

12 August 2020

Mr James Gerraty
Senior Manager
Listings Compliance, Melbourne
ASX

By email

Dear James

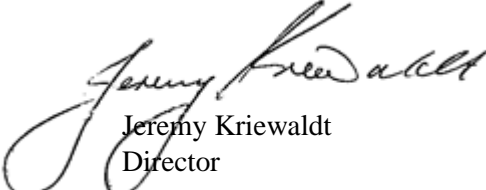
Keybridge Capital Limited (KBC): Takeover Offer for RNY Property Trust (RNY)

KBC refers to ASX's letter dated 5 August 2020 and responds to the questions and request for information from ASX as set out below:

1. KBC does not need to and hence does not intend to seek shareholder approval in relation to the RNY Bid under Listing Rule 10.1.
2. Aurora Funds Management Limited as the responsible entity for various funds (AFML) is the major unitholder in RNY. AFML has made a "truth in takeovers" statement as per the **attached** (AFML Statement). This has the effect that AFML will not accept into the RNY Bid in a manner which would bring an acceptance by it above the Listing Rule 10.1 materiality threshold. Accordingly Listing Rule 10.1 is not applicable. Previously there was some uncertainty regarding whether or not a Listing Rule related shareholder approval might apply, as acknowledged by KBC's announcement of its offer for RNY. As a consequence of the AFML Statement, this uncertainty has been resolved. Accordingly the RNY Bid is to be unconditional. It is not otherwise necessary to consider the possible applicability of Listing Rule 10.1 (noting that there are some aspects in the ASX letter with which Keybridge does not agree)e
3. KBC considers that Listing Rule 11.1 will not apply to the RNY Bid. Keybridge will remain an investor in a diverse range of assets in a variety of sectors, with no one sector having any particular dominance.
4. As a consequence of the AFML Statement, Keybridge does not expect to obtain effective control over RNY. Hence Listing Rule 11.1 is not applicable. It is not otherwise necessary to consider the possible applicability of Listing Rule 11.1.
5. KBC considers its financial position is and will continue to be adequate to warrant continued listing on ASX under Listing Rule 12.2. Please refer to the responses to the questions above. In any event, to support its financial position KBC is contemplating a placement consistent with Listing Rule requirements to provide it with additional cash resources.
6. KBC confirms that it is complying with the Listing Rules and in particular Listing Rule 3.1.
7. KBC confirms that the responses to the questions above have been authorised and approved under its published continuous disclosure policy and by its board or an officer of KBC with delegated authority from the board to respond to ASX on disclosure matters.

Please let us know if you have any queries.

Yours sincerely



Jeremy Kriewaldt
Director

12 August 2020

Suite 613
370 St Kilda Road
Melbourne, VIC 3004

The Directors
Keybridge Capital Limited
Suite 614, Level 6
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MELBOURNE VIC 3004

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E: enquiries@aurorafunds.com.au

Dear Sirs

Takeover Offer for RNY Property Trust

We refer to the takeover offer for the RNY Property Trust (ASX: RNY) announced by Keybridge Capital Limited (ASX: KBC) on 29 June 2020.

As you are aware, Aurora Funds Management Limited (Aurora) which is the responsible entity for a variety of substantial unitholders in RNY has confirmed to Keybridge (which was announced to ASX) that Aurora will not do anything that causes third parties including Keybridge to be in contravention of applicable laws or regulations.

It is unclear whether the takeover offer might require Keybridge shareholder approval for the purposes of Listing Rule 10.1 having regard to the relationship between Keybridge and Aurora.

Listing Rule 10.1 does not apply if the value of the consideration payable by Keybridge to Aurora is less than 5% of Keybridge's equity interest, which corresponds to \$457,000.

Having regard to the unconditional cash price presently being offered to purchase all of Keybridge's shares of 6.9 cents per share, this amounts to 6,632,000 Keybridge shares.

At the exchange ratio offered of 0.16 Keybridge shares for each RNY unit, this amounts to 41,450,000 RNY units.

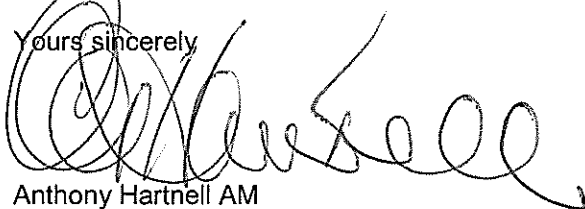
This represents less than 20% of the RNY units on issue.

