



Australian Government

Takeovers Panel

**Reasons for Decision
Keybridge Capital Limited 11, 12 & 13
[2020] ATP 16**

Catchwords:

Review of ASIC decision – decline to make a declaration – disclosure – efficient, competitive and informed market

Corporations Act 2001 (Cth), sections 618, 602, 631, 633, 654A, 655A, 656A, 656B, 657C, 657EA

Australian Securities and Investments Commission Regulations 2001 (Cth), regulations 16(1)(a), 20

Ford, Austin & Ramsay’s Principles of Corporations Law

Guidance Note 2: Reviewing Decisions, Guidance Note 4: Remedies General

ASIC RG 9: Takeover bids, ASIC RG 51 Applications for relief, ASIC RG 92: Procedural fairness to third parties

Otter Gold Mines Ltd v ASC & Ors (1997) 25 ACSR 382

Keybridge Capital Limited 08R, 09R and 10R [2020] ATP 9, Keybridge Capital Limited 04, 05 & 06 [2020] ATP 6, Lion-Asia Resources Pte Ltd [2009] ATP 25, Cape Lambert Minsec Pty Ltd [2009] ATP 12, Australian Pipeline Trust 01 [2006] ATP 27, Taipan Resources NL 07 [2000] ATP 18

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
YES	NO	YES	NO	NO	NO

INTRODUCTION

1. The Panel, Teresa Dyson, Michael Lishman and David Williamson (sitting President) affirmed ASIC’s decisions to grant relief to WAM Active Limited in relation to its bid for all the ordinary shares in Keybridge Capital Limited and declined to make a declaration of unacceptable circumstances in relation to the affairs of Keybridge.¹

2. In these reasons, the following definitions apply.

- ASIC** Australian Securities and Investments Commission
- Acceptance Facility** The mechanism described in paragraph 14 to allow Processed Shareholders to ‘accept’ the Current WAM Active bid
- Catalano Offer** Offer to Processed Shareholders by Antony Catalano, a director of Keybridge (through his controlled entities - Catalano Super Investments Pty Ltd ATF Catalano Superannuation Fund and Antstef Pty Ltd ATF Antstef Trust), to acquire their Processed Shares
- Corporations Act** *Corporations Act 2001 (Cth)*
- CRPNs** Has the meaning given in paragraph 4

¹ Keybridge in effect made three applications. See paragraph 22 for further information

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

Current WAM Active bid	Takeover bid announced on 28 April 2020 as subsequently amended
Keybridge	Keybridge Capital Limited
Processed Shares	Ordinary shares in Keybridge that were registered in the name of WAM Active through processing acceptances under its previous bid for all the ordinary shares in Keybridge announced on 13 December 2019
Processed Shareholders	Former shareholders in Keybridge whose shares are Processed Shares
WAM Active	WAM Active Limited

FACTS

Background

3. Keybridge is an ASX listed company (ASX code: KBC).
4. Keybridge has on issue both ordinary shares and convertible redeemable promissory notes (CRPNs).
5. On 16 July 2019, Keybridge was suspended from quotation on ASX. Keybridge remains suspended as at the date of these reasons.
6. On 13 December 2019, WAM Active announced an off-market takeover bid for all the ordinary shares in Keybridge at 6.5 cents per share and lodged its bidder's statement with ASIC. Its offer was subsequently increased to 6.9 cents per share.
7. On 25 February 2020, WAM Active announced, among other things, that its then offer remained subject to a condition it described as 'No Prescribed Occurrences' but was otherwise freed of conditions.
8. On 2 March 2020, WAM Active purported to free its bid of the 'No Prescribed Occurrences' condition, declare its bid unconditional and extend it to 7.00pm (Sydney time) on 3 April 2020.
9. On or about 6 March 2020, WAM Active commenced processing acceptances it had received under its bid.

Panel declaration and orders regarding WAM Active's previous bid

10. On 11 March 2020, Keybridge applied to the Panel for a declaration of unacceptable circumstances, submitting in essence that WAM Active had not freed its then bid of conditions in time and so the purported extension of its bid was not valid. This was *Keybridge Capital Limited 06*.²

² *Keybridge Capital Limited 04, 05 & 06* [2020] ATP 6

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

11. The Panel in that matter³ found that WAM Active had not effectively freed its then bid of all its defeating conditions and accordingly: it could not extend its bid, its bid closed subject to defeating conditions and all contracts and acceptances became void and no transfers should have been registered. It made a declaration of unacceptable circumstances on 7 April 2020 and orders on 9 April 2020, among other things, that unless a Court ordered or declared otherwise Processed Shareholders had an ongoing right to seek reversal of their acceptances and withdrawal of their shares. The Panel also said that the determination of the legal status of the Processed Shares was “a question more appropriately adjudicated by a Court.”⁴
12. On 15 April 2020, each of Keybridge and WAM Active sought reviews of the Panel’s decision to make orders. This is *Keybridge Capital Limited 09R and 10R*.⁵ While complicated by a multiplicity of applications and issues, essentially the outcome was that the review Panel affirmed the initial Panel’s declaration of unacceptable circumstances and orders. It also agreed that the legal status of the registration of the Processed Shares was more appropriately adjudicated by a Court.⁶

