



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/19

Monday, 7 March 2022

Keybridge Capital Limited 04, 05 & 06 Variation – Invitation to Processed Shareholders to Make Submissions on Proposed Orders Variation

The Panel received an application from WAM Active Limited on 15 September 2021 to vary the orders made in *Keybridge Capital Limited 04, 05 & 06* (see [TP20/24](#)). These orders were previously affirmed by the review Panel in *Keybridge Capital Limited 08R, 09R & 10R* (see [TP20/34](#)) and subsequently varied by the review Panel (see [TP20/54](#)).

Relevantly, Order 3 of the orders gives persons who accepted into WAM Active's off-market takeover bid for Keybridge¹ (**WAM Bid**) and had their acceptances processed (such persons defined in the orders as **Processed Shareholders**) a perpetual withdrawal right. The withdrawal rights are expressed to be operative "[u]nless a Court makes orders or a declaration inconsistent with Order 3...".

WAM Active has sought a variation of the orders to clarify the operation of the withdrawal rights in light of the decisions of the Supreme Court of New South Wales in the matter of *Keybridge Capital Ltd* [\[2020\] NSWSC 1917](#) (on 24 December 2020) and the New South Wales Court of Appeal in the matter of *Keybridge Capital Ltd v WAM Active Ltd* [\[2021\] NSWCA 203](#) (on 8 September 2021).

Having considered submissions from WAM Active, Keybridge and ASIC, the Panel is minded to vary the orders so that there is an end date on Order 3 (i.e. so that the withdrawal rights are no longer perpetual in nature), subject to there being a one month period of notice to Processed Shareholders.

Before making its final decision on the proposed variation of orders, the Panel considers it appropriate to consult with Processed Shareholders.

Invitation to Processed Shareholders to make submissions

The Panel invites Processed Shareholders to make submissions in respect of its proposed decision to vary the orders in *Keybridge Capital Limited 04, 05 & 06* so that there is an end date on the withdrawal rights in Order 3, subject to there being a one month period of notice to Processed Shareholders in which time Processed

¹ Announced on 13 December 2019

Shareholders could exercise the withdrawal rights. In particular, the Panel is interested to understand whether Processed Shareholders consider that the proposed variation decision would take away a valuable right given to them.

Any submissions from Processed Shareholders should be provided to the Panel on or before **5pm (Melbourne time) on Thursday, 7 April 2022**.

Submissions should be emailed to takeovers@takeovers.gov.au with the subject 'Keybridge Capital Limited 04, 05 & 06 Variation – Response to invitation to make submissions'. Processed Shareholders should also include the following information which their submissions:

- When the Processed Shareholder accepted into the WAM Bid.
- Whether the Processed Shareholder has attempted to withdraw from the WAM Bid and if so, on what basis (i.e. to withdraw and accept into the Catalano Offer², to withdraw and accept into WAM's offer for Keybridge dated 21 July 2020 or that the withdrawal is made in any other case).

Processed Shareholders should note that any submissions provided to the Panel will also be provided to the parties in these proceedings (WAM, Keybridge and ASIC). Any personal details of the Processed Shareholder will not be passed on, other than the name of the Processed Shareholder.

Allan Bulman
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² As defined in the Panel's orders (see [TP20/54](#))