8 August 2019

RESPONSE TO SHORT ATTACK

Burford Capital Limited ("Burford Capital" or "Burford" or "the Company"), the leading global finance and investment management firm focused on law, responds here to the short attack report issued by Muddy Waters yesterday.

The Muddy Waters report is false and misleading.

We set out below the report's many factual inaccuracies, simple analytical errors and selective use of information and expose its fallacious insinuations.

As previously announced, following release of this rebuttal, Christopher Bogart and Jonathan Molot, Burford's Chief Executive Officer and Chief Investment Officer, respectively, intend to purchase a significant number of Burford shares in the market. Two of Burford's non-executive directors have also sought clearance to make market purchases, as have numerous other Burford employees. In addition, the Board is also considering the Company buying back its own shares, given the potential investment return the shares represent at their current price. Appropriate disclosure will be issued upon the completion of any purchases.

Burford will host a conference call for analysts and investors to discuss these issues further at 3.00pm BST / 10.00am EDT on Thursday 8 August 2019. Participation details for this conference call will be announced shortly.

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Before turning to a detailed rebuttal of the report, some overarching points warrant discussion.

Burford is solvent, generates strong cash flow and has good access to expansion capital. Burford is a rapidly growing business that invests in medium-duration assets. By definition, if its growth rate in a year exceeds the recoveries from prior years' investments, it will need incremental capital. That has been consistently communicated to the market, is common to all growth companies and should not be a concern. It is also something entirely within Burford's control, in that Burford could simply slow its growth should it wish to access less expansion capital, although we believe that would not maximize shareholder value in the long term. Burford has instead elected a growth strategy while at the same time maintaining a strong balance sheet and also making use of a large family of private investment funds and our significant arrangement with a sovereign wealth fund. Burford has shown its capacity to access capital as needed, raising more than $2 billion in new capital in the last two years. Burford has no current intention of raising equity capital; Burford has raised equity only once since 2010 and has no plan to become a serial equity issuer.

The suggestion that Burford is "arguably insolvent" is baseless. Presumably, the reason "arguably" is inserted is because Muddy Waters knows they would lose a lawsuit if they accused Burford of insolvency, and they know they can't support such a claim.

Burford has a low debt level, a strong cash position and the capacity to take on more debt as desired. Burford's net debt to equity ratio was 0.3x at 30 June 2019, with laddered debt maturities between 2022 and 2026. As previously discussed, Burford is likely to continue to access the debt markets in addition to considering other sources of financing. Burford also has a strong cash position, with approximately $400 million in cash and cash equivalents on hand presently. Burford actively manages its cash and is confident about its ability to continue to meet its deployment needs and grow the business.

Burford's accounting and financial reporting is transparent, appropriate and has been consistent for many years. Burford provides both audited IFRS financial statements, with clean audit opinions from Ernst & Young since 2010, and detailed investment-level data on a cash basis using the same reporting approach since it began reporting. Burford sets out the details of its investment returns and provides investors with the data necessary to analyse the business in whatever way they see fit. Highlighted in this statement are specific references to Burford's prior disclosures covering the areas discussed.

Burford's governance is robust and serves the business well – Burford has been listening to investors and is actively considering their feedback. Burford has already raised and addressed in its 2019 interim report (at pages 13-14) or previously the governance points made in the report. Board succession and structure is an active topic of discussion at board meetings and the Company has been consulting, and intends to continue to consult, with shareholders as well. It is also simply wrong to say that Burford's investment disclosure requirements would be greater if Burford were listed on the Main Market; Burford's disclosures would be identical to what they are now. However, Burford has already indicated that it is actively considering a second listing, most likely on either NASDAQ or the New York Stock Exchange. Burford has a highly experienced board composed of non-executive directors with significant litigation and financial experience, but Burford does expect to refresh its board in the relatively near term. The relationship between Burford's CEO and CFO is longstanding, disclosed and well-known.