Current offers

13. On 28 April 2020, WAM Active lodged with ASIC, and served on Keybridge, a new bidder’s statement in relation to its current offer for all the ordinary shares in Keybridge at 6.9 cents per share. The offer is unconditional. It is otherwise on similar terms to the previous offer announced on 13 December 2019 that was the subject of the above Panel proceedings.
14. Following the granting of ASIC relief (see below) the offer included an offer to Processed Shareholders (that is, former Keybridge shareholders who had accepted WAM Active’s previous offer and whose acceptances had been processed) as well as to current Keybridge shareholders. The mechanism for ‘acceptance’ by Processed Shareholders of their Processed Shares is described in the replacement bidder’s statement. It is referred to as an Acceptance Facility, and it involves the Processed Shareholder signing an ‘Acceptance/Withdrawal Form’, by which:
 - (a) WAM Active is authorised to process a reversal request of the Processed Shareholder’s Processed Shares and to transfer the Processed Shares to a trustee for the benefit of the Processed Shareholder
 - (b) the Processed Shareholder agrees to hold the consideration repayable to WAM Active on trust and
 - (c) the Processed Shareholder agrees for WAM Active to arrange for the Processed Shares to be accepted into the Current WAM Active bid and for the consideration held on trust by the Processed Shareholder to be applied to

³ The matter was heard together with *Keybridge Capital Limited 04* and *Keybridge Capital Limited 05*

⁴ *Keybridge Capital Limited 04, 05 & 06* [2020] ATP 6 at [132]. In addition, the Panel included a ‘liberty to apply’ clause in its orders to make it clear that a party or ASIC could seek a variation of orders from that Panel if circumstances required, given the complicated nature of the matter

⁵ Heard together with a separate review in *Keybridge Capital Limited 08R, 09R and 10R* [2020] ATP 9

⁶ *Keybridge Capital Limited 08R, 09R and 10R* [2020] ATP 9 at [115]

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

satisfy WAM Active's obligation to pay the Processed Shareholder (i.e. a 'set-off').

15. Thus, the 6.9 cents per share previously paid to Processed Shareholders under WAM Active's previous bid is not required to be repaid in cash in order for Processed Shareholders to accept WAM Active's current bid (the Processed Shareholder will not receive a cash payment unless WAM Active increases its offer price).
16. On 1 June 2020, Keybridge announced that entities controlled by Antony Catalano (a director of Keybridge) intended to make an offer to the Processed Shareholders to acquire the Processed Shares for 7 cents per share. The Catalano Offer was subsequently increased to 7.1 cents per share. The Catalano Offer is made under Division 5A of Part 7.9 of the Corporations Act. It is possible for the offer to be structured in this manner as the total number of Processed Shares (16,057,929 – 8.5%⁷) plus the total number of shares held by the entities controlled by Antony Catalano (19,275,000 – 10.76%⁸) sum to less than 20%. The Catalano Offer (to any particular Processed Shareholder) is conditional only on a reversal for that holder's Processed Shares being satisfied. The mechanism involves a Processed Shareholder signing an acceptance form, which authorises the Catalano offeror to make a reversal request to WAM Active and for the Catalano offeror to repay the consideration of 6.9 cents per share to WAM Active, and further authorises the Catalano offeror to execute a transfer on behalf of the Processed Shareholder to transfer the Processed Shares to the Catalano offeror and for the Catalano offeror to pay the net difference to the Processed Shareholder (once the Processed Shares are transferred to the Catalano offeror).
17. Thus, the 6.9 cents per share previously paid by WAM Active to Processed Shareholders is not required to be repaid by them in order to accept the Catalano Offer. What Processed Shareholders accepting the Catalano Offer receive is 0.2 cents per share, being the difference between the 6.9 cent offer by WAM Active (repaid by the Catalano offeror) and the 7.1 cent offer by the Catalano offeror.

WAM Active's applications for ASIC relief

18. On 20 May 2020, WAM Active applied to ASIC for modifications of the Corporations Act under section 655A. It sought, among other things, relief in connection with its current offer as follows:
 - (a) Modification of section 654A(1) to allow compliance with the Panel's orders regarding reversal rights so as not to cause WAM Active to breach the Corporations Act, since that section prohibits a bidder disposing of bid

⁷ Keybridge and WAM Active use different numbers of shares on issue when calculating voting power. This was not an issue before us and we make no comment in relation to which is correct. We have used the smaller of the numbers (179,136,486) in the percentage calculations to demonstrate that in neither case is the total above 20%

⁸ Registered in the names of Catalano Super Investments Pty Ltd ATF Catalano Superannuation Fund and Antstef Pty Ltd ATF Antstef Trust. Mr Catalano's public disclosures disclose no shares held in his own name

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

securities during a bid period. This relief appears uncontroversial and is not the subject of complaint.

- (b) Modification of ASIC-amended section 633(1) item 6⁹ and ASIC-inserted section 633A(3)¹⁰ to allow a variation to WAM Active's offer terms and allow a replacement bidder's statement with the varied offer terms to be dispatched. A replacement bidder's statement dated 6 July 2020 was dispatched on 21 July 2020. It included the offer to Processed Shareholders by way of the Acceptance Facility.
- (c) Modification of ASIC-amended section 633(1) item 6, pending the outcome of ASIC's consideration of the above application, to extend the time frame for dispatch of the bidder's statement.

19. ASIC granted relief (ignoring intermediate steps) that ultimately:

- (a) By ASIC Instrument 20-0683 dated 3 July 2020, permitted a variation to the WAM Active offer so that it included all Keybridge shares on issue at 29 April 2020 and those issued on conversion of CPRNs until the end of the offer period. The original bidder's statement made offers to acquire all Keybridge shares "*not currently held by it or its Associates*", and together with the absence of the Processed Shareholders from Keybridge's register, ASIC submitted that this resulted in non-compliance with section 618. It submitted that "*the Acceptance Facility is facilitated by the modified bid terms as the bid would otherwise not have extended to the Processed Shares, including those dealt with by the facility.*"
- (b) By ASIC Instrument 20-0623 dated 23 June 2020, permitted dispatch of the replacement bidder's statement 70 days after lodgment of the original bidder's statement with ASIC.¹¹

Applications for court relief

- 20. On 1 June 2020, Keybridge filed an originating process in the Supreme Court of NSW seeking, among other things, a declaration that transfers to WAM Active of the Processed Shares were void and an order that any Processed Shares that were not withdrawn be vested in ASIC for sale.
- 21. On 16 July 2020, WAM Active filed an interlocutory process in the NSW Supreme Court action by Keybridge seeking, among other things, declarations that its previous bid was not non-compliant and that it was validly registered as the holder of the Processed Shares.

