

**ASX Market Announcement**

ASX: KBC

19 August 2024

**Market Update****NTA Appreciation**

Keybridge has experienced a material increase in NTA from various sources, with its July 2024 NTA now standing at 8.40 cents, up from 6.53 cents as last reported for February 2024. Drivers of this have been a successful takeover of Yowie, an appreciation in the carrying value of its Manly property and various legal settlements.

In addition, Keybridge notes that it currently holds an investment at nil that could, alternatively, be carried at an equity accounted value of approximately \$7.35 million, which equates to approximately 3.5 cents per Keybridge share. There is presently a dispute with the trustee in relation to this investment which Keybridge is working through with the trustee and further details will be provided in the Company's annual accounts.

**Keybridge Suspension Update**

Keybridge Capital Limited (Keybridge) has been suspended since 1 March 2024 whilst it has been corresponding with the ASX regarding the following matters:

- a. *The adequacy of KBC's financial condition to warrant the continued quotation of its securities as required by Listing Rule 12.2.* In its unqualified audit reviewed financial statements for the half year ended 31 December 2023, Keybridge has total assets of \$22.1 million as at 31 December 2023 and generated a net profit after tax of \$8.6 million for the half year ended 31 December 2023. Further, the Company can raise additional capital via a placement at short notice, or pro rata issue to existing shareholders, as well as the ability to realise its investments as required.
- b. *Applications made by each of WAM Active Limited (WAM) and Bell Potter Securities Limited in the Supreme Court of NSW to wind up KBC on the grounds of insolvency.* As disclosed in the financial statements for the half year ended 31 December 2023, WAM has commenced proceedings to wind-up Keybridge which are being vigorously defended by Keybridge and anticipates that it will be awarded all its costs in the proceeding.

It is common ground that a wind-up proceeding should only be brought by a party that reasonably considers an entity to be insolvent. Further, the test of whether a company is insolvent under section 95A of the *Corporations Act* is whether the company is able to pay its debts as and when they become due and payable. Keybridge considers that it is clearly presently able to meet all its debts as and when they become due.

As stated in Keybridge's unqualified audit reviewed financial statements for the half year ended 31 December 2023, WAM sought costs of \$275,032.22 (which the Company had fully provisioned), relating to an earlier costs order received by WAM where the court has since approved Keybridge's request to have those costs reviewed and assessed by an independent cost assessor. Keybridge had offered to secure or compound the amount sought by WAM whilst the costs were being reviewed, thereby satisfying any WAM demand for payment under s459E(2)(c), however, for reasons that are unclear to Keybridge, WAM rejected this offer.

Keybridge has resolved a separate matter with Bell Potter about a disputed costs matter that flowed from an administrative error and those proceedings have been dismissed with no order as to costs.

- c. *A standstill agreement under which each of KBC and Nicholas Bolton are prohibited from trading Magellan securities for two years.* As disclosed in the unqualified audit reviewed financial statements for the half year ended 31 December 2023, to facilitate the realisation of the Magellan Global Fund Options (MGFO) transaction, where the Company sold its total position for \$17.8 million, Keybridge and its Managing Director, Mr Nicholas Bolton, agreed to enter a Standstill Agreement with Magellan Financial Group Limited (ASX: MFG), limiting future dealings in the securities of MFG and its related entities for a period of two (2) years.
- d. *An undocumented agreement by KBC to pay Nicholas Bolton \$4.75m to enter into a restraint agreement prohibiting Nicholas Bolton from trading Magellan securities for two years.* As disclosed in the unqualified audit reviewed financial statements for the half year ended 31 December 2023, as an essential precursor to the MGFO transaction, the Company agreed to pay Mr Bolton \$4.3 million (NPV) to enter into a separate back-to-back restraint agreement, for the benefit of the Company, thereby enabling the Company (and all other MGFO holders) to then realise a considerable gain, with the restraint payment to be made at the end of the two (2) year period.

Keybridge considers that such arrangements comply with Listing Rule 10.1, as the arrangements were an essential and valuable precursor to enable the Company, as well as all other MGFO holders, to realise a considerable gain that it was not otherwise entitled to at the time, thereby giving rise to the creation of an asset, rather than the disposal of an asset.