Leaving its inflammatory rhetoric aside, the report raises seven issues. We discuss each in turn, pointing out the major inaccuracies; there are numerous further factual errors in the report that we do not address here for the sake of length and time.

Point 1 – Napo/Jaguar

The report's first and most prominent claim is that Woodford, Invesco and Burford acted in concert to engage in a multi-year deception over a $7 million investment. The claim is simply false and, further, makes no sense commercially.

Napo was a fledgling US biotech company. It entered into an agreement with a larger pharmaceutical company, Salix, to develop and market its flagship drug. Napo believed that Salix breached the agreement and sued for damages and the return of its rights to the drug. As Napo's case proceeded, it sought litigation financing from Burford.

One of Burford's hallmarks is to do deep diligence on its potential investments and seek structures when appropriate that are as principal protective as possible. Thus, Burford structured its financing agreement with Napo so that its recovery could come from not just Napo's dispute with Salix, but from other litigation as well.

As it transpired, a litigation matter *other than* the Salix matter resolved first, and resulted in an entitlement for Burford. That is the figure shown in Burford's 2013 reporting.

The Salix matter continued through the litigation process; while Napo lost at trial, a strong argument on appeal was available. At the same time as this litigation was proceeding, however, corporate events were

underway at both Napo (which wanted to divide itself into a human and an animal health business) and Salix (which was being acquired by Valeant). In the end, Burford restructured its financing arrangements with Napo to become entitled to certain fixed payments and to give Napo greater flexibility to reorganize its business, and Burford no longer became dependent on the results of the Salix litigation for its further returns.

Following the restructuring, Salix was acquired by Valeant and ultimately settled the Napo litigation by returning the product rights to Napo, and Napo proceeded to split its business and IPO its animal business, now called Jaguar.

As is not uncommon with biotech start-ups, some corporate restructuring ensued as Napo struggled with the right corporate form and financing for itself, and Burford managed at various inflection points to improve its position. Ultimately, in 2017, Burford received $8 million in cash and a significant equity position in Jaguar (as part of its re-merger with Napo), leaving Burford with its original investment fully repaid, a small cash profit and stock that was at that point worth more than $20 million.

Burford described this as it occurred. Our 2017 annual report said, at page 23:

> The structure of our investment and of Jaguar's subsequent corporate changes have led us to be paid a sum of cash in 2017 that more than recovered our invested capital with the remainder of our return coming in the form of a series of complex equity transactions that now leave us holding around 6% of Jaguar's voting common stock along with rights over a further interest in the company (collectively worth approximately $6 million at the end of 2017).

At that point, Burford believed this was looking like a reasonably successful investment: Burford was off-risk and had substantial upside in a company with an FDA-approved drug and growth prospects. Unfortunately, the story has not continued to be as positive, as Jaguar has not performed well and Burford has been unable to sell most of its equity due to various legal restrictions. So, now, the investment is more likely to be less successful, and we reported it as such – but still one where a lot of hard work and good negotiation avoided any loss of principal.

One of Napo's early equity investors was an Invesco fund run by Mark Barnett. Given that Burford's institutional investors represent some of the largest investors in the world, it is not at all unusual for Burford to be providing financing to – or to be adverse to – companies held by its investors. The Napo investment was not introduced to Burford by Invesco, and at the time Burford had no relationship with Mr. Barnett, whose fund did not hold any Burford equity.

Out of those straightforward facts, the report attempts to outline a groundless conspiracy between Invesco and Burford (throwing in Neil Woodford's name for headline value). Invesco was an equity holder in Napo, with all of the risks and returns associated with equity holders. Burford was a secured creditor. Invesco engaged in the actions it believed advantaged its equity investment in Napo, including participating in various rounds of equity investment in the business. Burford engaged in its own negotiations, which often disadvantaged Invesco given Burford's senior position in the company's capital structure. There was no complicity and not a moment's thought that Invesco was making further investments in Napo "purely to perpetuate a mythical ROIC" as the report suggests. Furthermore, we note Invesco's own comments on this matter yesterday "categorically" refuting any suggestion of "improper or unethical behaviour".