⁹ As amended by ASIC Class Order [13/528]. Item 6 as amended requires a bidder's statement (or replacement) and offers to be dispatched no later than 28 days after it had been served on the target and requires the offers to be on the same terms as in the original bidder's statement lodged with ASIC

¹⁰ Notionally inserted by ASIC Class Order [13/528], allowing the use of a replacement bidder's statement

¹¹ Strictly, ASIC Instrument 20-0623 amended to 70 days ASIC Instrument 20-0515 that effected an extension of time to 42 days

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

APPLICATIONS

22. By application to the Panel dated 24 July 2020, Keybridge submitted:
- (a) *“That the decision by ASIC to allow Acceptance Facility relief under Legislative Instrument 20-0683 be revoked.”* This is the application in *Keybridge 11*.
 - (b) *“That procedural fairness was not afforded by ASIC in relation to the decision by ASIC to allow for an extended time for WAM Active to dispatch its [replacement bidder’s statement] under Legislative Instrument 20-0623.”* This is the application in *Keybridge 12*.
 - (c) *“That the disclosure by WAM Active in its Replacement Bidder’s Statement dated 6 July 2020 (RBS) be corrected on the basis that the current disclosure represents unacceptable circumstances.”* This is the application in *Keybridge 13*.
23. We decided to conduct proceedings (discussed below) and directed that all three applications be considered together pursuant to regulation 16(1)(a) of the *Australian Securities and Investments Commission Regulations 2001* (Cth).
24. Keybridge submitted that the acquisition of control of the voting shares in a listed company was not taking place in an efficient, competitive and informed market for the purposes of section 602(a).

Interim orders sought

25. Keybridge sought interim orders, pending determination of its applications:
- (a) preventing WAM Active processing any acceptances under the Current WAM Active bid and
 - (b) staying the operation and implementation of ASIC’s decision to provide the Acceptance Facility relief under ASIC Instrument 20-0683.
26. Keybridge submitted that, given the Current WAM Active bid was live and unconditional, it would be extremely difficult to undo the effect of processing acceptances under the Acceptance Facility in the absence of interim orders. Keybridge noted that it had asked WAM Active to delay processing but the request had been refused. WAM Active had indicated to Keybridge shareholders that it would process acceptances each Friday.
27. Keybridge’s request for interim orders was put to the substantive President of the Panel on an urgent basis on the evening of Friday, 24 July 2020. The President noted a statement in WAM Active’s replacement bidder’s statement that *“WAM Active intends to pay the Offer consideration weekly, on each Friday during the Offer Period”*. Given an undertaking from WAM Active not to process any further acceptances under its bid until the following Friday (31 July 2020), the President declined to make the interim orders. The President considered that WAM Active’s undertaking maintained the status quo for the time being, and would provide a sitting Panel (if appointed in time, or the President if not) with sufficient time to consider Keybridge’s request. Prior to 31 July 2020, we were appointed so the President did not need to re-consider Keybridge’s interim orders request.

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

28. On 30 July 2020, we made interim orders (**Annexure A**).
29. The interim orders prevented WAM Active taking steps to process acceptances or 'Withdrawal/ Acceptance Forms' received. In view of the timing of the interim orders we allowed in the order for processing of acceptances to occur with our consent. This protected any shareholder or Processed Shareholder who may be unfairly prejudiced by the halting of processing while preserving the status quo and ensuring that our power to fashion final orders (if applicable) was not forestalled by intervening events.¹²
30. We did not otherwise stay the operation of ASIC Instrument 20-0683.¹³ We did not consider it necessary to do so.¹⁴

Final orders sought

31. Keybridge sought final orders, among others:
 - (a) setting aside ASIC's decision to provide the Acceptance Facility relief under ASIC Instrument 20-0683
 - (b) setting aside ASIC's decision to extend the time for dispatch of WAM Active's replacement bidder's statement (ie, under ASIC Instrument 20-0623) and remitting this to ASIC for reconsideration in accordance with any directions or recommendations of the Panel and
 - (c) requiring WAM Active to make corrective disclosure to its replacement bidder's statement.

DISCUSSION

32. While we directed that the related matters be considered together, it is convenient to separate out our reasons for our conclusions into each of the three applications.
33. We have considered all the material but address specifically only that part of the material we consider necessary to explain our reasoning.
34. In relation to *Keybridge 11* and *Keybridge 12*, the powers of a Panel reviewing a decision of ASIC are set out in section 656A(3). Our role is to conduct a *de novo* review on the merits.¹⁵ Relevantly, the factors we take into account include:
 - (a) the relevant ASIC policy and whether it was applied
 - (b) whether there is any reason why ASIC's policy should not be applied
 - (c) the legislative policy of Chapter 6
 - (d) Panel policy and rules and

¹² Guidance Note 4: *Remedies General* at [10]

¹³ See section 656B(2)

¹⁴ As discussed in paragraph 56 there may have been issues in doing so

¹⁵ Guidance Note 2: *Reviewing Decisions* at [10]. See also *Cape Lambert MinSec Pty Ltd* [2009] ATP 12 at [32]

