFL are each sometimes referred to herein as a “Party” and collectively as the “Parties”. The Parties, by and through their respective undersigned attorneys, hereby stipulate and agree as follows:²

RECITALS

A. On January 28, 2018 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), thereby commencing their respective Chapter 11 Cases. 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.

B. On February 20, 2018, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (as reconstituted, the “Committee”) pursuant to section 1102(a) of the Bankruptcy Code (D.I. 81).

C. In March 2018, SFL, a wholly-owned subsidiary of SALIC, filed an application with the Luxembourg District Court, sitting in commercial matters (Tribunal d’Arrondissement de Luxembourg, siégeant en matière commerciale) (the “Luxembourg Court”), to commence a voluntary bankruptcy proceeding.

D. By a judgment dated April 16, 2018, the Luxembourg Court opened a bankruptcy proceeding over SFL (the “Luxembourg Bankruptcy Proceeding”) and appointed Max Mailliet as the bankruptcy receiver for SFL (the “SFL Receiver”).

² Capitalized terms not otherwise defined in this Stipulation have the meanings ascribed to such terms in the Plan (as defined below).

E. On May 4, 2018, the SFL Receiver caused SFL to file a proof of claim against SALIC in its Chapter 11 Case, Case No. 18-10161 (LSS), and identified by the Clerk as Claim No. 7-1 (the “SFL-SALIC Claim”). Also on May 4, 2018, counsel for the SFL Receiver mistakenly filed a proof of claim against SHI in its Chapter 11 Case, Case no. 18-10160 (LSS), and identified by the Clerk as Claim No. 9-1 (the “SFL-SHI Claim”). By a notice dated May 4, 2018, and subsequently docketed on May 23, 2018 (D.I. 287), counsel for the SFL Receiver caused SFL to withdraw the SFL-SHI Claim. The SFL-SALIC Claim continues to be extant in SALIC’s Chapter 11 Case.

F. Pursuant to the SFL-SALIC Claim, SFL has asserted an unsecured, nonpriority claim against SALIC in the amount of \$63,536,041.32 for principal and interest alleged to be owing under that certain Floating Rate Junior Subordinated Deferrable Interest Debenture of Scottish Re (Dublin) Limited, dated December 15, 2004, in the original principal amount of fifty-one million five hundred and forty-seven thousand dollars (\$51,547,000) issued by Scottish Re (Dublin) dac (f/k/a Scottish Re (Dublin) Limited), as obligor, to SFL, as obligee, and subsequently assigned to, and assumed by, SALIC, as obligor, as such note may have been amended from time to time, including pursuant to that certain First Supplemental Debenture, dated as of June 23, 2008, and that certain Second Supplemental Debenture, dated December 19, 2008 (as amended, the “SFL Note”). As of the Stipulation Date, the Debtors have neither admitted nor disputed the SFL-SALIC Claim, although the Debtors have identified to the SFL Receiver certain potential defenses that may exist to the SFL-SALIC Claim.

G. On June 29, 2018, at the Debtors’ request, the Bankruptcy 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”).

H. On June 29, 2018, the Debtors filed the solicitation version of the *Second Amended Joint Chapter 11 Plan of Reorganization of Scottish Holdings, Inc., and Scottish Annuity & Life Insurance Company (Cayman) Ltd.* (D.I. 381) (the “Second Amended Plan”) and a related disclosure statement (D.I. 382) (the “Disclosure Statement”), each as contemplated by the Disclosure Statement Order.

I. As authorized by the Disclosure Statement Order, the Debtors have distributed the Second Amended Plan and Disclosure Statement to parties in interest and, through Prime Clerk LLC as the Bankruptcy Court appointed Voting Agent (as defined in the Disclosure Statement Order), solicited acceptances of the Second Amended Plan.

J. The Disclosure Statement Order provides that the Voting Deadline applicable to the SFL Receiver for voting on behalf of SFL of the SFL Note Claim is the later of (x) August 13, 2018 at 4:00 p.m. (prevailing Eastern time), and (y) two (2) Business Days after the Debtors or the Voting Agent has provided counsel for the SFL Receiver with notice in writing (which may take the form of an email to the SFL Receiver’s counsel) of the outcome of voting on the Plan by the SFLST I TruPS CDO Facility Holders. *See* Disclosure Statement Order, ¶ 35.

