

17 January 2023

Board of Directors  
Capricorn Energy PLC  
50 Lothian Road  
Edinburgh, EH3 9BY

Dear Members of the Board

## **Re: Major Governance Concerns**

We write to you today to express our major governance concerns at Capricorn, including the incomprehensible board decision to hold a rushed shareholder vote on the NewMed deal just hours before shareholders are due to vote on comprehensive board change for Capricorn.

This letter is sent to you following the publication on Friday of the Company's Combined Prospectus and Circular ("**Deal Circular**") for the NewMed deal vote, yesterday's investor update and your letters to us of 9 January and 14 January (a copy of the latter is available at [www.ReformCapricorn.com](http://www.ReformCapricorn.com)).

### **A Brazen Disregard for Shareholder Opinion**

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Your decision to sequence the votes in this way and blinkered determination in pursuing a premature vote on the NewMed combination not only ignores the explicit requests of a significant portion of Capricorn's shareholder base, but also epitomises the board's wholly unacceptable approach to governance and shareholder engagement.

This is a long-term issue and recent developments simply reinforce the concerns of over 40% of Capricorn shareholders who have lost trust and confidence in this board. Just yesterday, Legal & General Investment Management (LGIM), Britain's largest asset manager and a long-term Capricorn shareholder, commented publicly on its own unsuccessful attempts over many months to communicate concerns to you spanning governance, future strategy, executive pay and environmental risks. These were reportedly met with the disdainful response that LGIM should just sell its shares if they are not satisfied.

Is this the approach of a responsible board that is "*committed to the highest corporate governance standards*"?

### **A Premature Vote for Self-Serving Reasons**

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As we explained in our presentation of 12 January, your decision to rush forward the NewMed vote against the wishes of shareholders, and well before NewMed's own unitholder vote, appears to be nothing more than a tactical ploy to pressure shareholders into voting for the NewMed deal and avoid board accountability. This unfortunately follows similar tactics to pressure shareholders, such as making the distribution of excess cash conditional on approval of the NewMed deal and talking down the market's perception of Capricorn's value to well below analyst consensus in your latest investor presentations of this month.

LGIM agree – having rightly pointed out: "*the decision to hold the company's meeting before the shareholder requisitioned meeting appears to be a direct attempt to undermine due process*" and "*the process to date raises serious questions about the ongoing suitability and fitness of the entire board – and the chair and senior independent director in particular – to serve as directors of a listed company*".



Notwithstanding our own opposition to the proposed transaction, the market is fully justified in its confusion as to why you are fast-tracking the shareholder vote on the NewMed deal instead of permitting a reconstituted board, with a fresh mandate to represent shareholders, an opportunity to fully explore all strategic options for the company. What motivated this unjustified urgency?

### **Contradictory Logic and Insufficient Disclosure on an Uncertain and Complex Transaction**

Attempts to legitimise your actions simply do not stack up. You say the timing of the NewMed vote is in the best interests of shareholders to ensure they have all relevant information to make an informed decision about the future of the company. However, what shareholders are confronted with instead is a rushed and clearly deficient Deal Circular lacking in critical aspects. For instance, we note key missing components, such as:

- the **outcome of the Israeli tax ruling** (meaning a lack of clarity for Capricorn shareholders as to their tax treatment through the proposed Combination and the unknown impact on the combined group's business – such uncertainty confirmed by the Deal Circular itself which highlights the possibility of the tax ruling having a material adverse effect on the combined group's business);
- a **third-party working capital report** (meaning a lack of independent validation of management's claims that only US\$500 million can be distributed to shareholders on a standalone basis);
- a **fairness opinion** (that we were previously informed by the CFO would be provided); and
- a **special committee review process** (bearing in mind that 5 of the 9 incumbent directors are set to receive deal-linked payouts and/or are to retain board seats in a combined group that will ultimately encumber Capricorn shareholders with added governance shortcomings due to the presence of a new controlling shareholder and the continued presence of two over-committed incumbent directors).

The proposed transaction is a highly complex one – for Capricorn shareholders it effectively represents a majority (c.90%) sale of Capricorn's business to NewMed unitholders combined with a simultaneous investment into a newly listed combined entity on the London and Israeli stock exchanges. Yet shareholders have been deluged with a significant volume of incomplete information in the Deal Circular with barely two weeks to process it. Accelerating this vote just adds to the likelihood that shareholders will simply reject the deal on governance grounds alone.

### **Inequitable Treatment of Capricorn Shareholders and NewMed Unitholders**

You have clearly deviated from the way you informed the market that events would unfold. Both parties were explicit in published materials that key approvals, including the fundamental Israeli tax ruling, Egyptian approvals and the release of Delek pledges over NewMed units, would be obtained ahead of the respective shareholder votes on the deal. This made sense given the critical nature of such conditions and the need for shareholders to fully understand the implications of the proposed path forward before being invited to approve the deal.

However, as things stand, only NewMed has stuck to its original commitment by obtaining an extension until 2 April 2023 to defer its unitholder vote on the deal until after the Israeli tax ruling has been obtained – no doubt because only at that point would the situation be clear enough for NewMed's own investors to cast an informed vote.

This is to be contrasted with your approach, which is to unfairly push Capricorn shareholders to vote on the same deal with woefully insufficient information, despite your apparent focus on shareholders' best interests. In our view, no plausible explanation for this behaviour exists other than it serves your steadfast objective of preserving your own positions by ensuring that the deal vote takes place ahead of the vote on board change.



## **Insincere Invitations to the Nominees**

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Furthermore, your recent proposal to reconstitute the board by way of appointing an unknown number of nominees merely obfuscates the situation. This approach may be intended to sound like genuine engagement but it is hollow in reality, absurdly unrealistic and would achieve nothing at this juncture. It is our firm view that it must be up to Capricorn shareholders to decide which directors they wish to remove and which candidates they wish to appoint.

Finally, we also note your repeated invitation to the candidates to conduct due diligence on the strategic options explored by the current board. We do not speak for the candidates, all of whom are highly professional, experienced and naturally have their own independent views. However, as we have already made clear, the candidates have informed us that they are not minded to involve themselves in this type of exercise now, which they see as inappropriate given they do not yet have a mandate from Capricorn shareholders. You describe this as an unusual position for independent nominees – we disagree. That said, nothing about this situation of your own making is normal and the insinuation that the nominees are anything but independent is baseless and disrespectful to them as individuals.

The same is true of statements plastered all over the company's latest disclosures implying that a reconstituted board is likely to thwart the NewMed deal when there is no reason to believe that an independent and high-calibre new board would do anything other than consider all strategic options for the company thoroughly, transparently and with an open mind. The current board is behaving as if it is intrinsic to the execution of the NewMed deal, which is simply not the case.

## **A Vote for Change**

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We and other shareholders are disappointed that you have chosen to remain upon this stubborn and self-serving path rather than respond to shareholder concerns. Your latest actions simply reinforce the fact that wholesale board change is vital in fixing what appear to be deeply embedded longer-term governance failings at Capricorn.

The board should adjourn the NewMed vote until after the requisitioned vote on board change and allow true shareholder democracy to take its course. Winning back the trust of shareholders should be the first priority.

Yours sincerely,

A handwritten signature in cursive script that reads "James Smith".

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James Smith, Chief Investment Officer

**Palliser Capital (UK) Ltd**