



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/49

Monday, 27 July 2020

Keybridge Capital Limited 11 & 12 – Panel Receives Applications

The Panel has received an application from Keybridge Capital Limited in relation to its affairs and an application from Keybridge in relation to a review of an ASIC decision made under section 655A.¹

Details of the applications, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the applications.

Details

On 9 April 2020, the Panel made orders in *Keybridge Capital Limited 04, 05 & 06* (see [TP20/24](#)), giving former Keybridge shareholders (**Processed Shareholders**) who accepted into a takeover bid made by WAM Active Limited (and whose acceptances were processed), a right to withdraw their acceptance and requiring the return of their processed shares. There are court proceedings on foot in relation to the processed shares, with Keybridge seeking their vesting in ASIC for sale and WAM Active seeking their validation.

On 28 April 2020, WAM Active lodged with ASIC and served on Keybridge a bidder's statement in relation to a new unconditional off-market takeover bid it was making for the fully paid ordinary shares on issue in Keybridge at 6.9 cents per share.

On 20 May 2020, the Panel in *Keybridge Capital Limited 08R, 09R and 10R* affirmed the Panel's orders in *Keybridge Capital Limited 04, 05 & 06* (see [TP20/34](#)).

Also on 20 May 2020, WAM Active applied for relief from ASIC in order to (among other things):

- permit the establishment of an acceptance facility to allow any Processed Shareholder to direct WAM Active (and Keybridge) that their Keybridge shares be deemed to have been withdrawn from WAM Active's previous bid and accepted into WAM Active's new bid, and

¹ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth)

- extend the time frame for despatch of WAM Active's bidder's statement in respect of its new bid.

ASIC granted the relief sought by WAM Active.

On 6 July 2020, WAM Active lodged a replacement bidder's statement in relation to its new bid with ASIC and served it on Keybridge. The replacement bidder's statement was despatched on 21 July 2020.

In relation to the ASIC relief, Keybridge submits (among other things):

- it was inappropriate for ASIC to provide the relief pending the court proceedings in relation to the processed shares
- the acceptance facility involves a range of concerns under the takeovers provisions including the principle that all offers need to be the same and
- procedural fairness was not afforded by ASIC to Keybridge and others in relation to granting the relief.

In addition, Keybridge submits that the disclosure by WAM Active in its replacement bidder's statement represents unacceptable circumstances for various reasons including that:

- *"there is no explanation as to the prejudice Processed Shareholders may suffer from accepting into the WAM Active offer. They are not informed that it is financially disadvantageous compared to [a competing offer for the Processed Shareholders' shares]"*
- *there "is no discussion of the consequences of what the Processed Shareholders would be giving up if they accept using the Acceptance Facility, being the right to get their shares back from WAM Active at any time"*
- *"Processed Shareholders are not adequately informed that they receive no cash for accepting into the WAM Active offer" and*
- *the replacement bidder's statement does not disclose that WAM Active is seeking in court proceedings "various declarations and orders relating to the Processed Shares", which "increases the uncertainty associated with the Processed Shares and undermines the utility of the ASIC relief in relation to the Acceptance Facility".*

Keybridge seeks interim orders preventing WAM Active from processing any acceptances under its offer and staying the operation of the acceptance facility relief. WAM Active has undertaken not to process any further acceptances before Friday, 31 July 2020.

Keybridge seeks final orders setting aside ASIC's decision to provide the acceptance facility relief, setting aside ASIC's decision to extend the timeframe for dispatch of WAM Active's replacement bidder's statement and remitting that matter for reconsideration by ASIC and requiring corrective disclosure in relation to the replacement bidder's statement.

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