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

- (e) the desirability of certainty and consistency in decision-making.¹⁶
35. Section 656A(3) provides that a Panel may exercise the same powers and discretions as ASIC and may affirm, vary or set aside the ASIC decision reviewed; and, if set aside, may substitute a new decision or remit the matter to ASIC for reconsideration in accordance with any directions or recommendations.
36. We first considered whether to conduct proceedings on each of the applications. Under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth), the Panel must decide whether to conduct proceedings on an application, which is defined as an application under sections 656A, 657C or 657EA. For the reasons below, we decided to conduct proceedings on each of the applications. We noted WAM Active’s preliminary submission that the applications were not timely¹⁷ but were not persuaded in all the circumstances that we should decline to conduct proceedings. We return to this below.
37. In each of the applications, we have considered the matter on its merits, including relevant legislative and Panel policy, the applications, preliminary submissions and submissions and rebuttals to the Panel’s brief. In relation to *Keybridge 11* and *Keybridge 12* we also considered the matters referred to in paragraph 34.¹⁸
38. Lastly, before turning to the detail, we also took a step back from the detailed considerations to consider, based on our commercial judgement and experience, the bigger picture through the lens of Chapter 6 policy. In other words, we looked at the situation overall bearing in mind the bid, the Catalano Offer, the way each of the offers was likely to be received by Processed Shareholders, and the impact it appeared likely that each of the offers (or withdrawal thereof) would have on affected parties such as the applicant, the bidder, the Catalano offeror and, most importantly, the interests of Keybridge shareholders, as well as on the market for control of Keybridge.

Conduct proceedings on *Keybridge 11* (Acceptance Facility relief)

39. In its application, Keybridge submitted that the Acceptance Facility resulted in Processed Shareholders being treated differently from other shareholders and this raised concerns as to how this coexisted with the equality principle that all offers need to be the same. It also submitted that the Acceptance Facility had the effect of the Processed Shares forming a different class. It submitted that the class arose due to:
- (a) the different treatment being provided to the Processed Shareholders (for example, because the payment process was different)
 - (b) the risk that the Processed Shares may not be perfected in WAM Active’s name

¹⁶ Guidance Note 2: *Reviewing Decisions* at [10]

¹⁷ Referring to *Lion-Asia Resources Pte Ltd* [2009] ATP 25

¹⁸ ASIC provided reasons in compliance with the Panel's Procedural Rule 3.2.3

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

- (c) the optionality associated with Processed Shareholders being able to reverse the transaction by which WAM Active acquired their Processed Shares under WAM Active's previous bid at any time and the giving up of that entitlement for no value
 - (d) the value attributable to Processed Shareholders associated with the Catalano Offer that was not available to any other shareholder and
 - (e) the reasons for Processed Shareholders accepting the Current WAM Active bid being entirely different to other shareholders.
40. It also submitted, among other things, that:
- (a) the Acceptance Facility operated as a detriment to Processed Shareholders because it removed their entitlement to the right of reversal at any future time and ASIC should not facilitate such an arrangement and
 - (b) the relief was not necessary and WAM Active's conduct had been such that *"It is incongruous for ASIC to provide Acceptance Facility relief."*
41. ASIC made a preliminary submission (among other things) that:
- (a) It did not agree with Keybridge's view that the Acceptance Facility raised substantive issues in relation to the equality principle in section 602. Processed Shareholders were offered the same bid as other shareholders and did not *"appear to be receiving any material additional benefit through these practical differences [in the Acceptance Facility] alone."*
 - (b) Even accepting that Processed Shareholders have a perpetual right to withdraw, this is no reason not to grant relief.
 - (c) The relief was necessary because, while section 654A relief would allow WAM Active to comply with the Panel's orders (that is, to dispose of Processed Shares during its bid), it did not remedy a potential section 618 breach (that is, that offers under an off-market bid must be for all or a specified portion of the securities in the bid class).
 - (d) While WAM Active's interlocutory process was filed after ASIC gave its relief, the Court could still make orders *"that do not impact any Processed Shares reversed in accordance with the right."*
42. ASIC's preliminary submission in respect of procedural fairness focussed on the submission that the Catalano entities were not consulted on the acceptance facility relief. It submitted that it was unclear how their *"rights, interests or legitimate expectations would be likely to have been directly, materially and adversely impacted."*
43. WAM Active submitted, among other things:
- (a) The scope and operation of ASIC Instrument 20-0683 is very limited and unaffected by the interlocutory proceedings.

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

- (b) It sought the relief “in response to [Keybridge’s] allegations that WAM Active’s Offer did not extend to all [Keybridge] shares and therefore breached s618” so the application in *Keybridge 11* is an abuse of process.
- (c) Keybridge has provided no evidence or submissions in support of setting aside ASIC’s decision and there is no reasonable prospect of the Panel reversing ASIC’s decision.

44. The issues raised in the application are significant and in our view warranted more detailed consideration. We decided to conduct proceedings on *Keybridge 11*.

Discussion on *Keybridge 11*

45. ASIC’s reasons for giving the relief in ASIC Instrument 20-0683, namely a modification of Item 6 of section 633 to permit WAM Active to modify its bid terms to clarify that its bid extended to Processed Shares included:

- (a) The Corporations Act does not allow a bidder to alter the terms of a bid from those lodged with ASIC under Item 2 of section 633. We take this to mean that the relief was necessary.
- (b) ASIC Regulatory Guide RG 9 at [9.573] states that ASIC will normally grant case-by-case relief to allow offers to be varied if:
 - (i) The altered document would have been accepted for lodgment. ASIC did not say that the varied bid terms could not have been made initially. We infer that ASIC would not have refused lodgment of a bidder’s statement that included the Acceptance Facility if it had also included the varied bid terms.
 - (ii) The target has an opportunity to respond. ASIC identified that both WAM Active and Keybridge made submissions.
 - (iii) The proposed variation is not contrary to section 602. We take it that ASIC did not think it was.

