UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Securities Exchange Act of 1934
Rule 13e-4(f)(8)(i)

No Action, Interpretive and/or Exemptive Letter:
Security Capital Assurance Ltd and XL Capital Ltd

Response of the Office of Mergers and Acquisitions
Division of Corporation Finance

October 31, 2006

Michael Becker, Esq.
Cahill Gordon & Reindel LLP
Eighty Pine Street
New York, NY 10005-1702

Re: Security Capital Assurance Ltd and XL Capital Ltd - Exchange Offer

Dear Mr. Becker:

We are responding to your letter dated October 31, 2006 addressed to Brian V. Breheny and Michael Pressman, as supplemented by telephone conversations with the staff, with regard to your request for exemptive relief. To avoid having to recite or summarize the facts set forth in your letter, our response is attached to the enclosed copy of your letter.

On the basis of your representations and the facts presented in your letter, the U.S. Securities and Exchange Commission hereby grants an exemption from Rule 13e-4(f)(8)(i) to permit SCA and XL to conduct the Offer as described in your October 31, 2006 letter.

The foregoing exemptive relief is based solely on your representations and the facts presented in your letter dated October 31, 2006, as supplemented by telephone conversations with the Commission staff. This relief is strictly limited to the application of the rule listed above to the Offer. You should discontinue the Offer pending further consultations with the staff if any of the facts or representations set forth in your letter change.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Section 9(a), 10(b) and 14(e) of the Exchange Act and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws rest with the participants in the Offer. The

Division of Corporation Finance expresses no view with respect to any other questions that the exchange offer may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of any other federal or state laws to, the Offer.

For the Commission,
By the Division of Corporation Finance,
Pursuant to delegated authority,

Brian V. Breheny
Chief, Office of Mergers and Acquisitions
Division of Corporation Finance

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October 31, 2006

Office of Mergers and Acquisitions
Division of Corporation Finance
United States Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549

Attention: Brian V. Breheny, Chief
Michael Pressman, Special Counsel

Re: Security Capital Assurance Ltd
XL Capital Ltd
Request for SEC No-Action Letter

Ladies and Gentlemen:

This letter is submitted on behalf of our clients, Security Capital Assurance Ltd, a Bermuda exempted company (the "Company" or "SCA"), and XL Capital Ltd, a Cayman Islands exempted limited company ("XL"). SCA and XL intend to commence an employee exchange offer (the "Offer") as co-bidders, pursuant to which SCA will offer certain eligible employees the opportunity to exchange outstanding eligible unvested restricted Class A Ordinary Shares ("XL Shares") of XL and eligible options to purchase Class A Ordinary Shares of XL for a cash long term incentive award (the "LTIP Award") of SCA. As more fully described below, SCA was a wholly-owned subsidiary of XL until consummation of SCA's initial public offering on August 4, 2006, and the employees of subsidiaries of SCA (sometimes collectively referred to with SCA as the "SCA Group") historically received options and restricted shares of XL as part of their compensation.

SCA consummated the initial public offering of its common shares in August 2006. This Offer would be conducted solely for, and to further, SCA's employee compensatory purposes — in order to align SCA employee incentive compensation by providing to employees of

SCA Group, as a new public company and other employees of the SCA Group, the right to exchange their XL-related compensation (received while SCA was a wholly-owned subsidiary of XL) for SCA incentive cash compensation.

For the reasons set forth below, we hereby respectfully request that the Staff of the Division of Corporation Finance (the "Staff") grant an exemption for the Offer from the requirements of Rule 13e-4(f)(8)(i) (the "All-Holders Provision") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Regarding this request, we note that the sole purpose of the Offer is the same as those for which the Securities and Exchange Commission (the "Commission") has provided exemption under the Global Exemption Order and which the Staff has extended to factual situations different than those in the Order where the logic and policy of the Order applies, such as to non-employees in the October 7, 2004 Comcast Corporation no-action letter. We believe similar relief should be available for the facts presented here, where the Offer is made jointly with the current employer (formerly a wholly-owned subsidiary of XL, the issuer of the compensatory securities).