K. On August 9, 2018, the Debtors filed the *Third Amended Joint 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 time to time in accordance with its terms and together with the Stock Purchase Agreement and the Plan Supplement, the “Plan”), together with a redline marked to show changes made to the Second

Amended Plan (D.I. 437, Ex. B). The modifications made to the Second Amended Plan, as set forth in the Plan and redline thereof filed with the Bankruptcy Court, are technical and non-material as to creditors and other parties-in-interest that have not affirmatively consented to such modifications.

L. Section 4.3(c)(ii)(B) of the Plan provides, in relevant part, that upon the occurrence of the Effective Date, the SFL Note Claim will be Allowed as a Class 6 Claim in the amount of \$63,536,014.32 if the Holder of the SFL Note Claim (1) votes the SFL Note Claim to accept the Plan, (2) does not object to confirmation of the Plan, and (3) does not opt out of the “Releases by Holders of Claims and Interests” set forth in Section 10.3 of the Plan (together, the “SFL Note Claim Allowance Conditions”).

M. The SFL Receiver has not yet determined whether SFL (or the SFL Receiver on behalf of SFL and/or SFL’s creditors) may hold or possess against certain current or former members of the board of managers for SFL (each in such capacity, a “SFL Manager” and collectively in such capacity, the “SFL Managers”) one or more claims, causes of action, controversies, obligations, suits, judgments, damages, demands, debts, rights, preference actions, fraudulent conveyance actions, indemnities, guaranties, suits, liabilities, judgments, accounts, defenses, offsets, for acts or omissions relating to or arising from the SFL Note in their respective capacities as managers of SFL (each a “SFL Cause of Action” and collectively, the “SFL Causes of Action”). The Debtors dispute whether any SFL Causes of Action exist and, to the extent any such SFL Causes of Action exist, whether they would have meaningful value.

N. On August 14, 2018, in accordance with Paragraph 34 of the Disclosure Statement Order, Debtors provided the SFL Receiver and his counsel with notice in writing via email (collectively, the “SFL Deemed Acceptance and Cash Election Notice”) that: (a) with

respect to voting on the Plan by the SFLST I TruPS CDO Facility Holders, (i) the SFLST I TruPS CDO Facility Holders had unanimously accepted the Plan, (ii) none of the SFLST I TruPS CDO Facility Holders had made the New Equity Election and (iii) none of the SFLST I TruPS CDO Facility Holders had opted out of the releases set forth in Section 10.3 of the Plan; and (b) as a result of the foregoing events, unless the SFL Receiver objected in accordance with Paragraph 36 of the Disclosure Statement Order, the SFL Receiver, for himself and SFL, is deemed (i) to have voted the entire SFL Note Claim to accept the Plan, (ii) to have made the Cash Election under the Plan, and (iii) to have not opted out of the “Releases by Holders of Claims and Interests” set forth in Section 10.3 of the Plan (it being understood that the releases in Section 10.3 of the Plan and any related injunctions shall be interpreted and enforced only in accordance with this Stipulation).

O. The SFL Receiver desires on behalf of SFL to support confirmation of the Plan and to vote to accept the Plan, but wants to ensure that nothing in the Plan or the Confirmation Order releases, enjoins or otherwise impairs the ability of the SFL Receiver to investigate, pursue and/or recover upon any SFL Cause of Action.

P. The Debtors and the SFL Receiver have engaged in extensive, arms'-length negotiations regarding the subject matter of this Stipulation.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises contained herein, and such other good and valuable consideration as may be applicable, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby stipulate and agree, subject to approval of the Bankruptcy Court, as follows:

1. The Recitals set forth above are incorporated herein by reference.
2. Section 10.3 of the Plan does not waive or release any SFL Cause of Action (including any SFL Cause of Action that the SFL Receiver may hold or assert on behalf of SFL

and/or its creditors) against any SFL Manager. The Debtors, on behalf of themselves, their Estates, their Representatives and following the Effective Date of the Plan the Reorganized Debtors, Distribution Trustee and Distribution Trust, covenant and agree not to take the position in any subsequent action or proceeding that Section 10.3 of the Plan waives or releases any SFL Cause of Action.

