

## THIRD POINT INVESTORS LIMITED INVESTOR GROUP ("THE GROUP")

**THE GROUP ISSUES AN OPEN LETTER TO VOTECO, URGING IT TO ABSTAIN FROM VOTING AT THE UPCOMING EGM FOR THIRD POINT INVESTORS LIMITED ("TPIL" or "THE COMPANY")'**

**A VOTE FOR THE TRANSACTION BY VOTECO WOULD SUBVERT THE WILL OF SHAREHOLDERS GIVEN THE SPECIAL RESOLUTIONS WILL FAIL TO PASS WITHOUT IT**

Talmai Morgan

Roger Philips

Shelagh Mason

Dear VoteCo directors,

We have written to you privately regarding the upcoming EGM but, in the interests of transparency, consider it appropriate to elaborate on our message in an open letter.

Given VoteCo owns 40% of the Voting Rights and is entitled to vote on the five special resolutions<sup>1</sup> at the EGM which each require 75% of votes cast to pass, its votes are highly likely to determine the outcome of each of these resolutions, each of which is required for the merger with Malibu (the "Proposed Transaction") to proceed.

Our press release of 1<sup>st</sup> August disclosed that the Group owned a 14% stake in TPIL and had spoken to other shareholders representing 10% of the ordinary shares who had confirmed their intention to vote against the Proposed Transaction. Given historic turn-out levels<sup>2</sup>, this aggregate 24% would be far more than sufficient to ensure none of these special resolutions were able to pass, absent the votes of VoteCo. Expressed differently, to secure the necessary 75% amongst ordinary shareholders, ordinary share turn-out would need to be 99% with all votes apart from our identified 24% voting for the Transaction.

Our objections to the Proposed Transaction are detailed in the various releases that can be found here: [TPIL Investor Group | Realising value for TPIL shareholders](#). Chief among them are the lack of a full exit despite the radical change in investment policy and structure, and the failure of the Board to uphold higher standards of governance by insisting on a vote of independent shareholders. You will also note that we believe the Board's recommendation that shareholders vote in favour is irredeemably tainted by conflicts of interest, not least surrounding directors' remuneration.

In our private letter to you, we drew attention to the recommendations by ISS that shareholders vote against all resolutions. We note it is relatively rare for ISS to recommend voting in a way contrary to that guided by a board, and even rarer still for it to do so for all resolutions tabled at a meeting. We also highlighted comments from sell-side analysts criticising the Proposed Transaction,

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<sup>1</sup> Resolutions 2,4,5,6,7.

<sup>2</sup> Votes cast by ordinary shares at the previous five shareholder meetings have ranged from a low of 45% of ordinary shares in issue to a high of 56%. As such, the 24% of ordinary shares that intend to vote against the Proposed Transaction would have represented between 43% and 50% of total ordinary shares at those meetings.

including from TPIL's joint broker, Deutsche Numis, as well as from J.P. Morgan Cazenove and Investec Securities.

VoteCo was established at the inception of TPIL to address "*jurisdictional regulatory issues in the US*", holding B shares which gave no economic interest in the Company but 40% of its voting rights. Its objective was stated as being "*to exercise the voting rights attached to the Class B Shares in the best interest of the holders of Ordinary Shares as a whole*".

In February 2021, questions were raised over this stated objective when, on a Company webinar, Dan Loeb of Third Point described VoteCo as an entity designed to guard against shareholders who wish to see measures enacted that would "*liquidate or diminish the amount of capital that we have invested*". As far as we are aware, these comments have never been addressed or rebutted by TPIL's Board, and we note they were deleted from the webinar recording subsequently circulated to investors<sup>3</sup>.

Concerns as to VoteCo's independence were further heightened when a resolution to remove a Third Point representative from the Board at an EGM in December 2021 was approved by a majority of ordinary shareholders but not passed due to VoteCo voting against<sup>4</sup>. While this was in line with the recommendation of the Board, we note that VoteCo has never – as far as we are aware – voted against the Board's recommendation on any resolutions.

When considered alongside the long tenures of two of the three VoteCo directors (18 years), and the lack of disclosure on how VoteCo determines what is in the best interest of ordinary shareholders, it is perhaps understandable that a perception exists that VoteCo's objective is closer to that described by Dan Loeb than that stated in TPIL's prospectus and in the latest circular. This may be unfair, and the Group accepts that VoteCo was established for valid regulatory purposes at the time of its formation.

In contrast to 2021, you have now been made aware well ahead of this vote that a sufficient percentage of ordinary shareholders will vote against the special resolutions to defeat them, were voting restricted to ordinary shareholders only. You are also aware that the proposals have been criticised by reputable sell-side analysts, as well as by a leading proxy adviser, and that we have highlighted conflicts of interest that may have impaired the Board's judgement.

For a set of highly controversial proposals, which fundamentally change what the Company is and ultimately remove important protections that shareholders currently have by re-domiciling from Guernsey to the Cayman Islands, we believe "*the best interest of the holders of Ordinary Shares as a whole*" will be served by VoteCo either abstaining from voting on the Proposed Transaction or splitting its votes 75/25 for/against the resolutions to effectively neutralise its impact, thus allowing shareholders to decide for themselves what is best.

Yours sincerely,

The TPIL Investor Group

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<sup>3</sup> The Group has a recording.

<sup>4</sup> 9.4m ordinary shares voted for the proposal to remove Josh Targoff as a director versus 8.5m voting against, meaning 52% of ordinary share votes cast were in favour of his removal. However, VoteCo's 21.8m votes were voted against the proposal which meant the resolution was not passed.