



Australian Government

Takeovers Panel

Reasons for Decision

**Keybridge Capital Limited 04, 05 & 06 Variation
[2022] ATP 11**

Catchwords:

Variation of orders – withdrawal rights – reversal rights

Corporations Act 2001 (Cth), sections 630, 650F, 650G, 657D(3)

Keybridge Capital Ltd [2021] NSWCA 203, Keybridge Capital Ltd [2020] NSWSC 1917

Keybridge Capital Limited 08R, 09R & 10R [2020] ATP 9, Keybridge Capital Limited 04, 05 & 06 [2020] ATP 6

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
N/A	N/A	YES	N/A	YES	N/A

INTRODUCTION

1. The Panel, Chelsey Drake, Bruce McLennan and Sharon Warburton (sitting President), varied the final orders made by the sitting Panel in *Keybridge Capital Limited 04, 05 & 06*.¹ Relevantly, those orders gave persons who accepted into WAM Active Limited’s off-market takeover bid for Keybridge Capital Limited² and had their acceptances processed a perpetual withdrawal right.³ The variation of orders puts an end date on which those withdrawal rights can be exercised.

2. In these reasons, the following definitions apply.

Appeal Judges	Chief Justice Bathurst, Justice White and Justice Emmett in the Court of Appeal Proceedings
Court of Appeal Proceedings	The proceedings in the New South Wales Court of Appeal in the matter of <i>Keybridge Capital Ltd [2021] NSWCA 203</i>
Court Proceedings	Collectively, the Supreme Court Proceedings and the Court of Appeal Proceedings
Initial Panel	The sitting Panel in <i>Keybridge Capital Limited 04, 05 & 06 [2020] ATP 6</i>
Keybridge	Keybridge Capital Limited (ASX: KBC)
Order 3	Order 3 of the Orders (as set out in paragraph 9)

¹[2020] ATP 6. Those orders were affirmed by the Review Panel and subsequently varied by the Variation Panel (see [TP20/54](#))

² Announced on 13 December 2019

³ In these reasons, the term ‘withdrawal right’ and ‘reversal right’ are used interchangeably

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Orders	The final orders made by the Initial Panel dated 9 April 2020, which were affirmed by the Review Panel and subsequently varied by the Variation Panel
Primary Judge	Chief Justice Ward in the Supreme Court Proceedings
Processed Shareholders	has the meaning given in the Orders
Processed Shares	has the meaning given in the Orders
Proposed Variation	has the meaning given in paragraph 50
Review Panel	The sitting Panel in <i>Keybridge Capital Limited 08R, 09R & 10R</i> [2020] ATP 9
Supreme Court Proceedings	The proceedings in the Supreme Court of New South Wales in the matter of <i>Keybridge Capital Ltd</i> [2020] NSWSC 1917
Variation Panel	The sitting Panel in respect of the first orders variation in <i>Keybridge Capital Limited 04, 05 & 06</i>
WAM	WAM Active Limited (ASX: WAA)
WAM Bid	WAM's off-market takeover bid for all the shares in Keybridge at 6.5 cents per Keybridge share announced on 13 December 2019

FACTS

Original Panel proceedings

3. The Initial Panel made a declaration of unacceptable circumstances on 7 April 2020 in relation to the affairs of Keybridge. At that time, Keybridge was the subject of competing takeover bids from WAM and Aurora Funds Management Limited as responsible entity for the Aurora Dividend Income Trust. The Initial Panel considered (among other things) that WAM had acquired a substantial interest in Keybridge (purportedly under a takeover bid) in circumstances where its bid had closed subject to defeating conditions.
4. The Initial Panel made final orders on 9 April 2020. The Panel ordered (among other things) that:
 - (a) unprocessed acceptances under the WAM Bid be cancelled and
 - (b) relevantly, WAM reverse any processed acceptances under the WAM Bid at the option of accepting shareholders (such persons defined in the Orders as **Processed Shareholders**) – see further Order 3 below.
5. Details of the Initial Panel's decision are set out in its reasons.⁴