Aurora advises that it has not yet made a decision whether to accept the Keybridge offer. In the event it does, Aurora reaffirms its earlier comment that it will not do anything that causes third parties, including Keybridge, to be in contravention of applicable laws or regulations. In the event Listing Rule 10.1 is an issue, Aurora confirms that it will abide by the limitations that flow from that, namely it would not accept into the offer more than 41,450,000 RNY units. Accordingly, Listing Rule 10.1 would not be triggered by Aurora's acceptance into the Keybridge offer.

Aurora makes this letter consistent with ASIC's "truth in takeovers" policy which will not be waived.

Aurora consents to Keybridge disclosing the contents of this letter publicly.

Yours sincerely



Anthony Hartnell AM
Chairman



5 August 2020

Reference: 22002

Mr John Patton
Company Secretary
Keybridge Capital Limited
Suite 614, Level 6
370 St Kilda Road
Melbourne VIC 3004

By email

Dear Mr Patton

Keybridge Capital Limited ('KBC'): Takeover Offer for RNY Property Trust ('RNY')

ASX Limited ('ASX') refers to:

- A. The Bidder's Statement released on the ASX Market Announcements Platform ('MAP') on 3 January 2020 in relation to the takeover bid made by WAM Active Limited for all the shares in KBC ('WAM Active Bid') offering cash consideration of 6.5 cents per KBC share, which was later increased to 6.9 cents per KBC share.
- B. The Bidder's Statement released on MAP on 7 February 2020 in relation to the takeover bid made by Aurora Funds Management Limited ('AFML') as responsible entity for Aurora Dividend Income Trust ('ADIT') for all the shares in KBC offering cash consideration of 6.6 cents per KBC share. The cash consideration was later increased to 7.0 cents per KBC share, and the offer subsequently closed on 6 April 2020.
- C. ASX's Query Letter dated 18 May 2020 ('Query Letter') and KBC's response dated 2 June 2020, released together on MAP on 2 June 2020.
- D. KBC's announcement titled 'Keybridge intention to scrip-bid RNY Property Trust' released on MAP on 29 June 2020, which disclosed that:
 - (i) KBC intends to offer 0.16 KBC shares for every RNY unit on issue ('RNY Bid'); and
 - (ii) *'Keybridge's intention to make this bid is conditional upon, and Bid will also be conditional upon, Keybridge obtaining any necessary regulatory consents or approvals. Otherwise Keybridge's intention to bid, and the bid itself is not subject to conditions.'*
- E. KBC's announcement titled 'CRPN Redemption, Conversion and Extension' released on MAP on 4 August 2020 which disclosed that 4,861,932 Convertible Redeemable Promissory Notes (CRPNs) had been redeemed and CRPN noteholders will receive \$1.00 per note plus accrued interest.
- F. The board of directors of KBC comprising Mr Nicholas Bolton (Managing Director), Mr Jeremy Kriewaldt and Mr Antony Catalano.
- G. The following in relation to AFML:
 - (i) Aurora Corporate Pty Ltd which as Trustee for the Aurora Investments Unit Trust owns 100% of the ordinary shares in AFML.¹

¹ See page 17 of the Aurora Absolute Return Fund (ABW) half year report released on MAP on 2 March 2020.

- (ii) Mr Bolton's 54.5% 'purely economic interest' in AFML 'through Mr Bolton's 54.5% unitholding in a trust which owns 100% of AFML's shares'.²
- (iii) The 50% ownership interest in Aurora Corporate Pty Ltd held by Mr John Patton,³ who is AFML's Managing Director and KBC's company secretary.
- (iv) Mr Patton's retirement as a non-executive director of KBC on 21 January 2020, and the following statement by KBC:

*'On 21 January 2020, citing potential conflicts relating to his role at ADIT as bidder, Mr Patton retired as a director of Keybridge by withdrawing himself from re-election at the Company's AGM.'*⁴

H. The following in relation to RNY:

- (i) The appointment of Huntley Management Limited ('Huntley') as the responsible entity of RNY on 2 July 2018, and Huntley's appointment of AFML as the investment manager of RNY on the same day ('Investment Management Agreement').
- (ii) RNY's Annual Report for the financial year ended 31 December 2019, which incorporated its financial statements, released on MAP on 1 April 2020 ('RNY Annual Report') which disclosed the following in relation to 'Fees paid to the Responsible Entity' (on page 5):

'Under the Investment Management Agreement, [AFML] is entitled to receive the Asset Management Fees payable to Huntley under the Trust Constitution and Huntley will receive \$100,000 p.a. (GST inclusive) plus expense reimbursement.