46. ASIC also had regard to the review Panel in *Keybridge 08R, 09R and 10R*, which said (in its decision email to the parties to that matter):

*“The review Panel considered that (i) it would not be inappropriate for Processed Shareholders to be given the opportunity to accept WAM Active’s current bid (ii) ASIC seemed best placed to facilitate this if necessary and (iii) if WAM Active and ASIC considered that further Panel orders were necessary, they could seek those under Order 12 (liberty to apply).”*¹⁹

¹⁹ The review Panel at [117], elaborated in its reasons by stating that: “It is conceivable that there could be a way to facilitate the ability of the former holders of Processed Shares to withdraw their acceptance and accept into either WAM Active’s new offer and deal with Keybridge’s objection by giving those shareholders the opportunity to accept the better offer in a competitive auction. We consider that it would not be inappropriate for Processed Shareholders to be given the opportunity to accept WAM Active’s new bid. While ASIC seems best placed to facilitate this, it is possible that WAM Active (or ASIC) could seek further orders under the liberty to apply provision in Order 12 or a variation of the orders under section 657D(3), if necessary.”

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

47. Keybridge submitted that it did not *“have difficulty with ASIC taking this into account as it did.”* It also submitted that it had no difficulty with the relief provided by ASIC Instrument 20-0563 in relation to section 654A(1) because that relief was necessary in order for WAM to properly make its offer. Keybridge further submitted, however, that WAM Active could have made its offer without the Acceptance Facility relief provided under ASIC Instrument 20-0683. It submitted that the instrument was not contemplated by the comment of the review Panel and was an inappropriate exercise of discretion by ASIC.
48. ASIC stated that it was satisfied that granting relief would be appropriate in the circumstances because (in summary):
- (a) the technical amendments were within the policy of RG 9 and would be matters for which it would ordinarily give relief
 - (b) the original offer terms may not meet the requirements of section 618, exposing all Keybridge shareholders to significant uncertainty
 - (c) the relief increased optionality for Processed Shareholders and
 - (d) Keybridge’s court proceedings did not seek the vesting of Processed Shares that were withdrawn, so the relief would not be inconsistent with potential court orders. Clearly therefore ASIC was aware of Keybridge’s court proceedings at the time it granted the relief. ASIC further stated in submissions on the brief that in view of the orders that Keybridge sought, it did not consider that it could decline relief because of *“the mere possibility of court orders being made that conflict with the effect of relief...”*
49. We agree with ASIC for the reasons that it gave. In our view the relief was not an inappropriate exercise of ASIC’s discretion. Keybridge also submitted that ASIC *“confuses the rationale for the grant of the section 654A relief with the grant of the Acceptance Facility relief.”* It is not apparent that ASIC did so.
50. Keybridge also submitted that the Acceptance Facility was too complex to be susceptible of relief because:
- (a) It combined two decisions in one and was confusing to Processed Shareholders. We do not think it is confusing.
 - (b) CRPN holders were not provided with an Acceptance Facility to combine two decisions in one. We do not think this matters to a consideration of the relief granted under ASIC Instrument 20-0683.
 - (c) The Acceptance Facility has the effect of the Processed Shares forming a different class. ASIC submitted that *“it is open for the Panel to take a pragmatic approach to the Acceptance Facility insofar as considering to what extent its existence means that the Processed Shareholders... should technically be in a different class for the purposes of Chapter 6.”* ASIC also submitted that *“the provisions in Chapter 6 indicate that certain differences in rights and obligations may be disregarded in delineating classes.”* We think they are not in a separate class and in any event in the circumstances of this case, and taking a pragmatic approach, any differences

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

between the Processed Shares and ordinary shares are minor and can be disregarded for the purpose of Chapter 6.

- (d) The replacement bidder's statement was misleading. In support, it submitted that the reasons why the offer should be accepted were irrelevant to Processed Shareholders, the "encouragement" to Processed Shareholders to accept the offer was misleading and Keybridge had received "several inquiries from Processed Shareholders about the status of their shares." Because we don't think there is a disclosure issue (see below), we don't need to consider this issue further.

51. ASIC submitted that its approach to applications for minor and technical relief involve "the application of existing policy to new situations, either legislative or administrative (e.g. where there is an existing policy, but it needs to be adapted to cover the application)"²⁰ and therefore, complexity of the situation in and of itself is not a reason for ASIC refusal.
52. ASIC also submitted that the Acceptance Facility itself did not need the relief in Instrument 20-0683 noting the scope of the relief²¹:
- "The relief ... allows for a permitted variation of the Offer Terms, which had the effect of extending the WAM bid to Processed Shares that are re-acquired by Processed Shareholders by requesting a reversal as permitted by Order 3. The Acceptance Facility is a mechanism that facilitates the exercise of reversal rights and subsequent acceptance into WAM's bid. The Acceptance Facility is facilitated by the modified bid terms as the bid would otherwise not have extended to the Processed Shares, including those dealt with by the facility."* (footnotes excluded)
53. In relation to the Acceptance Facility itself, ASIC submitted that it was "considered by ASIC to ensure that it was not contrary to any provisions in the corporations legislation and would not otherwise be inappropriate in the circumstances."
54. We understand ASIC to be saying that the Acceptance Facility could have been included originally and the relief was only to allow it to be included subsequently. We accept this and note that the Instrument also facilitated the ability for Processed Shareholders that exercise the reversal right separately to also accept the Current WAM Active bid without using the Acceptance Facility.
55. Subsequent to the relief being granted, WAM Active made its interlocutory application. ASIC submitted that in its view this did not negate the need for the relief, although acknowledged that there may be uncertainty about how the Acceptance Facility and the interlocutory application interact.
56. ASIC submitted that setting aside or varying the relief would make WAM Active's lawful conduct unlawful and remitting the relief decision back to ASIC may not result in any effective change because subsequent revocation would not affect accrued rights and liabilities. Of the many considerations, this is an important one in