⁴ *Keybridge Capital Limited 04, 05 & 06* [2020] ATP 6

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6. The Review Panel affirmed the decision of the Initial Panel to make a declaration of unacceptable circumstances (on 7 May 2020) and the Orders (on 20 May 2020).
7. Details of the Review Panel’s decision are set out in its reasons.⁵
8. The Orders were subsequently varied by the Variation Panel on 8 September 2020 (following an application from WAM) to clarify the process that must be followed to give effect to the reversal right granted under the Orders.⁶ The variation did not otherwise change the substance of the Orders.
9. Relevant to these proceedings, Order 3 (which provides for the reversal right), as varied, orders that:

“Unless a Court makes orders or a declaration inconsistent with this Order, from and including the date of these orders WAM Active must comply with Order 5B if it receives a request from any Processed Shareholder (or a request from a Processed Shareholder’s agent or attorney) to reverse the transaction by which WAM Active acquired any Processed Shares from that Processed Shareholder.

For the avoidance of doubt, this Order applies in relation to all reversal requests received by WAM Active prior to the Variation Date but which have not been actioned.”

The Court Proceedings

Supreme Court Proceedings

10. On 1 June 2020, Keybridge filed an originating process seeking declaratory and other relief concerning events that had occurred in relation to the WAM Bid. In essence, Keybridge sought declarations that the processing of the Processed Shares by WAM contravened section 650G⁷ and that the transfers of those shares to WAM were void.⁸ It also sought an order that the Processed Shares be vested in ASIC for sale.
11. By interlocutory process filed on 16 July 2020 (and amended on 15 October 2020), WAM sought declaratory relief to the effect that it was validly registered as the holder of the Processed Shares or, alternatively, remedial relief curing any procedural defect which prevented it becoming the registered holder of those shares.
12. On 24 December 2020, the Primary Judge determined and made orders:
 - (a) to dismiss Keybridge’s originating process with costs

⁵ *Keybridge Capital Limited 08R, 09R & 10R* [2020] ATP 9

⁶ See [TP20/54](#)

⁷ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

⁸ Section 650G provides (in summary) that all takeover contracts, and all acceptances that have not resulted in binding takeover contracts, for an off-market bid are void if offers made under the bid are subject to a defeating condition, the bidder has not declared the offers to be free from the condition within the relevant period under section 630 and the condition has not been fulfilled at the end of the offer period. A transfer of securities based on an acceptance or contract that is void under section 650G must not be registered

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- (b) to extend the time for compliance by WAM with section 630(3) in respect of the giving of notice to Keybridge, thereby granting the remedial relief sought by WAM in its interlocutory process and
- (c) that Keybridge pay WAM's and ASIC's costs of WAM's interlocutory process.⁹

Court of Appeal Proceedings

- 13. By summons filed on 24 March 2021, Keybridge sought leave to appeal from the orders made by the Primary Judge.
- 14. Keybridge was granted leave to appeal. However, the appeal was ultimately dismissed with costs by the Appeal Judges on 8 September 2021.¹⁰
- 15. The Court Proceedings are discussed in further detail in paragraphs 26 to 28 below.

APPLICATION

- 16. By application dated 15 September 2021, WAM applied for a variation of the Orders.
- 17. In its application, WAM referred to Keybridge's ASX announcement made on 10 September 2021 which stated that:

"Notwithstanding the dismissal of the appeal, [the Orders] that require WAM Active to reverse the transfer of the Processed Shares, at the request of the [Processed Shareholders] remains. Those [Processed] Shareholders may obtain their shares back by repaying 6.9c per share to WAM Active, which is below Keybridge's market price on 10 September 2021. Accordingly, those rights have value.

The Takeovers Panel on two occasions declared that WAM Active's Bid constituted Unacceptable Circumstances and that contracts entered into under the Bid were void. Those decisions stand."

- 18. WAM submitted (among other things) that:

"Keybridge's announcement misrepresents the nature and effect of the Panel's decision and orders. In making orders in relation to the WAM Active's bid, the Panel deliberately left open the ability for the Court to determine the legal status and ownership of the Processed Shares. To this end, the terms of the Panel's [orders] in respect of WAM Active's bid, were drafted to apply "unless a Court makes orders or a declaration inconsistent with [the Panel's order 3 containing the withdrawal rights]".

...

The Panel is aware the Supreme Court of NSW made orders inconsistent with the Panel's orders on 24 December 2020. These Court orders were affirmed by the Court of Appeal on 8 September 2021... It follows that from 24 December 2020, the terms of the Panel's orders no longer required WAM Active to comply with withdrawal requests.