FACTUAL BACKGROUND

SCA was a wholly-owned subsidiary of XL until consummation of SCA's initial public offering on August 4, 2006. As a result of SCA's initial public offering, SCA is now approximately 37% publicly owned (with the publicly owned shares trading on the New York Stock Exchange), with XL retaining a 63% ownership interest and approximately a 50% voting interest.

Because SCA was formerly a wholly-owned subsidiary of XL, the employees of SCA Group historically received options and restricted shares of XL as part of their employee compensation. In order to offer employees the opportunity to more closely align their future compensation with SCA, SCA and XL have determined to make available to those employees of SCA Group at the time of the initial public offering who held eligible unvested restricted XL Shares and vested and unvested options (69 total "eligible employees") the opportunity to substitute a compensatory cash award payment for the existing options and unvested restricted XL Shares that they currently hold. We also note that substantially all of the eligible options are currently "out of the money". Because eligible employees are no longer employed by a wholly-owned subsidiary of XL, but are employed by SCA or its subsidiaries, SCA has determined to allow them to exchange eligible securities for a cash performance incentive that will be linked more directly to the performance of the business in which they are employed (*i.e.*, SCA). The Offer will be the mechanism utilized to provide the employees with that opportunity, principally because it is a consensual mechanism giving employees the choice to receive a cash payment called an LTIP Award. The LTIP Award is the right to receive a cash payment of no less than 75% of a "target amount" (the "base amount") to be calculated for each eligible employee based upon that employee's holdings of eligible securities.

From SCA's perspective, the Offer serves important compensatory and personnel goals by providing an incentive to valued employees to create shareholder value and remain employees of SCA by allowing them to share in the shareholder value that they create through their talent and hard work. Because eligible employees are no longer employed by a wholly-owned subsidiary of XL, but are employed by SCA or its subsidiaries, a determination has been made to allow them to exchange eligible securities for a cash performance incentive linked more directly to the performance of the business in which they are employed.

Aside from the tendered securities, SCA will not receive any consideration for the Offer. Under the terms of the plans under which the XL options and restricted shares were granted, and as a result of the terms of the Offer, the options and restricted shares accepted under the Offer will be cancelled upon the closing of the proposed exchange offer. We note that the LTIP Award will be provided under an employee benefit plan of SCA that will be filed on a Form S-8 prior to the commencement of the Offer.

OPERATION OF THE OFFER

The Offer is a consensual mechanism giving employees the choice to receive a cash payment called an LTIP Award. The LTIP Award is the right to receive a cash payment, or "base amount," from SCA of no less than 75% of a "target amount" to be calculated for each eligible employee based upon that employee's holdings of eligible securities. The LTIP Award will be granted to each eligible employee who accepts the Offer on the expiration date of the Offer, including any extension thereof, as prompt payment for tendered eligible securities. Thereafter, each participating employee will be entitled to a single lump-sum cash payment from SCA on a payout date expected to be made no later than March 15, 2009. If an eligible employee chooses to exchange eligible securities, he must exchange all eligible securities for an LTIP Award. Vested XL Shares may not be tendered in response to the Offer. The Offer will remain open for a period not less than 20 business days. SCA and XL will disclose all material terms and conditions of the Offer to eligible employees in the offering materials and in a Schedule TO filed with the Commission.

In determining the target amount of each eligible employee's LTIP Award, SCA first will value the eligible options using the "Black-Scholes" method of valuing stock options. For purposes of valuing options in connection with the Offer, SCA will use the remaining term of the option multiplied by 0.55, which represents a prorated expected life based on SCA's current estimate of the expected life of a ten year option being five and one-half years. SCA next will add the value of the eligible restricted stock, calculated at the closing share price of XL's Class A Ordinary Shares on a date certain prior to the commencement of the Offer, to the value of any eligible options held. The total of those two amounts is equal to the target amount of the LTIP Award. In the event this methodology yields a value of less than $1,000, the target amount of the LTIP Award will be designated as $1,000. The target amount is calculated in exactly the same manner (i) for all eligible restricted stock and (ii) for each "class" of options (with class based upon their exercise price and expiration date).