²⁰ Referring to ASIC RG 51 Applications for relief at paragraph 22

²¹ The relief also included an amendment to ASIC Instrument 20-0563 which provided relief from section 654A(1)

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

our view. The Current WAM Active bid was lawful at the time of the application and acceptances have been received by WAM Active. If the bid is subsequently rendered unlawful this will complicate the situation even more and cannot be of advantage to Keybridge shareholders.

57. WAM Active submitted that the Acceptance Facility was an extension of the orders affirmed by the review Panel that “*merely seeks to facilitate the entire process and remove any administrative burden placed on the Processed Holders.*” We agree that the Acceptance Facility makes it easier for Processed Shareholders to reverse and re-accept, should they wish to do so. We note that the Catalano Offer is similar from a shareholder’s perspective.
58. For the reasons above, we do not consider that complexity was itself a reason to refuse relief. While it is always desirable that matters put to shareholders are as simple and straightforward as possible, this cannot always be achieved. At the date of the submissions on the brief WAM Active advised that no Processed Shareholders had accepted by way of the Acceptance Facility. It is hard to imagine former shareholders who, at least at this point in time, have little or nothing to gain²² engaging with WAM Active’s replacement bidder’s statement. Be that as it may, it was not so complicated that it could not be considered with a little application. It is not too complicated to be susceptible of relief in our view.
59. There is, in our view based on our commercial judgment and experience, no mischief or disadvantage created by the Acceptance Facility. It does not offend the principles in section 602 as any differences in treatment between Processed Shareholders and ordinary shareholders are technical and not material from a holder’s perspective. For instance, while there is a difference in the payment process at the offer price of \$0.069 (given the mechanism described in paragraph 14), in the event WAM Active increases its offer price, the replacement bidder’s statement states that “*the additional consideration will be paid by cheque in accordance with the Offer terms*” – this is consistent with the payment methods available to ordinary holders. The Acceptance Facility is also not unlawful in itself. While the Acceptance Facility may not be perfect, and indeed there are likely more elegant solutions to the problem that WAM Active faced, it is time to move on and let shareholders consider the Current WAM Active bid.
60. Keybridge submitted that “*The Acceptance Facility materially adversely affects the Catalano Entities for the purposes of RG 92.16.*” RG 92.16 refers to ASIC not being obliged to afford procedural fairness if a decision is unlikely to “*directly, materially and adversely affect a third party.*” Keybridge gave no details. We are inclined to agree with ASIC’s preliminary submission to the effect that it is unclear how the Catalano entities were so affected,²³ but in any event we consulted with the Catalano entities in the course of these proceedings (see paragraph 70 below).

²² Unless WAM Active increases its bid consideration

²³ See paragraph 42

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

61. Keybridge also submitted that ASIC provided relief to facilitate the Current WAM Active bid using 7 different instruments of relief, and submitted this was *“extraordinary and should not have been accommodated by ASIC... [particularly] given the litany of breaches by WAM Active of numerous takeover provisions meaning that WAM Active does not come with clean hands.”*
62. We have taken into account that the Panel in *Keybridge Capital Limited 04, 05 & 06*²⁴ and the review Panel in *Keybridge Capital Limited 08R, 09R & 10R*²⁵ identified instances where WAM Active contravened provisions of Chapter 6²⁶, but given the reasons ASIC gave in granting the relief we do not think the contraventions are a significant factor in whether it was appropriate for ASIC to give relief in this case.
63. For all these reasons we affirm ASIC’s decision under section 655A(1)(b) in ASIC Instrument 20-0683.

Conduct proceedings on *Keybridge 12* (extension of time)

64. Keybridge submitted that it was not afforded the ability to comment in relation to the decision by ASIC to extend the time for the dispatch of the Bidder’s Statement to 70 days, representing a breach of RG 92.
65. It appears that ASIC did consult Keybridge, but not on the last extension which took the time for despatch out to 70 days. Keybridge submitted that *“Such an extended period of time is novel and should not have been allowed.”*
66. WAM Active submitted that the basis for the application in *Keybridge 12*, namely ASIC’s alleged failure to consult Keybridge on the extension, was rectified by the Panel proceedings and therefore was not a ground for coming to a different conclusion (quoting the Panel’s Guidance Note 2). It further submitted that the application was an attempt to frustrate WAM Active’s bid.
67. We decided to conduct proceedings on *Keybridge 12*.