Keybridge confirms that the back-to-back agreement with Mr Bolton, once finalised, will make payment conditional upon the Magellan standstill agreement with Mr Bolton being satisfied, with payment to occur at the end of the two (2) year Standstill period.

In July 2024, Keybridge advanced an unsecured loan to an asset rich entity owned by Mr Bolton equal to the unpaid standstill fee and bonus. The loan is on commercial terms and must be repaid either by the proceeds of the restraint fee or by the asset rich borrower. Further details will be provided in the Company's annual accounts.

- e. *An agreement by KBC to pay success fees of \$400,000 (in aggregate) to Antony Catalano and Aurora Fortitude Absolute Return Fund – B Class, subsequently reduced to \$200,000 (in aggregate).* Mr Catalano, but not Mr Patton, Managing Director of Aurora Funds Management Limited, the responsible entity of Aurora Fortitude Absolute Return Fund, was recused from board deliberations regarding these loans. As advised to the ASX, Mr Catalano is the sole holder of the AFARF B Class securities. In relation to the loan advanced by AFARF B Class, this was done at the direction of Mr Catalano and any interest earned is solely to Mr Catalano's account and benefit. Given that Aurora Funds Management Limited does not earn any fees from the interest earned, with Mr Catalano being the sole beneficiary, there was no need for Mr Patton to be recused on this matter. In any case, as advised below, Mr Catalano agreed to waive this payment to AFARF B Class.

As disclosed in the unqualified audit reviewed financial statements for the half year ended 31 December 2023, Mr Catalano provided a loan of \$800,000 to the Company to assist in financing trading in Magellan Global Fund Options (ASX: MGFO). The loan facility was at-call, with interest accruing at 1.52% per month. On 21 August 2023, the Company repaid \$125,000 to Mr Catalano with the balance repaid on 25 October 2023.

In addition, Mr Catalano provided a loan of \$80,000 and Aurora Fortitude Absolute Return Fund – B Class (where Mr Catalano is the sole unitholder of this class) provided another loan

of \$80,000 to assist in financing the MGFO trade. Those loans entitled the lenders to a success only share of performance of MGFO, being \$200,000 for each facility.

Based on Keybridge's financial statements for the year ended 30 June 2023, the 5% threshold in Listing Rule 10.1 equates to \$208,788, with this figure increasing to \$641,341 as at 31 December 2023. Despite this, Keybridge has decided to cap the payments under both loans to \$200,000 in aggregate, with \$200,000 to be paid to Mr Catalano personally.

- f. *The timeliness and inadequacy of KBC's disclosure of the matters set out above.* Keybridge has been in regular contact with the ASX during the period of its suspension, including:
- i. Providing a written response on 7 March 2024 in relation to an ASX letter dated 5 March 2024, pursuant to the timeframe set by ASX;
  - ii. Providing a written response on 26 March 2024 in relation to an ASX letter dated 14 March 2024, pursuant to the timeframe set by ASX;
  - iii. Providing a written response on 12 April 2024 in relation to an ASX letter dated 4 April 2024, pursuant to the timeframe set by ASX;
  - iv. Providing a written response on 7 May 2024 in relation to an ASX letter dated 23 April 2024, pursuant to the timeframe set by ASX;
  - v. Providing documents on 11 June 2024 as requested in an ASX letter dated 28 May 2024, pursuant to the timeframe set by ASX;
  - vi. Providing a written response to an ASX letter dated 21 June 2024, pursuant to the timeframe set by the ASX;
  - vii. Providing a letter to the ASX dated 5 May 2024, with the ASX providing a written response on 6 May 2024; and
  - viii. Providing this ASX Announcement in response to an ASX letter dated 12 August 2024.
- g. *Errors and inadequacies in disclosure in KBC's Net Asset Backing Report for the period ended 31 January 2024 and released on MAP on 21 February 2024.* Keybridge has now issued a revised Net Asset Backing Report for the month of January 2024 correcting an error in the commentary.
- h. *Whether any of the matters above involved any breaches of the ASX Listing Rules or the Corporations Act.* As outlined above, Keybridge considers that it is complying with the Listing Rules, including Listing Rule 12.2, Listing Rule 10.1 and Listing Rule 3.1.