Finally, Burford has been transparent about this investment, commenting on it more than once in its public disclosures, including when Burford amended its investment table data about this case, when we said in our 2019 interim report at page 8, note 6:

> We have this period, however, adjusted the returns associated with … Jaguar, a litigation investment discussed in our 2017 annual report where we recovered our invested capital and earned a small profit upon resolution, but also received a quantity of Jaguar stock as further compensation. We reported the stock at its original value when we received it, but since then the stock has underperformed and we have concluded that we would not be able to sell it for much, and we have accordingly reduced the investment recovery we attributed to this matter by $13 million. (This is purely a portfolio reporting change; we have been marking Jaguar stock to market each period on our income statement.)

<u>Point 2 – Gray and delayed recoveries</u>

The entire second claim in the report is without merit.

Burford has explained many times before that while most of its investments resolve for cash, some involve other kinds of consideration. While we do not routinely disclose this information, we can say at present that we have virtually no such non-cash recoveries awaiting monetisation (i.e., less than $1 million), and only around 4% of our litigation finance investment recoveries are represented by investments that have yet to pay in full.

As we said in our 2019 interim report at page 8, note 6, and previously:

> While most of our recoveries are paid at the time of resolution, a few are not and instead are paid over time or are paid in forms other than cash.

Burford has also been transparent about (i) when it classifies an investment as concluded and (ii) how it addresses non-cash recoveries, and most recently outlined its approach on page 12 of its 2019 interim report as it has on many previous occasions. Burford has not altered its approach to these issues since it began reporting cash returns in 2012.

The report chooses to focus on Burford's very successful investment in the Gray Development case, which is an investment Burford has discussed publicly a number of times over the years, including providing several detailed updates about its progress and Burford's reporting on the investment. Gray is an example not only of an excellent litigation finance investment, but of Burford's expertise in maximizing the value of its recoveries. As set out in our 2016 interim report at page 5:

> Of particular note for longstanding Burford shareholders, part of our cash generation this period was the full payment of our receivable from the Arizona real estate matter – indeed, we ended up recovering more than our receivable balance and thus also generated a further $2.8 million gain in the period on this investment. We have reported on this matter from time to time since its win at trial in 2010, and it is a good illustration of why a successful litigation finance business needs not only strong litigation talent but also deep deal and financial skills to maximise returns.
>
> To recap the history of this matter, one of our earliest investments was in support of a leading trial team at a major US law firm, Simpson Thacher & Bartlett, which was representing a real estate developer in a dispute over a commercial development in Arizona. The case won following a jury trial and received a substantial damages award – much more than the underlying real estate was worth following the collapse of the Arizona real estate market in 2008–2009. Ultimately, the case settled post-trial by the plaintiff – Burford's client – taking a significant land interest but no cash with which to pay us. At that point, we could have elected to force the sale of the land, which certainly would have been the fastest path to cash for us, but we did not believe that was the

> value-maximising approach – and it certainly would not have been in our client's best interests. Instead, we agreed to restructure our investment and allow the client to wait for a recovery in the real estate market.
>
> Now, after years of perseverance, we have concluded the investment. We received $32.8 million in the current period in addition to prior interim payments of $5.3 million, amounting to total cash receipts of $38.1 million against a total investment of $7.4 million.

Gray has been very profitable for Burford, and the value of Burford's investment kept rising over time. While the report cites a decline in Burford's IRR from 51% to 47% over time (which simply reflected the timing of payments), it fails to mention that Burford's ROIC kept on rising, finally ending up at 448%. This kind of selective use of financial data is misleading.

It is false that Gray's bankruptcy estate is suing Burford. Gray itself did bring an attempted shakedown action against Burford in Arizona; that action was stayed and Gray has not attempted to pursue it elsewhere. Burford, in any event, believes any such claim would be meritless.