Discussion on *Keybridge 12*

68. Keybridge submitted, among other things, that:
 - (a) The extension of time relief *“should not be continuously applied to such an extent which is the longest extension ever granted by ASIC.”*
 - (b) Keybridge *“was not afforded procedural fairness on all subsequent extensions.”*
 - (c) Relief *“should have been conditional on WAM Active complying with the section 631 relief which WAM Active did not do.”*²⁷

²⁴ [2020] ATP 6 at [55] to [72]

²⁵ [2020] ATP 9 at [49] to [58]

²⁶ As well as matters where Keybridge submits that WAM Active has contravened other provisions

²⁷ ASIC granted section 631 relief on 29 June 2020, extending the timeframe to 7 July 2020 conditional on WAM Active making an ASX announcement explaining the relief. WAM Active did not make the announcement, expecting to lodge and dispatch the replacement bidder’s statement by 7 July. ASIC indicated in submissions that it would have extended the time if need be

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

- (d) *“WAM Active should not have lodged its initial Bidders Statement in the first place without having obtained ASIC relief in relation to the Processed Shareholders before doing so, and ASIC should have taken WAM Active's failure to seek such relief in advance into account before proving unprecedented relief.”*
- (e) *“The extension relief is linked to the Acceptance Facility relief, and if the Acceptance Facility relief should not have been granted, the extension relief should not have been granted either.”* It was open for WAM Active to have issued its replacement bidder’s statement at the time it received section 654A relief on 3 June 2020.
- (f) WAM Active did not come to ASIC *“with clean hands”*, noting WAM Active’s previous contraventions of Chapter 6.²⁸
69. ASIC’s reasons for giving the extension of time relief included (in summary):
- (a) ASIC was satisfied that granting relief would be appropriate and would allow it additional time to consider the suite of relief requested by WAM Active
- (b) it would be advantageous to target shareholders to receive one, accurate document, albeit later and
- (c) it was arguably unreasonable for WAM Active to despatch a bidder’s statement if it considered that the offer terms may be invalid.
70. ASIC requested submissions from Keybridge in relation to the first extension of time²⁹ and noted in its reasons that *“Keybridge did not oppose the provision of an extension of time to permit ASIC to consider the substantive elements of WAM’s relief application.”* ASIC submitted that it provided Keybridge with appropriate procedural fairness. We are inclined to agree. In any event however, if there is an issue, these proceedings cure it. In *Otter Gold Mines Limited v ASC*,³⁰ a decision of the Full Court of the Federal Court of Australia, the AAT set aside a decision of the ASC and remitted it back to the ASC for reasons including that an interested party was not afforded the opportunity of making a submission to the ASC.³¹ In deciding that the AAT made an error, the Court stated at 392:
- “... [the interested party] received a full and fair hearing on the review, which was a hearing de novo in respect of which the AAT was empowered to exercise all of the relevant powers and directions of the ASC. Any failure by the ASC to hear [the interested party] at the original hearing was irrelevant...”*³²
71. We consider that we have given a full and fair hearing to Keybridge in this matter.
72. The further extensions, or at least the last, resulted in a despatch date beyond the 2-month limit in section 631. ASIC considered this, according to its reasons, as it stated that historically it would have declined to provide such an extension. It granted the extensions in this case because a final decision on WAM Active’s application to allow

²⁸ Referring to its submission summarised in paragraph 61

²⁹ See paragraph 65

³⁰ *Otter Gold Mines Ltd v ASC & Ors* (1997) 25 ACSR 382

³¹ See at 391

³² See also Ford, Austin & Ramsay’s Principles of Corporations Law at [3.290] and [23.582]

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

a variation to the offer terms was still pending due to factors beyond its control, a further extension remained appropriate notwithstanding RG9.451 which says that ASIC policy is not to extend beyond the section 631 time (as that time itself may be extended), and it was not in Keybridge shareholders' interests to permit WAM Active's bid to lapse.

73. We agree with ASIC's reasons.
74. We note without comment WAM Active's rebuttal submission to the effect that Keybridge exploited the procedural fairness it was afforded to delay the release and dispatch of the Replacement Bidder's Statement. Whether WAM Active has contravened section 631 is a matter for another time and place. We accept that ASIC's reasons justified it coming to the view it did, and that ASIC complied with its long-standing policy, and we do not think this aspect warrants us interfering with the decision.
75. We do not see any reason why in this particular case (notwithstanding the length of the extension) that, as Keybridge submitted, "*such relief should not be continuously applied.*"
76. Keybridge has not identified any particular disadvantage it has suffered by reason of the extension in ASIC Instrument 20-0623, and indeed, ASIC points out that revocation or variation of that instrument may have unintended consequences.
77. Having considered now all the arguments for and against the granting of relief extending the time for dispatch of the replacement bidder's statement, we see no reason to interfere with ASIC's decision.
78. Moreover, making previously lawful conduct unlawful is not a desirable outcome³³ and for this reason also we do not think we should revoke or vary the relief. While Keybridge submitted that it would expect that WAM Active would make a new, compliant bid if the Panel interfered with this relief, we do not think that is a pragmatic position to adopt. Nor is it certain that WAM Active would make a new bid. And as ASIC submitted, it would likely prejudice Keybridge shareholders not to have the Current WAM Active bid available to them.
79. Perhaps, as Keybridge effectively submitted, WAM Active 'jumped the gun' in lodging its bidder's statement, but we are not satisfied that matter (if it is the case) should preclude the granting of any of the relief obtained by WAM Active.
80. We have also considered Keybridge's submission that WAM Active did not come with 'clean hands'. Even if this was true, we think ASIC was justified in giving relief.
81. For all these reasons we affirm ASIC's decision under section 655A(1)(b) in ASIC Instrument 20-0623.