3. So long as the SFL Receiver and SFL comply with the terms of this Stipulation, the SFL Note Claim Allowance Conditions set forth in Section 4.3(c)(ii)(B)(2)(a) of the Plan will be deemed satisfied and the SFL Note Claim to be Allowed under the Plan as a Class 6 Claim in the amount of \$63,536,014.32.

4. The Debtors shall cause the following decretal language to appear in any Confirmation Order that is tendered to the Bankruptcy Court for entry in connection with the Plan:

Notwithstanding anything to the contrary in the Plan, any Plan Document or this Order, nothing in the Plan, any Plan Document or this Order is intended to, or shall, (a) waive or release any Cause of Action of SFL (or of the SFL Receiver on behalf of SFL and/or its creditors) against any current or former member of the board of managers for SFL (each, in such capacity, a “SFL Manager” and collectively in such capacity, the “SFL Managers”) for acts or omissions relating to or arising from the SFL Note in their respective capacities as managers of SFL (such Causes of Action, “SFL Causes of Action”), or (b) stay or enjoin the SFL Receiver from commencing any SFL Cause of Action or pursuing any SFL Cause of Action against any SFL Manager.

The Debtors shall use all reasonable efforts, at their own expense, to cause any Confirmation Order entered with respect to the Plan to include language substantially in the form of that listed above.

The SFL Receiver shall reasonably cooperate with the Debtors’ efforts to obtain entry of a Confirmation Order containing such language.

5. SFL, and the SFL Receiver acting on SFL’s behalf, agree that neither SFL, nor the SFL Receiver or any other Person acting on behalf of SFL, shall file any further Claims

against the Debtors or their Estates amending the SFL-SALIC Claim to change the amount, priority, classification or secured status of the SFL-SALIC Claim.

6. The SFL Receiver, for himself and SFL, acknowledges the receipt and validity of the SFL Deemed Acceptance and Cash Election Notice pursuant to Paragraph 34 of the Disclosure Statement Order and agrees, as a result thereof, that the SFL Receiver, for himself and SFL, is deemed (a) to have voted the entire SFL Note Claim to accept the Plan, (b) to have made the Cash Election under the Plan, and (c) to have not opted out of the “Releases by Holders of Claims and Interests” set forth in Section 10.3 of the Plan (it being understood that the releases in Section 10.3 of the Plan and any related injunctions shall be interpreted and enforced only in accordance with this Stipulation) (collectively, the “SFL Deemed Plan Acceptance and Cash Election”). The SFL Receiver, for himself and SFL, waives any objection to the SFL Deemed Plan Acceptance and Cash Election pursuant to Paragraph 36 of the Disclosure Statement Order or otherwise. Additionally, the SFL Receiver, for himself and SFL, waives any objections to confirmation of the Plan (without prejudice to the ability of the SFL Receiver to object any further amendments to the Plan that are materially adverse to the rights, Claims or obligations of the SFL Receiver or SFL or materially inconsistent with the terms of this Stipulation).

7. The Stipulation is subject to Bankruptcy Court approval. The Debtors shall use reasonable efforts, at their own expense, to request approval of this Stipulation on or before the date of the Confirmation Hearing. The SFL Receiver, at SFL’s own expense, shall reasonably cooperate with the foregoing actions by the Debtors and shall support the Debtors’ request for approval of this Stipulation.

8. Except with respect to the Person signing for the Debtors as to the requirement for Bankruptcy Court approval of this Stipulation, the undersigned Persons represent

and warrant that they have full authority to execute this Stipulation on behalf of the respective Parties hereto, and that the respective Parties hereto have full knowledge of and have consented to this Stipulation.