[AFML] was entitled to receive Asset Management Fees of \$360,066 (GST exclusive) for the year ended 31 December 2019. [AFML] was entitled to receive Asset Management Fees of \$165,197 (GST exclusive) for the period 2 July 2018 to 31 December 2018 ...

Huntley is entitled to receive \$90,594 (GST exclusive) to act as Responsible Entity for the year ended 31 December 2019 from [AFML] under the Investment Management Agreement. Huntley is entitled to receive \$44,897 (GST exclusive) to act as Responsible Entity for the period 2 July 2018 to 31 December 2018 from [AFML] under the Investment Management Agreement.'

- (iii) Note 2(e)(ii) of the RNY Annual Report (on page 13) which disclosed the following in relation to going concern (emphasis added):

'As at 31 December 2019, the Group's current liabilities exceeded current assets by \$1,569,111, and the Trust does not have sufficient liquid assets nor does it generate sufficient free cashflows to meet its current and ongoing requirements. Given this, RNY and its consolidated subsidiary, US REIT, are reliant on continued access to adequate cash distributions or repayment of amounts receivable from the underlying investment in the US LLC, the joint venture investment, to settle the liabilities within the respective entities. Absent this, RNY is reliant upon the financial support provided by [AFML] for an amount of \$500,000 in addition to commitments by [AFML] to defer payment of asset management fees and lenders not to call on any debt due and payable ...'

² See KBC's supplementary target's statement released on MAP on 19 February 2020.

³ See page 17 of the Aurora Absolute Return Fund (ABW) half year report released on MAP on 2 March 2020.

⁴ See KBC's supplementary target's statement released on MAP on 19 February 2020.

- (iv) The Independent Auditor's Report attached to the financial statements in the RNY Annual Report ('Auditor's Report') which contained the following disclaimer of opinion:

'We do not express an opinion on the accompanying financial report of the RNY Property Trust. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of our report, we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial report.'

Basis for Disclaimer of Opinion

Use of going concern assumption

As at 31 December 2019, the Group's current liabilities exceeded its current assets by \$1,569,111. This factor and the challenging economic conditions caused largely by the impact of the COVID-19 pandemic, as disclosed in Note 2, indicates the existence of material uncertainties which may cast significant doubt about the Group's and the Trust's ability to continue as a going concern. As disclosed in Note 2, the directors of the Responsible Entity (the Directors) have prepared the financial statements on a going concern basis, based on the assumption that the Group's underlying investment in the joint venture will renegotiate its loan facilities and continue to receive support from tenants, financial institutions and all its other stakeholders and its future operations remain profitable.

Based on the information available to us, we have not been able to obtain sufficient appropriate audit evidence to conclude on the appropriateness of the use of the going concern assumption to prepare the financial statements as the validity of the going concern assumption is dependent on the successful renegotiation of the Group's loan facilities, the continued support from tenants and financial institutions, in the uncertain economic environment, as well as any United States Government stimulus measures to support the economy.'

- (v) Note 6 to the RNY Annual Report (on page 21) which disclosed the following:

- The carrying value of RNY's 'investments in joint venture', namely its 75% interest in RNY Australia Operating Company LLC, was \$11,188,834 at 31 December 2019 (up from \$2,445,607 at 31 December 2018).
- *'RNY has a 100% interest in RNY Australia LPT Corp. ('US REIT'), which in turn has a 75% interest in RNY Australia Operating Company LLC ('US LLC'), a Delaware Limited Liability Company that as of 31 December 2019 owned 5 office properties (31 December 2018: 5 office properties) in the New York Tri-State area. The owner of the remaining 25% interest is an affiliate of [AFML]. [AFML] is the responsible entity of the Aurora Property Buy-Write Income Trust which is the Trust's largest unitholder with 67% of the Trust's units (with a further 14% owned by other [AFML] funds).*

Under the structure created above, RNY (through the US REIT) and [AFML] exercise joint control over the property investments held in the US LLC.'

- (vi) The balance sheet of US LLC at Note 6 on page 22 of the RNY Annual Report which disclosed that US LLC had a net current asset deficiency (or net current liabilities) of \$95,881,228 at 31 December 2019, and that the current liabilities included:

'a loan due to ACORE of \$89,713,733 (31 December 2018: \$85,410,629). The ACORE loan was negotiated as a non-recourse loan with exposure being limited to the properties pledged for the loan facility. There are no set-off arrangements involving the other assets of the Group.'

The ACORE Loan, which was extended to February 2020 under the Loan Extension and has been further extended to 8 April 2020, contains four (under the Loan Modification) 1-year extension options, bears interest at a variable rate of LIBOR plus weighted average rate of 4.7% per annum, with a minimum LIBOR rate of 25 basis points, and requires monthly payments of interest only during the initial 3-year term. In addition, the ACORE Loan is subject to customary financial covenants.'