The target amount of the LTIP Award for each eligible employee will be set forth in a letter of transmittal. The actual amount to be paid by SCA for <u>each</u> eligible employee will be adjusted higher or lower (but in no event lower than the base amount of 75% of the target amount) based on the performance of SCA during the period commencing on January 1, 2006 through December 31, 2008. Such adjustment, positively or negatively, shall be based upon performance metrics for SCA that are expected to be determined by the SCA Board in its discretion, which may include measures of Operating Income and Growth in Adjusted Book Value, and are expected to fall in a range of the base amount up to 150% of the eligible employee's target amount. The offering materials will state that the base amount is the only amount that an eligible employee should anticipate receiving from the LTIP Award, as cash awarded in excess of the base amount will be a compensation decision that is outside of the employee's control. The amount payable will be reduced by applicable tax withholding.

Each LTIP Award will be granted, effective as of 5:00 P.M., Eastern Daylight Time, on the date the Offer expires, as prompt payment for properly tendered eligible securities. SCA will send a letter evidencing the LTIP Award promptly after consummation of the Offer. Thereafter, each eligible employee who tendered shares will be entitled to a single lump sum cash payment from SCA on the payout date in the amount of the LTIP Award (the target amount, as adjusted upwards or downwards (but in no event lower than the base amount) as described above), so long as the employee remains continuously employed by SCA through December 31, 2008. It is expected that the payout date shall be no later than March 15, 2009.

Payment of the LTIP Award will only be made if and when applicable vesting conditions are met. In the event that an eligible employee's employment with SCA terminates for any reason, other than death or Disability or termination by SCA without Cause (as those terms are defined in the applicable LTIP Award agreement) before the vesting date of December 31, 2008, the LTIP Award will be forfeited immediately upon the date such employee's employment with SCA ends.

In the event of a Change in Control of SCA, the vesting condition will lapse and a cash payment equal to the target amount of the LTIP Award, less applicable tax withholding, will be payable in full at the time of the Change in Control. In the event of termination of employment by reason of death or Disability or by SCA without Cause (as those terms are defined in the applicable LTIP Award agreement), the vesting condition will lapse and the cash payment associated with the LTIP Award will be payable, less applicable tax withholding, on the next scheduled SCA payroll date and shall be appropriately prorated based on the amount of time the employee actually worked for SCA during the vesting period from the date of grant through December 31, 2008.

DISCUSSION

1. The Offer is entitled to relief from the provisions of the "all-holders" rule.

Rule 13e-4(f)(8)(i) requires that an issuer tender offer be open to all security holders of the class of securities subject to the issuer tender offer. The Offer may present concerns under these rules because the Offer excludes holders of restricted XL Shares and options that are not current employees of SCA.[1]

The original grant of eligible securities was to provide an incentive to valued employees by allowing them to share in the shareholder value that they create through their talent and hard work. They were an important means by which XL was able to align the interests of its employees with its own, providing significant productivity benefits and incentives to employees.

However, because of SCA's recent formation and initial public offering of common shares, in the hands of employees of the SCA Group, the restricted shares and options to purchase shares of XL provide less of the critical benefit to XL of incentivizing employees, which was the fundamental compensatory objective at the time of the initial grant of such securities. By providing eligible employees of the SCA Group a means to align their compensation more closely to the performance of SCA, the Offer serves SCA's compensation objectives. Thus, the compensatory purpose of the Offer would be frustrated if the Offer was to be made to all security holders.