#### Related Party Policy

ASX has informed KBC that it is not satisfied that KBC's existing Related Party Policy or procedures for managing board-level conflicts of interest are adequate and appropriate. ASX has expressed particular concerns in relation to each of: (1) KBC entering into a significant undocumented agreement to pay \$4.75m to Nicholas Bolton, managing director of KBC; and (2) KBC agreeing to pay success fees of \$400,000 (in aggregate) to Mr Catalano, director of KBC, and Aurora Fortitude Absolute Return Fund – B Class, and the apparent recusal of Mr Catalano, but not Mr Patton, from board deliberations regarding the loans and success fees despite Mr Patton being managing director of the responsible entity of Aurora Fortitude Absolute Return Fund.

Accordingly, ASX has directed KBC to update its existing Related Party Policy having specific regard to KBC's circumstances and structure, and in light of KBC's history of related party transactions and the concerns expressed by ASX in relation to KBC's related party transactions. KBC is required to provide to ASX an updated related party policy satisfactory to ASX by no later than 21 August 2024.



Whilst Keybridge does not agree with the ASX's views stated above, it has engaged an external legal practitioner to review and update the Company's Related Party Policy, as required, which will then be lodged on the Company's website once the review is completed.

This announcement was authorised for release by the Company Secretary with approval from the Directors of the Company.

**ABOUT [KEYBRIDGE CAPITAL LIMITED](#) (ASX: [KBC](#))**

KBC is an investment and financial services group with a diversified portfolio of listed and unlisted investments/loan assets including in private equity (US), life insurance (New Zealand), property and funds management sectors and substantial holdings in Yowie Group Ltd (ASX: YOW) and Benjamin Hornigold Ltd (ASX: BHD).



12 August 2024

Reference: ODIN90009

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

By email

Dear Mr Patton

**Keybridge Capital Limited ('KBC'): Directions and proposed reinstatement to quotation**

ASX refers to the following:

- A. The suspension of KBC's securities from quotation since 1 March 2024 pending KBC's response to ASX queries in relation to:
- I. The adequacy of KBC's financial condition to warrant the continued quotation of its securities as required by Listing Rule 12.2.
  - II. Applications made by each of WAM Active Limited and Bell Potter Securities Limited in the Supreme Court of NSW to wind up KBC on the grounds of insolvency.
  - III. A standstill agreement under which each of KBC and Nick Bolton are prohibited from trading Magellan securities for two years.
  - IV. An undocumented agreement by KBC to pay Nick Bolton \$4.75m to enter into a restraint agreement prohibiting Nick Bolton from trading Magellan securities for two years.
  - V. An agreement by KBC to pay success fees of \$400,000 (in aggregate) to Antony Catalano and Aurora Fortitude Absolute Return Fund – B Class, subsequently reduced to \$200,000 (in aggregate). Mr Catalano, but not John Patton, Managing Director of Aurora Funds Management Limited, the responsible entity of Aurora Fortitude Absolute Return Fund, was recused from board deliberations regarding these loans.
  - VI. The timeliness and adequacy of KBC's disclosure of the matters set out above.
  - VII. Inadequate and inconsistent disclosure in KBC's Net Asset Backing Report for the period ended 31 January 2024 and released on MAP on 21 February 2024.
  - VIII. Whether any of the matters above involved any breaches of the ASX Listing Rules or the Corporations Act.
- B. Correspondence between ASX and KBC since 1 March 2024 including, without limitation:
- I. The letter from ASX to KBC dated 21 June 2024 requiring KBC to provide an announcement for release to the market in a form satisfactory to ASX covering, at a minimum, the following matters:
    - (i) The reason for KBC's suspension, described in paragraph A above.
    - (ii) Updates on the status of the above matters.
    - (iii) ASX's direction to KBC under Listing Rule 18.8 to update its Related Party Policy including, without limitation, the following statement:

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*ASX has informed KBC that it is not satisfied that KBC's existing Related Party Policy or procedures for managing board-level conflicts of interest are adequate and appropriate. ASX has expressed particular concerns in relation to each of: (1) KBC entering into a significant undocumented agreement to pay \$4.75m to Nick Bolton, managing director of KBC; and (2) KBC agreeing to pay Absolute Return Fund – B Class, and the apparent recusal of Mr Catalano, but not Mr Patton, from board deliberations regarding the loans and success fees despite Mr Patton being managing director of the responsible entity of Aurora Fortitude Absolute Return Fund.*

*Accordingly, ASX has directed KBC to update its existing Related Party Policy having specific regard to KBC's circumstances and structure, and in light of KBC's history of related party transactions and the concerns expressed by ASX in relation to KBC's related party transactions. KBC is required to provide to ASX an updated related party policy satisfactory to ASX by no later than 21 August 2024.*

- II. Correspondence from ASX to KBC on 4 July 2024, 10 July 2024 and 23 July 2024 confirming that ASX does not object to a draft of the announcement referred to in paragraph B(I) provided by KBC, confirming that ASX will consider reinstating KBC's securities subject to KBC lodging an agreed form of the announcement and other outstanding periodic reports, and requesting that KBC promptly lodges the documents for reinstatement to trading.
- III. The letter from KBC to ASX dated 5 August 2024 requesting that the suspension remains in place.
- IV. Correspondence from ASX to KBC on 6 August 2024 stating that ASX does not agree that it is appropriate for KBC's suspension to continue in the circumstances and directing KBC under Listing Rule 18.7 to lodge the announcement referred to in paragraph B(I) above and other outstanding periodic reports by no later than 5:00pm AEST on 12 August 2024.

### **Request for information**

Having regard to the above, ASX asks KBC to provide an announcement (or announcements) for release to the market in a form satisfactory to ASX covering, at a minimum, the following matters:

- 1. Each of the matters set out in paragraphs 1-3 under the heading 'Proposed reinstatement to quotation' in the letter from ASX to KBC dated 21 June 2024.
- 2. All outstanding net asset backing reports.
- 3. Confirmation that KBC is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
- 4. Confirmation that KBC's responses to the requests above have been authorised and approved in accordance with 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.

If KBC provides to ASX an announcement (or announcements) satisfactory to ASX addressing each of the above matters and containing such disclosure as is appropriate to provide an accurate, complete and not misleading description of ASX's material queries and KBC's material responses to these queries as soon as reasonably possible and, in any event, by no later than **5:00pm AEST 14 August 2024**, ASX will consider reinstating KBC's securities to quotation.

If other material facts come to light, ASX may withdraw or change its advice. Regardless of any view expressed in this or in any other correspondence, ASX will retain its absolute discretion under Listing Rule 17.7 to reinstate or not to reinstate KBC's securities to quotation, which it can exercise at any time. If KBC does not provide an announcement (or announcements) before this deadline, ASX may reconsider whether it is appropriate to reinstate KBC's securities to quotation and whether it is appropriate to take further action in response to KBC's repeated failure to comply with directions from ASX.

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### **When and where to send your response**

This request is made under Listing Rule 18.8. Your response is required as soon as reasonably possible and, in any event, by no later than **5:00 PM AEST Wednesday, 14 August 2024**.

You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, KBC's obligation is to disclose the information 'immediately'. This may require the information to be disclosed before the deadline set out above and may require KBC to request a trading halt immediately if trading in KBC's securities is not already halted or suspended.

Your response should be sent by e-mail to **ListingsComplianceMelbourne@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow us to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to KBC's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. It should be noted that KBC's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter. It should also be noted that KBC's obligation to disclose information under Listing Rule 3.1 continues to operate during the period in which trading in its securities are suspended.

### **Release of correspondence between ASX and KBC**

We reserve the right to release all or any part of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A. The usual course is for this correspondence and your response to be released to the market. Should ASX not receive an adequate and complete response suitable for release to the market, ASX intends to release only this letter to the market.

Yours sincerely

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ASX Compliance