- (vii) Note 7 to the RNY Annual Report (on pages 24-25) which disclosed that the fair value of US LLC's investment properties were revalued from \$97,627,148 at 31 December 2018 to \$116,489,761 at 31 December 2019 with the appraisals having been done by CBRE Group Inc. at 20 August 2019.

I. The following in relation to AFML:

- (i) AFML's role as responsible entity ('RE') of the following funds (in addition to its role as RE of ADIT and investment manager of RNY):
- the unlisted Aurora Fortitude Absolute Return Fund ('AFARF');
 - ASX-listed Aurora Absolute Return Fund ('ABW');
 - ASX-listed Aurora Property Buy-Write Income Trust ('AUP'); and
 - ASX-listed HHY Fund ('HHY').
- (ii) The Form 604 Notice of change of interests of substantial holder lodged by AFML on MAP on 7 March 2019 which disclosed that AFML holds a relevant interest in 213,264,758 RNY units (80.96% of total units on issue) in its capacity as RE on behalf of the following funds:
- AUP: 179,842,642 units;
 - AFARF: 4,157,045 units;
 - AIB: 3,111,225 units; and
 - ADIT: 26,153,846 units
- (iii) AFML's letter of 30 September 2019 attaching AUP's financial report for the financial year ended 30 June 2019 released on MAP on 30 September 2019, which stated the following:
- 'Between 30 August 2019 and 30 September 2019, material information came to light regarding AUP's investment in RNY Property Trust which caused the Directors of [AFML], as responsible entity for AUP, to determine a fair value of 4.4 cents per unit in RNY Property Trust. This represents an increase of 3 cents per share from the valuation on which the Appendix 4E Preliminary Final Report to the Australian Securities Exchange was based of 1.4 cents per share'.*
- (iv) AUP's interim financial report for the half year ended 31 December 2019 released on MAP on 28 February 2020, which disclosed the following.
- AUP owns 67.15% of the units in RNY; and
 - AUP had advanced loans totalling \$4,369,076 to RNY and is owed interest of \$790,681 from RNY.

J. Listing Rule 10.1, which states:

'An entity (in the case of a trust, the responsible entity) must ensure that neither it, nor any of its child entities, acquires a substantial asset from, or disposes of a substantial asset to, any of the following persons without the approval of holders of the entity's ordinary securities.'

10.1.1 A related party of the entity.

10.1.2 A child entity of the entity.

10.1.3 A person who is, or was at any time in the 6 months before the transaction or agreement, a substantial (10%+) holder in the entity.

10.1.4 An associate of a person referred to in rules 10.1.1 to 10.1.3.

10.1.5 A person whose relationship to the entity or a person referred to in rules 10.1.1 to 10.1.4 is such that, in ASX's opinion, the transaction should be approved by security holders.'

K. The definition of 'related party' in Listing Rule 19.12, which states:

'in relation to a body corporate:

(i) *an entity that controls the body corporate;*

(ii) *if the body corporate is controlled by an entity that is not a body corporate, the persons making up that entity;*

(iii) *directors of the body corporate or of an entity that controls the body corporate;*

(iv) *spouses and de facto spouses of anyone referred to in (ii) and (iii) above;*

(v) *parents and children of anyone referred to in (ii), (iii) and (iv) above;*

(vi) *an entity controlled by anyone referred to in (i) – (v) above unless it is also controlled by the body corporate;*

(vii) *anyone who has fallen within (i) – (vi) above within the past 6 months;*

(viii) *anyone who believes or has reasonable grounds to believe that they are likely to fall within (i) – (vi) at any time in the future; and*

(ix) *anyone acting in concert with someone referred to in (i) – (viii) above.'*

L. Listing Rule 11.1, which states:

'If an entity proposes to make a significant change, either directly or indirectly, to the nature or scale of its activities, it must provide full details to ASX as soon as practicable. It must do so in any event before making the change. The following rules apply in relation to the proposed change.

11.1.1 *The entity must give ASX information regarding the change and its effect on future potential earnings, and any information that ASX asks for.*

11.1.2 *If ASX requires, the entity must get the approval of holders of its ordinary securities and must comply with any requirements of ASX in relation to the notice of meeting. The notice of meeting must include a voting exclusion statement.*

11.1.3 *If ASX requires, the entity must meet the requirements in chapters 1 and 2 as if the entity were applying for admission to the official list.'*

M. Listing Rule 12.2, which states:

'An entity's financial condition (including operating results) must, in ASX's opinion, be adequate to warrant the continued quotation of its securities and its continued listing.'