9. Each Party enters into this Stipulation without admitting any liability or conceding any allegations not already expressly admitted, including, but not limited to in connection with any SFL Cause of Action. Without limiting the foregoing, each Party agrees the allowance of the SFL Note Claim will not and does not prejudice any SFL Manager or other non-released party's ability to raise any defense in any legal or equitable action or proceeding brought against such SFL Manager or non-released party in connection with any SFL Cause of Action. This Stipulation and its provisions shall not be offered or received in evidence in any action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of any Party except that it may be offered and received in evidence solely to enforce this Stipulation.

10. This Stipulation shall be binding upon and inure to the benefit of the Parties hereto, their affiliated Entities, their successors and assigns (including the Reorganized Debtors, the Distribution Trust and the Distribution Trustee) and each of their respective Representatives.

11. In the event that the Bankruptcy Court does not approve this Stipulation, then (a) the SFL Deemed Plan Acceptance and Cash Election shall be nullified and without further force or effect, (b) the SFL Receiver shall have two (2) Business Days from the date of the Bankruptcy Court's denial of approval of this Stipulation, if the SFL Receiver so chooses, to submit a Ballot on the Plan and (c) any ruling by the Bankruptcy Court on whether to confirm the Plan shall be deferred until at least one (1) Business Day after the extended deadline for the SFL Receiver to submit his Ballot. For the avoidance of doubt, if the Bankruptcy Court denies approval of this Stipulation, the terms of this Stipulation (except for Paragraph 9 of this Stipulation) shall

be null and void in their entirety, including, but not limited to, the allowance of the SFL Note Claim and any agreements in this Stipulation with respect to the interpretation or enforcement of the releases contained Section 10.3 of the Plan and related injunctions.

12. This Stipulation shall constitute the entire agreement between the Parties with respect to the subject matter hereof and shall supersede any previous discussions, understandings, commitments, agreements, writings, orders or judgments with respect to such subject matter. No provision of this Stipulation may be changed except by a written instrument executed by the Parties.

13. The Court shall retain jurisdiction to interpret, enforce and resolve any disputes arising under or relating to this Stipulation.

14. This Stipulation may be executed in one or more counterparts, any of which may be transmitted by facsimile or electronic mail, each of which shall be deemed an original, but all of which together shall constitute but one and the same document.

15. This Stipulation shall be governed by and construed in accordance with the internal laws of the State of Delaware without reference to its conflicts of law rules.

Dated: August 15, 2018

Dated: August __, 2018

For the Debtors:

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



Eric D. Schwartz (No. 3134)
Gregory W. Werkheiser (No. 3553)
Matthew B. Harvey (No. 5186)
Paige N. Topper (No. 6470)
1201 N. Market St., 16th Floor
PO Box 1347
Wilmington, DE 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
eschwartz@mnat.com
gwerkheiser@mnat.com
mharvey@mnat.com
ptopper@mnat.com

- and -

Peter Ivanick
Lynn W. Holbert
John D. Beck
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
peter.ivanick@hoganlovells.com
lynn.holbert@hoganlovells.com
john.beck@hoganlovells.com

Counsel for Debtors and Debtors in Possession

For the SFL Receiver and SFL:

**MAX MAILLIET, as bankruptcy receiver
for SFL**

15. This Stipulation shall be governed by and construed in accordance with the internal laws of the State of Delaware without reference to its conflicts of law rules.

Dated: August ___, 2018

Dated: August 16, 2018

For the Debtors:

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

For the SFL Receiver and SFL:

**MAX MAILLIET, as bankruptcy receiver
for SFL**

Eric D. Schwartz (No. 3134)
Gregory W. Werkheiser (No. 3553)
Matthew B. Harvey (No. 5186)
Paige N. Topper (No. 6470)
1201 N. Market St., 16th Floor
PO Box 1347
Wilmington, DE 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
eschwartz@mnat.com
gwerkheiser@mnat.com
mharvey@mnat.com
ptopper@mnat.com



- and -

Peter Ivanick
Lynn W. Holbert
John D. Beck
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
peter.ivanick@hoganlovells.com
lynn.holbert@hoganlovells.com
john.beck@hoganlovells.com

Counsel for Debtors and Debtors in Possession