The report then tries to make something out of the untimely death of an inventor whose intellectual property litigation Burford had financed in a small investment. Burford invested $3.3 million in this matter and has received $1.4 million in cash; the remaining $3.1 million in expected payments did not materialise following the inventor's death and Burford wrote them off. Burford previously disclosed this as well, in its 2019 interim report at page 8, note 6:

> The other matter is a small investment where a settlement was achieved in a case involving some intellectual property that was dependent on the inventor's continuing activities; regrettably the inventor died unexpectedly, calling into question the ongoing viability of the intellectual property and causing us to reduce our previously-recognised return by $3 million both in our portfolio reporting and on our income statement.

The entirety of this section of the report apparently relies on (i) a profitable investment with a 448% ROIC, a figure undisputed in the report and (ii) a reduction in the back-end proceeds of a dead inventor's potential royalties in a small investment.

Point 3 – Acquisition cost in acquired investments

The report makes three complaints in its third section. None stand up to scrutiny.

In 2015, Burford acquired Focus Intelligence, the foundation for what is now its asset recovery business. The purchase price of £1 million was not for any investments, but for the operating business itself. Indeed, the principals of Focus retained for their personal account their principal investment matter at the time, which had concluded but was awaiting payment. The investment cited in the report is a post-acquisition matter; it did not exist at the time of the acquisition (indeed, it was one of our first investments to put capital at risk in the asset recovery business). The report is simply wrong on its facts.

In 2016, Burford acquired Gerchen Keller Capital ("GKC"). GKC was a fund manager, not generally a direct balance sheet investor like Burford, and we were buying GKC for its fund management platform. Our acquisition was of GKC's operating business as a fund manager; it was not the acquisition of GKC's investments (which were owned by the funds managed by GKC, not by GKC itself). Burford reports in its investment data chart the performance of fund investments for the information of investors and so that investors may take views on potential performance fee income, but when Burford publishes returns on its core litigation finance business, as it does each period, those returns are solely for balance sheet

investments as is made clear in the disclosure. It is obviously wrong to say that Burford "booked" direct investment returns from the GKC funds' MagCorp investment, as is apparent from the face of the investment data chart.

The third point in this section is also wrong. Burford did not make "further investments" in MagCorp. Rather, as disclosed in our 14 December 2016 RNS (at footnote 2), in addition to the acquisition of GKC itself, Burford separately purchased *at cost* two small interests in litigation finance investments held directly by the GKC manager. MagCorp was one of those investments, as reported in the investment data chart, and its returns for the Burford balance sheet were computed as they always are, without any "cherrypicking" – from the date cash was deployed to the day it returned.

<u>Point 4 – Computation of partially-concluded investments</u>

The report repeats a perspective espoused earlier this year, and widely discredited, that Burford should not allocate investment cost against partial recoveries. Burford has already addressed this issue in depth in its 2019 interim report at page 13.

There is nothing unusual about the Akhmedov case cited by the report in terms of Burford's reporting policies; Burford received a partial recovery and allocated cost basis against it (and continues ongoing enforcement activities), just as a portfolio manager would allocate cost basis against the partial sale of a security holding. No one buys 200 shares of stock, sells 50 of them, and measures the profit or loss on the sale of the 50 shares against the cost of all 200, yet that is what is suggested here.

<u>Point 5 – Progas</u>

The report admits, as it must, that Progas appealed its arbitral loss. Burford's policies are very clear about how it deals with such situations in the case of ongoing litigation; see, e.g., page 12 of our 2019 interim report. For IFRS accounting purposes, we would adjust downwards the carrying value of the investment following the arbitral loss (and did so in this instance). For investment data purposes, as discussed above in point 2, we report investments as ongoing until they meet our definition of being concluded, which we publish and which has not changed since we began reporting returns. An investment with an active appeal is obviously not concluded and our treatment of such situations is consistent and adheres to our published policies. When Progas' appeal was finally resolved, the matter moved to "concluded".