Despite this, in the ASX announcement Keybridge suggests that not only do the Processed Shareholders still have a right to request withdrawals, but that these rights have value. Having misrepresented the operation of the Panel's orders, Keybridge actively

⁹ *Keybridge Capital Ltd* [2020] NSWSC 1917 at [281]-[284]

¹⁰ *Keybridge Capital Ltd* [2021] NSWCA 203 at [98], [99] and [120]

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encourages Processed Shareholders to rely on those orders; going so far as to compare the 6.9c repayment price to the current trading price.”

19. Accordingly, given the outcome of the Court Proceedings, WAM submitted that “[t]o clarify the withdrawal rights, WAM Active seeks a variation of the Panel’s order 3 (if required) or public statement that confirms that order 3 effectively ceased on 24 December 2021 (sic).”

DISCUSSION

20. Section 657D(3) provides that:

“The Panel may vary, revoke or suspend an order made under this section. Before doing so, it must give an opportunity to make submissions in relation to the matter to:

- (a) each person to whom the order is directed; and*
- (b) each party to the proceedings in which the order was made; and*
- (c) ASIC.”*

21. We gave the parties, persons to whom the relevant Orders are directed and ASIC an opportunity to make submissions, as required by section 657D(3). We also consulted with Processed Shareholders given that their interests are affected by the Orders (see paragraphs 51 to 53 below).
22. We have considered all the submissions, but address specifically only those submissions we consider necessary to explain our reasoning.

Orders or declarations inconsistent with Order 3?

23. Keybridge made a preliminary submission, submitting that the Panel “*should decline this request from WAM*”. It submitted (among other things) that “*the Orders, which have already been considered by three sitting Panels, require no clarification. The Orders remain operative, irrespective of the independent decision of the NSW Supreme Court (Decision)... The Decision was neither a review nor appeal of the Review Panel decision or orders, nor was it capable of being so. In no way does the Decision vary the Panel Orders (which stands and remain binding) and, perversely, if it did, then it would undermine the basis upon which that Decision was made.*”
24. Order 3 (which provides for the reversal right) is subject to a Court making an order or a declaration which is inconsistent with that Order. It therefore contemplates that the status of the Processed Shares should be clarified by the Courts. Should the Court make an order or a declaration which is inconsistent with Order 3, it follows that WAM is no longer required to comply with any reversal requests of Processed Shareholders in respect of their Processed Shares.
25. The threshold question then is whether or not a Court has made an order or a declaration which has affected the operation of Order 3.

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26. In the Supreme Court Proceedings (in summary):
- (a) The Primary Judge concluded that WAM waived all relevant conditions to the WAM Bid within the timeframe required by section 650F¹¹ and therefore, did not contravene section 650G.¹² In the event that her preceding determination was incorrect and that section 650G did apply, her Honour considered that it would have been appropriate to grant remedial relief to WAM to extend the period of time to give the notice required by section 650F, thereby avoiding any contravention of section 650G.¹³
 - (b) In respect of WAM’s interlocutory application, the Primary Judge was not persuaded that a declaration should be made that WAM did not breach section 630(3). Instead, her Honour considered that *“the alternative remedial relief should be made which will adequately address the issues”*.¹⁴
 - (c) Accordingly, the Primary Judge made orders that dismissed Keybridge’s application, granted remedial relief to WAM in respect of the section 630 procedural irregularity and awarded costs in favour of WAM and ASIC.¹⁵
27. In the Court of Appeal Proceedings (in summary), the Appeal Judges agreed with the conclusions of the Primary Judge that WAM had not contravened section 650G¹⁶ and made orders to dismiss Keybridge’s appeal application with costs.¹⁷
28. We note that the Courts’ conclusions on the section 650G issue are contrary to that of the Initial and Review Panels, which had accepted that the WAM Bid closed subject to defeating conditions. Hence, those Panels considered that all takeover contracts and acceptances in relation to WAM Bid became void and no transfers should have been registered given section 650G.¹⁸
29. Keybridge submitted that there was *“no conflict between the Panel’s orders as affirmed by the Review Panel and the orders and declarations of the Courts. The two decisions can and do exist together”*.
30. WAM submitted that *“the initial and review Panels were at pains to make clear that they were leaving the legal status of the Processed Shares to the Courts to determine”*, referring to the following passages of the Panels’ reasons which *“encouraged the parties to apply to the Court”*:

¹¹ Under section 650F(1), a bidder can only free offers under its bid from a defeating condition if it gives the target a notice declaring the bid free from the condition in accordance with the following: (a) if the condition relates only to the happening of an event or circumstance referred to in subsection 652C(1) or (2), not later than 3 business days after the end of the offer period or (b) in any other case, not less than 7 days before the end of the offer period

¹² *Keybridge Capital Ltd* [2020] NSWSC 1917 at [185]-[187]

¹³ *Ibid* at [220]

¹⁴ *Ibid* at [282]

¹⁵ *Ibid* at [281]-[284]

¹⁶ *Keybridge Capital Ltd* [2021] NSWCA 203 at [90], [99] and [120]

¹⁷ *Ibid* at [98], [99] and [120]

¹⁸ *Keybridge Capital Limited 04, 05 & 06* [2020] ATP 6 at [70]; *Keybridge Capital Limited 08R, 09R & 10R* [2020] ATP 9 at [58]

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- (a) The Initial Panel states that “[o]ur order relating to shareholders’ reversal right (see below) facilitates this by automatically ceasing if a Court makes orders or a declaration inconsistent with it.”¹⁹ It also states that its order relating to a six month voting freeze was intended to assist “with preserving the status quo as far as possible for a period to allow the parties to seek a Court declaration as to the status of the shares processed by WAM Active if desired.”²⁰
- (b) The Review Panel states that “[a]s presently drafted, the reversal right protects the interests of those affected by the unacceptable circumstances and may give WAM Active some impetus to deal with the legal consequences of its actions.”²¹
31. WAM further submitted that the Courts’ conclusions “alone confirm WAM Active as the legal owner of the Processed Shares” and that “[b]ecause the Court determined WAM Active was already the legal owner of the Processed Shares, orders or declarations confirming the status of the shares were not required and could not be made.”
32. Having considered the submissions, we do not consider that any of the orders made by the Primary Judge (as summarised in paragraph 26(c) above) or Appeal Judges (as summarised in paragraph 27 above) are inconsistent with Order 3. We note that the Courts did not make any declarations.
33. In our view, there is an attempt to clear up the status of the Processed Shares in the Court Proceedings and the Courts ultimately take a different view on the legal conclusions of the Initial and Review Panels. However, the Courts did not go so far as to make an order or a declaration that is inconsistent with Order 3.
34. We agree with WAM that the Initial and Review Panels left it open to WAM to pursue an application to the Court on the legal status of the Processed Shares to vary the operation of Order 3. However, in our view, WAM did not take up the opportunity in these Court Proceedings or otherwise to pursue with the Court the making of an order or a declaration that is inconsistent with Order 3.
35. Further, the Courts were not asked to judicially review the decisions of the Initial and Review Panels. On this point, Keybridge submitted that WAM could have “invoke[d] an ADJR review of the Panel and Review Panel’s declaration and failed to do so. The decision of the Court specifically did not, and could not, set aside the decision of the Panels. We now live in a world where the two co-exist together... The Panel’s declaration remains absolutely enforceable unless and until it is overturned by an ADJR decisions.”
36. We agree with Keybridge’s submissions that the decisions of the Courts have not, and could not have, set aside the decisions of the Initial and Review Panels as they were not judicially reviewed by WAM and were not the subject of the Court Proceedings. Those decisions have not been affected or overturned and therefore, the declaration and orders of the Initial and Review Panels still stand. The Chief Justice in the Court of Appeal Proceedings acknowledged that whether circumstances are acceptable is “a matter on which minds might differ. Suffice to say, the

¹⁹ At [131]

²⁰ At [118(d)(ii)]

²¹ At [118]

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Panel found the conduct unacceptable and its orders have not been challenged. It does not in my opinion impact on the question of construction”²² before the Court.

37. Given the above, we consider that Order 3 continues to be operative in its current form.

Necessity for perpetual withdrawal rights?

38. While we did not consider that the operation of Order 3 had been affected by the Court Proceedings, we queried whether the perpetual nature of the reversal rights might be problematic, or whether there was any confusion in the market as to the status of Order 3 in light of the decisions of the Courts which would warrant an amendment or variation to the Order. We sought submissions on this point from the parties.