In this regard, we note that the Staff did not object to an option liquidity program restricted to former employees of an issuer and its subsidiaries made for similar compensatory objectives. *See* Comcast Corporation, SEC No-Action Letter (October 7, 2004). The Staff also has not objected to the treatment of options issued under stock option plans and held by employees and non-employees as separate classes of securities for the purposes of the "all-holders" rule. *See* Microsoft Corporation, SEC No-Action Letter (October 15, 2003), Digimarc Corporation, SEC No-Action Letter (March 16, 2001). The Staff has also exempted issuer self-tender offers from the "all-holders" rule where the offer was extended only to holders who were not employees, officers or directors. *See, e.g.*, Science Applications International Corporation, SEC No-Action Letter (July 2, 1992) and Peter Kiewit Sons', Inc., Kiewit Materials Company, SEC No-Action Letter (August 4, 2000). The Staff also granted relief from the "all-holders" rule for an issuer tender offer made only to qualified purchasers (as defined in Section 2(a)(51) of the Investment Company Act of 1940, as amended), to allow such purchasers to switch their investments and thereby avoid potential adverse tax conse-

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1 Because the target amount of the LTIP Award for each eligible employee would be calculated using the same methodology and all eligible employees would be treated equally, the Offer does not present "best-price" issues under Rule 13e-4(f)(8)(ii).

quences to all holders. *See* Special Situations Fund III, L.P., SEC No-Action Letter (November 17, 2005).

Furthermore, we are of the opinion that Offer is entitled to no-action relief as sufficiently analogous to the issuer self-tender offers for options considered in the Commission's March 21, 2001 Global Exemptive Order, which provided relief from the requirements of the "all-holders" rule for option repricings made for compensatory purposes. Given that the Global Exemptive Order was intended to eliminate the limitations that the all-holders and best-price rules place on issuers' ability to utilize exchange offers to restructure compensation plans in a manner consistent with their compensation policies and practices, we respectfully request that the XL options and unvested compensatory restricted stock be given corresponding treatment. The Offer, like the option repricings that motivated the Global Exemptive Order, does not present the same concerns caused by discriminatory treatment among security holders that the "all-holders" rule was adopted to address.

We further note that the purpose behind the all holders portion of these Rules is to prevent fraudulent, deceptive or manipulative acts or practices in connection with tender offers. However, on the facts presented here, as in other similar cases where the Staff has granted relief, this offer does not raise such concerns and, therefore, we request relief from these provisions, as each Rule so provides of such concerns and not present or that such relief is appropriate." SCA and XL will provide all eligible employees with all material information necessary for them to independently make an informed decision on whether to participate in the Offer, including the following disclosures, in the offering materials and the Schedule TO:

(a) all terms and material conditions of the Offer, including disclosure clearly stating that the "base amount" (which is 75% of the target amount) is the only amount that eligible employees can be sure to receive from the LTIP Award;

(b) information regarding the historical price range of XL's Class A Ordinary Shares;

(c) that the Offer is being conducted solely for the compensatory purposes of providing further incentives to employees to remain employed with SCA Group and more directly rewarding SCA Group employees for their contributions to SCA;

(d) the essential features and significance of the exchange offer, including risks that eligible employees should consider in deciding whether to accept the Offer;

(e) that eligible employees may withdraw an election to exchange their eligible securities at any time prior to the expiration of the Offer;

(f) complete and accurate identification of SCA and XL as co-bidders, and that SCA is a majority owned subsidiary of XL;

(g) that SCA and XL currently have no plans or proposals regarding future tender offers of the securities of XL;

(h) that SCA has the funds necessary to consummate the Offer, as indicated in the combined financial statements of SCA, which will be provided as part of the offering materials;

(i) that SCA does not anticipate extending the Offer, although the Offer may be extended in its discretion; and

(j) that XL is expected to make no recommendation as to whether eligible employees should tender or refrain from tendering their securities.

Because SCA and XL will provide eligible employees with all material information necessary for them to make informed decisions regarding their respective LTIP Awards, we believe that the Offer would not give rise to the potential for the fraud, deception and manipulation that the all holders provisions of these Rules were designed to prevent. Granting an exemption from the "all-holders" Rules for the Offer will be consistent with actions taken by the Commission in other situations where the "all-holders" rule was implicated, but where, as here, the potential for fraud, deception and manipulation did not exist. *See* Comcast Corporation, Peter Kiewit Sons', Inc., Kiewit Materials Company and Science Applications International Corporation.

Comments or questions regarding any matters with respect to the above may be directed to the undersigned at (212) 701-3412.

Sincerely,

Michael A. Becker

cc: Paul S. Giordano
Kirstin Gould, Esq.