<u>Point 6 – Treatment of "trial losses"</u>

Everything about the short report here is incorrect. To begin, the Neptune investment is entirely a fund investment; the Burford balance sheet has no part of it, and it predates Burford's acquisition of GKC. As discussed earlier, we report fund investment performance for investors' information but we do not include fund performance in our published investment returns. Investment 166813 cited by the report as Neptune is in fact not Neptune; Neptune is investment 177598. Neptune is a portfolio investment with a variety of results to date (both positive and negative) and is appropriately shown as a partially concluded investment. The investment discussed in the report is in fact a separate non-Neptune investment, 166813, which is appropriately classified as ongoing.

The report's commentary on RCR is, to anyone who knows anything about such litigation, very much off the mark, and a review of the court's publicly-available orders would show why. However, RCR is an ongoing active litigation matter and we are constrained from further comment.

Similarly, the Volkswagen matters are also active litigation matters (and part of a diversified and cross-collateralized portfolio) and we can't comment on them. However, any dispassionate observer of the VW

litigation would not be taking the view that its current posture is "recovery-killing", as the report suggests, with VW having already paid more than $30 billion in settlements related to the subject matter of this litigation.

Point 7 – Deducting costs from recoveries

Having failed in its first six points to articulate any accurate, substantiable criticism, Burford believes this final point in the report is basically a long, convoluted morass of text cobbled together, riddled with errors and without much of an organising principle. We address below the key arguments we can discern.

Before descending into the details, however, there is an important and overarching issue here. Burford provides, and has always provided, both Ernst & Young-audited IFRS accounts (which include fair value adjustments) and cash-based investment reporting (which do not). We have commented in the past on the undesirable complexity of IFRS accounting for our business, and we have guided investors to rely, as the management itself does, on our cash-based reporting as the principal analytical tool in the business.

To begin, the report goes to great length to point out a basic and consistent feature of Burford's accounting that we have ourselves described to investors and is a tenet of IFRS. That does not stop the report from suggesting that Burford "misleads" investors. The accounting feature is that when Burford recognizes a realized gain, it also reverses prior unrealized gains associated with the realized gain. This is straightforward accounting and, as the report itself admits, occurs to "avoid double-booking". A recent example of us describing this process in depth was in our 30 May 2019 RNS concerning our Teinver investment.

The report then suggests that if one removes not just Petersen but Burford's top four performing investments, Burford's returns will go down. This is hardly novel analysis and we addressed this very point in depth in our 2019 interim report, page 12:

> We often say that our litigation finance investment outcomes have some similarities with venture capital, albeit with fewer losses – we tend to have some outsize successes, some losses and a number of investments that perform at a more conventional level. That is simply the nature of this business. Part of our underwriting skill lies in assessing investment opportunities and assembling a desirable and well-diversified portfolio that performs consistently with the foregoing description. It is thus unsurprising that if one removes our outsize successes and leaves in place our losses, our returns will be lower – but the asymmetry of such an approach is peculiar indeed. Just as one would not invest in venture capital without believing in its capacity to generate the occasional terrific return, so too Burford. And it seems odd to ignore home runs like our investment in Petersen. It is a bit like saying that one should assess venture capital performance without having Accel include Facebook, Sequoia include Google or Softbank include Alibaba. It would be even more peculiar also to remove a matter like Teinver, an investment that was squarely in our sweet spot and one with characteristics shared by a number of comparable international arbitration matters. However, just to illustrate that Burford produces desirable returns regardless, if one removes our largest gain (Petersen) from our return computations and leaves in all our losses, our portfolio ROIC would still be 59%.

Even using the report's more punitive approach, Burford is still producing reasonable returns: If one were to remove (nonsensically) our best four results and all non-cash realisations, Burford's litigation finance returns would still be 33%.

Returning to Petersen, the report concedes its "undisputed success", but complains about the expenses of pursuing the case. Despite pages of discussion, however, there is no point actually made in the report.