39. Keybridge submitted that “[t]he perpetual nature of the withdrawal rights has already been considered by the Review Panel and the Panel considering the last variation of these Orders” and that “there is no confusion” in the market as to the status of Order 3 that would justify a variation or amendment.

40. WAM submitted that while it considered that the Courts had made orders inconsistent with Order 3, if the Panel “is minded to clarify the language of order 3 (to better reflects (sic) the intention of the initial and review Panel)” that Order 3 should be varied to make clear that WAM only needs to comply with a reversal request from Processed Shareholders “[f]rom and including the date of these orders until 24 December 2020” (being the date of the Primary Judge’s decision).

41. WAM further submitted that:

“The purpose of WAM Active’s application is to ensure that there is no possible confusion in the market. WAM Active does not want to revisit this issue in 3 months or 3 years’ time.

No withdrawal requests or enquiries had been received by WAM Active for close to 12 months (i.e. since before 24 December 2020).

After [Keybridge’s] ASX announcement... WAM Active has been contacted by one Processed Shareholder enquiring as to the status of these withdrawal rights.”

42. ASIC referred to and relied on its submissions made in the Review Panel proceedings, where it submitted:

“In relation to whether order 3 of the initial Panel’s orders should be limited by time, ASIC recognises that there is merit in this given there is otherwise indefinite uncertainty to WAM Active as to, for example:

- (a) its unfettered ownership of the Processed Shares; and*
- (b) whether a Processed Shareholder can, following considerable time, seek to reverse their prior acceptance for prevailing commercial reasons.*

²² At [89]

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These effects may be unfairly prejudicial depending on the review Panel's findings as to, among other matters, WAM Active's culpability in the unacceptable circumstances.

To the extent the Panel is minded to limit the order by time, ASIC notes that recognising the 'reversal' right is akin to a withdrawal right, a period of 1 month commencing on the giving of notice of the right may be sufficient for Processed Shareholders. Such a time period being consistent with s650E. In this case, ASIC considers that to the extent the review Panel affirms order 3 (and 5) or makes orders to similar effects, a fresh notice (with a restart of the notice period) may be appropriate."

43. ASIC further submitted that *"a variation of the Panel's orders would be appropriate as it is the operation of these orders which has given rise to the circumstances."*
44. Having considered the submissions, we considered that, in the circumstances, it was no longer necessary for the withdrawal rights to be perpetual and that a variation to Order 3 was warranted, including because:
- (a) It is difficult to predict how the perpetual nature of the reversal rights could affect future transactions involving Keybridge shares. For example, if WAM no longer holds any Keybridge shares and cannot acquire Keybridge shares on-market to fulfil any Processed Shareholder's reversal request, it is unclear what rights a Processed Shareholder may have and against whom. In addition, it is unclear how WAM would, for example, be able to warrant that its shares were free of encumbrances if Keybridge was the target in a merger scheme.
 - (b) Time has passed, such that the unacceptable circumstances have now been adequately remedied.
45. In addition, WAM and Keybridge have made conflicting ASX announcements regarding the status of the Panels' decisions and Order 3 which is potentially creating uncertainty in the market. We considered it desirable to clarify, and provide the market with certainty, on the status of the reversal rights.
46. We also note ASIC's submissions support limiting Order 3 by time.
47. Accordingly, we proposed a variation to Order 3 so that there is an end date on that Order, subject to there being a period of notice to Processed Shareholders.

Proposed variation to Order 3

48. Keybridge submitted that the Panel ought not to make the proposed variation to Order 3. However, if the Panel decided otherwise, it submitted that the Panel should *"allow a minimum of 6 months' notice to Processed Shareholders [and] confer on and (sic) Keybridge the function of communicating with Processed Shareholders and receiving and processing withdrawals"*.
49. WAM submitted that the proposed variation to Order 3 *"is inappropriate, uncommercial and not in keeping with the objectives and aims of the Panel"*. It submitted that it had *"sought orders to align the Panel's orders with the findings of the Court. Instead the Panel proposes to vary order 3 to re-enliven the withdrawal rights"*. In WAM's view, *"[a]ny order or variation that deprives WAM Active of shares it acquired in accordance with*

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the law can only be prejudicial.” It further submitted that the variation *“is not needed or appropriate to protect the interests of Processed Shareholders from WAM Active’s bid”* given the WAM Bid complied with Chapter 6.