Compliance with Listing Rules 10.1, 11.1 and 12.2

Given the information identified above, ASX is concerned:

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- Whether the RNY Bid requires security holder approval under Listing Rule 10.1. In this regard, ASX refers to the information in paragraphs F, G and I of this letter, which establishes the following in relation to:
 - KBC as the acquiring party:
 - Mr Bolton is a related party of KBC; and
 - Mr Patton was a related party of KBC when it announced the RNY Bid on 29 June 2020 (see item (vii) of the related party definition in paragraph K above), and
 - AFML as the disposing party:
 - Mr Bolton has a 54.5% economic interest in AFML; and
 - Mr Patton has a 50% ownership interest in AFML and is its Managing Director.

Also, the RNY Bid values RNY at approximately \$2.9 million (or 1.1 cents per RNY unit).⁵ KBC's consolidated statement of financial position as at 31 December 2019⁶ disclosed that KBC has equity interests of \$9,153,030. Since 5% of that amount is \$457,652, the acquisition of RNY would constitute a substantial asset as defined in Listing Rule 10.2.

- Whether the RNY Bid attracts Listing Rule 11.1, potentially requiring security holder approval under Listing Rule 11.1.2 and KBC to re-comply with chapters 1 and 2 of the Listing Rules under Listing Rule 11.1.3.

In this regard, ASX refers to the following information:

- paragraph H of the Query Letter, which indicates that the majority of KBC's existing investments have uncertain prospects of recoverability or realisation, being as they are, loans that are past due or owed by entities in liquidation, or equity investments in ASX listed securities which are either suspended or whose value has substantially declined;
 - the redemption requests from CRPN holders which will result in a cash outflow of \$4,861,932 plus accrued interest (see paragraph E above); and
 - the substantial liabilities of RNY (see paragraph H above).
- Whether KBC's financial condition under Listing Rule 12.2 will further deteriorate if the RNY Bid is successful. In this regard, ASX refers to the information in:
 - sub-paragraph H(iv) of this letter regarding the disclaimer of opinion in the Auditor's Report for RNY;
 - sub-paragraphs H(ii), H(iii), H(v), H(vi), H(vii) and I(iv) of this letter which highlight:
 - RNY's net current asset deficiency;
 - accrued investment management fees owed by RNY to AFML;
 - RNY's reliance on financial support from AFML;
 - US LLC's current liability in the form of the ACORE Loan;
 - loan amounts (and accrued interest) owing by RNY to AUP; and
 - the lack of recent valuation reports for US LLC's investment properties (with the last valuation on 20 August 2019).

⁵ See KBC's announcement released on MAP 29 June 2020.

⁶ See KBC's half year accounts for the six months ended 31 December 2019 released on MAP on 8 May 2020.

Questions and Request for Information

Having regard to the above, ASX asks KBC to respond separately to each of the following questions and requests for information.

1. Does KBC intend to seek security holder approval in relation to the RNY Bid under Listing Rule 10.1?
2. If the answer to question 1 above is 'no', why not?
3. Does KBC consider that Listing Rule 11.1 will apply to the RNY Bid?
4. If the answer to question 3 above is 'no', why not?
5. If the RNY Bid is successful, does KBC consider that its financial condition will be adequate to warrant continued listing on ASX under Listing Rule 12.2? In answering this question, please also explain the basis for KBC's conclusion.
6. Please confirm that KBC is complying with the Listing Rules and, in particular, Listing Rule 3.1.
7. Please confirm that KBC's responses to the questions above have been authorised and approved under its published continuous disclosure policy or otherwise by its Board or an officer of KBC with delegated authority from the Board to respond to ASX on disclosure matters.

When and where to send your response

This request is made under Listing Rule 18.7. Please note that ASX reserves its right under Listing Rule 18.7A to release this letter and KBC's response to the market. Accordingly, KBC's response should address each question separately and be in a format suitable for release to the market.

Unless the information is required immediately under Listing Rule 3.1, a response is requested as soon as possible and, in any event by no later than **9:30am AEST on Wednesday, 12 August 2020**.

Any response should be sent to me by return email. It should not be sent to the ASX Market Announcements Office.

Release of correspondence with ASX

ASX reserves the right to release a copy of this letter, your reply and any other related correspondence between us to the market under Listing Rule 18.7A.

Enquiries

If you have any queries regarding any of the above, please contact me.

Yours sincerely

James Gerraty
Senior Manager, Listings Compliance (Melbourne)