Petersen is a very successful investment for Burford. We have guided the market in the past that our 70% entitlement will be reduced by significant expenses to above 50%; see, e.g., our 2016 annual report at page 14. It is self-evident that with Burford receiving more than 50% of the recovery, as opposed to 100%, that an implied valuation of $1 billion for Burford's entitlement means that the case is expected to produce more than $1 billion, and one can presume that the sophisticated buyers of Burford's secondary interests understand that basic math.

The report also suggests that Burford is using fund assets in our complex strategies business to inflate returns. That is simply not so and the computation in the report is inaccurate; the numbers cited on page 7 of Burford's 2019 interim report are not for the entire complex strategies fund as the report suggests, ignoring the reconciliation Burford provides to eliminate third-party interests, but only for Burford's portion of it. That said, Burford has been clear that complex strategies investments are IRR-focused and have a different return profile.

The report also raises the issue of "financial stress". Burford is simply not in any financial stress. We have regularly broken out and analysed our cash movements for investments in our regular cash bridges, most recently slide 13 of the 2019 interim presentation and slide 33 of the 2018 full year presentation. Burford also devoted considerable time at its Capital Markets Day in November 2018 on its approach to cash management and capital structure and showed that Burford at that point could be self-financing, without any external capital, at a lower growth rate than we were experiencing (see, e.g., slide 41 in our CMD presentation). We believe it is a benefit that our growth rate currently exceeds the level at which we could be self-financing, and we have significant cash reserves (approximately $400 million currently) and have demonstrated a very successful track record of raising external capital. The report's analysis to reach its conclusion that Burford is "arguably insolvent" is deeply flawed. It (i) ignores approximately $400 million of cash on hand, (ii) provides no provision for incoming cash (which has been plentiful), (iii) assumes all debt is currently due (whereas our debt is laddered with maturities between 2022 and 2026), (iv) disregards management fee income and (v) assumes that all undrawn investment commitments are drawn immediately (which will not be the case, as disclosed in note 20 in our 2019 interim financials). That approach makes no sense at all.

Finally, the report discusses expenses. To be clear, Burford expenses all of its operating costs; it does not capitalise them to investments (as some of our competitors do), and it does not make extensive use of expensive outside resources which would be added to investment cost (and our model does not allocate internal costs to individual investments, as we expense those costs immediately). Burford produces high operating margins, 84% for fiscal year 2018. It seems churlish to complain about those margins.

Concluding remark

Short attacks such as this are a fundamental menace to an orderly market and to the value inherent in long-term investing in companies such as Burford that are revolutionising industries. Burford is well equipped to investigate and pursue market manipulators, and as stewards of investor capital, we are exploring doing so here, cognisant of the substantial losses our investors have suffered. Our early investigation already shows the hallmarks of market manipulation.

In virtually every instance, Burford has already addressed publicly the points raised by the report, often repeatedly for many years, or has shown them here to be simply erroneous. Burford has been consistent and transparent in its discussion of its financial reporting. It is also remarkable that the core of the attack is based on Burford's expanded investment disclosures, disclosures Burford began voluntarily publishing in March 2019. Muddy Waters would have investors believe that Burford has been engaged in a multi-year pattern of deception and misrepresentation that has only been revealed by Burford's own election

to provide even more transparency into its business – hardly sensible conduct for a business "egregiously misrepresenting" itself as Muddy Waters claims.

Burford – with the support of its shareholders and other stakeholders – has spent the last decade building the leading player in the rapidly-growing legal finance market. We have done so with industry-leading transparency as to our investment and financial performance and with open and candid communication with investors. We are pleased with the returns we have generated and the business we have built, and we are happy to stand on our record.

Burford appreciates the support of its shareholders and is committed to continue its performance and market leadership.

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About Burford Capital

Burford Capital is the leading global finance and investment management firm focused on law. Its businesses include litigation finance and risk management, asset recovery and a wide range of legal finance and advisory activities. Burford is publicly traded on the London Stock Exchange, and it works with law firms and clients around the world from its principal offices in New York, London, Chicago, Washington, Singapore and Sydney.

For more information about Burford: www.burfordcapital.com

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