50. Having considered the submissions and for the reasons outlined above, we were minded to proceed with making the proposed variation which would put an end date on Order 3, subject to there being a one month period of notice to Processed Shareholders (**Proposed Variation**).
51. However, we considered it appropriate to first consult with Processed Shareholders on our proposed decision. We note that section 657D(3) requires the Panel to give *“each person to whom the order is directed”* (emphasis added) an opportunity to make submissions before varying an order. As Order 3 is directed at WAM, strictly speaking we were not required to give Processed Shareholders an opportunity to make submissions prior to making any variation of Order 3. However, given the Proposed Variation would have the effect of depriving those Processed Shareholders who had not yet exercised their withdrawal rights of their right to do so, we considered it prudent to give them an opportunity to be heard.
52. We considered a one-month consultation period to be sufficient for Processed Shareholders to raise any concerns on our proposed decision. We note that the one-month consultation period combined with the one-month notice period proposed in the Proposed Variation would, in effect, give Processed Shareholders two months’ notice of the end date on Order 3. We considered this would provide Processed Shareholders with adequate notice of the time in which their reversal rights needed to be exercised if they still wished to do so.
53. We ultimately consulted with Processed Shareholders by way of a media release which was published on the Panel’s website and ASX on 7 March 2022.²³ The media release invited *“Processed Shareholders to make submissions in respect of [the Panel’s] 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 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.”* We asked for any submissions by 7 April 2022. We did not receive any submissions in response.
54. Accordingly, we decided to vary the Orders in line with our Proposed Variation so that the withdrawal rights in Order 3 are no longer perpetual in nature. The variation of orders also requires WAM to provide written notice to Processed Shareholders informing them of the end date on Order 3.

²³ See [TP22/19](#)

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DECISION

55. For the reasons above, we made the variation of orders set out in Annexure A.

Sharon Warburton
President of the sitting Panel
Decision dated 22 April 2022
Reasons given to parties 27 June 2022
Reasons published 5 July 2022

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Advisers

Party	Advisers
Keybridge Capital Limited	-
WAM Active Limited	Mont Lawyers Pty Limited



Australian Government

Takeovers Panel

Annexure A

CORPORATIONS ACT SECTION 657D VARIATION OF ORDERS

KEYBRIDGE CAPITAL LIMITED 04, 05 & 06 FURTHER VARIATION

Pursuant to section 657D(3) of the *Corporations Act 2001* (Cth)

THE PANEL ORDERS

The final orders made by the initial Panel in *Keybridge Capital Limited 04, 05 & 06* on 7 April 2020, which were affirmed by the review Panel in *Keybridge Capital Limited 08R, 09R & 10R* on 20 May 2020, and subsequently varied by the variation Panel in *Keybridge Capital Limited 04, 05 & 06 Variation* on 8 September 2020, are further varied by:

1. Amending Order 3 so that the following underlined words are included in the Order:

“Unless a Court makes orders or a declaration inconsistent with this Order, from and including the date of these orders WAM Active must comply with Order 5B if it receives a request from any Processed Shareholder (or a request from a Processed Shareholder’s agent or attorney) on or before the date that is 1 month from the Further Variation Date to reverse the transaction by which WAM Active acquired any Processed Shares from that Processed Shareholder.

For the avoidance of doubt, this Order applies in relation to all reversal requests received by WAM Active prior to the Variation Date but which have not been actioned.”

2. Inserting new Order 3A as follows:

“WAM Active must, within 3 business days of the Further Variation Date, provide written notice to each Processed Shareholder (excluding only those Processed Shareholders that either (1) withdrew and accepted into the Catalano Offer or (2) withdrew and had Processed Shares returned to them), using, to WAM Active’s knowledge, the last known registered address for that Processed Shareholder, informing them:

- (a) of the Panel’s decision to vary the orders so that there is an end date on Order 3 and
- (b) that Processed Shareholders who wish to withdraw their previous acceptance of WAM Active’s takeover offer dated 3 January 2020 have until 1 month from the Further Variation Date to exercise their reversal right in Order 3.”

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3. Including the following in Order 13:

“Further Variation Date 26 April 2022”

**Tania Mattei
General Counsel
with authority of Sharon Warburton
President of the sitting Panel
Dated 22 April 2022**