³³ *Australian Pipeline Trust 01* [2006] ATP 27 at [56]

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

Conduct proceedings on *Keybridge 13* (unacceptable circumstances due to disclosure deficiencies)

82. Keybridge raised 5 concerns with WAM Active's disclosure in its replacement bidder's statement. In summary:
- (a) There was no clear, concise and effective distinction between Processed Shareholders and other shareholders.
 - (b) There was no explanation of the prejudice Processed Shareholders may suffer by accepting the WAM Active offer, being at a financial disadvantage compared to accepting the Catalano Offer.
 - (c) There was no discussion of what the Processed Shareholders give up by accepting using the Acceptance Facility, being the right to get their shares back from WAM Active at any time.
 - (d) Processed Shareholders were not adequately informed that they receive no cash for accepting into the Current WAM Active bid and instead fundamentally wrong statements were made, namely:
 - (i) the WAM Active offer is at an *"attractive cash price"*
 - (ii) there is *"certainty compared to retaining [Keybridge] Shares"*
 - (iii) the WAM Active offer *"provides liquidity"* and
 - (iv) *"[t]here are risks associated with being a minority shareholder of [Keybridge]"*.
 - (e) The replacement bidder's statement's taxation description also *"includes Processed Holders"*. However, withdrawal and acceptance may change the relevant transaction date for tax purposes.
83. WAM Active in its preliminary submission said that *"there is no reasonable prospect that [the Panel] would declare the circumstances unacceptable in respect of the disclosure within the [replacement bidder's statement]."* It denied there were any disclosure concerns.
84. Quoting from *Taipan 07*,³⁴ WAM Active submitted that the Panel has previously said it may be appropriate to decline to conduct proceedings if enough of the issues have been considered and determined by a sitting Panel. It submitted that this was the case here in *Keybridge Capital Limited 08R, 09R and 10R*. We do not think the disclosure issues have previously been determined.
85. We considered that there was enough to warrant further exploration in a brief, and decided to conduct proceedings.

Discussion on *Keybridge 13*

86. On the question of a clear, concise and effective distinction between Processed Shareholders and other shareholders, we accept WAM Active's submission that the options available to Processed Holders are sufficiently explained and we are

³⁴ *Taipan Resources NL 07* [2000] ATP 18, [52].

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

conscious of the relatively small number of Processed Shareholders.³⁵ It would likely be confusing for all shareholders if too much space was given over to a discussion of Processed Shares.

87. On the question of the lack of an explanation about Processed Shareholders being financially disadvantaged compared to accepting the Catalano Offer, direct comparisons are hard for many reasons, including tax treatment. As we have noted earlier, many Processed Shareholders may be unlikely to engage with the Current WAM Active bid; and in any event it would be better for comparisons of the kind complained of to be drawn out in a target's statement, where shareholders may take more notice.
88. Of course, having few likely readers is not a reason to ignore disclosure deficiencies. Section 636(1)(m), for example, requires the inclusion of any other information that is material to the making of a decision by offerees that is known to the bidder and does not relate to the value of securities offered as consideration. But the replacement bidder's statement is, in the end, a document that is designed to communicate WAM Active's offer to the offerees. It would be surprising to find a bidder's statement selling the merits of a competing proposal. Keybridge acknowledged the "*unusual circumstances*" of the case but submitted that it "*is unprecedented for a class of shareholders to be made a takeover offer where they receive no consideration for accepting it.*" Noting that this is not technically correct,³⁶ ultimately, we consider that this is an unusual situation and it is enough that the replacement bidder's statement draws out relevant information about that proposal. In our view, this is done sufficiently in this case.
89. On the question of what Processed Shareholders give up by 'accepting' using the Acceptance Facility, the replacement bidder's statement contains information that would allow Processed Shareholders to assess the opportunity cost of 'accepting' using the Acceptance Facility, and we are not satisfied that the disclosure is misleading. Keybridge submitted that "*Disclosure is required because [Processed Shareholders] are not receiving any value in return for accepting WAM Active's current bid. This differs from a usual situation. A heightened disclosure regime applies in these circumstances.*" For the reasons above, we don't think additional disclosure is required. If Keybridge thinks that Processed Shareholders should have more information on this, Keybridge is free to include that in a target's statement. Similarly, Processed Shareholders do not, in our view, need to be informed further by WAM Active that they receive no cash. Based on our commercial judgment and experience we think that any Processed Shareholders who engage with the replacement bidder's statement will understand this. Similarly, if Keybridge thinks that Processed Shareholders should have more information on this, Keybridge is free to include that in a target's statement.

³⁵ WAM Active processed 96 acceptances into its previous takeover bid, meaning there were 96 Processed Shareholders as at the date of the Panel's orders in *Keybridge Capital Limited 04, 05 & 06*

³⁶ Processed Shareholders that accept the Current WAM Active bid receive no net payment (unless WAM Active increases its offer price), but consideration still flows from WAM Active to the relevant holders

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

90. Keybridge submitted that it was misleading for WAM Active, in the section titled *“What options do Processed Shareholders have?”* to say it *“encourages all former [Keybridge] shareholders ... to exercise their reversal right and re-accept into this Offer.”*³⁷ Four options are detailed in this section – accept this offer, reverse and keep their shares, do nothing, and accept the Catalano selective offer. We do not think the use of the word *“encourages”* is misleading in the context.
91. WAM Active submitted that there were no material changes to the tax treatment of Processed Shareholders. We note that the tax treatment may well cross different tax years and this may matter to some of the Processed Shareholders but in the end we accept that it was sufficient here that the Processed Shareholders were directed to take independent tax advice. Given the unusual position they find themselves in, any who were considering the ‘Acceptance/Withdrawal’ could readily heed that advice.
92. Keybridge referred to the lack of disclosure about the interlocutory proceedings in the replacement bidder’s statement as an example of how Keybridge shareholders were prejudiced. It stated that the replacement bidder’s statement was dispatched after the interlocutory proceedings were issued. WAM Active submitted that those proceedings were issued after the replacement bidder’s statement was lodged and those proceedings were the subject of an ASX announcement by WAM Active on 24 July 2020. The replacement bidder’s statement is dated 6 July and dispatch was completed on 21 July. The interlocutory proceedings are dated 16 July. It is unclear why there is no supplementary bidder’s statement or why it took until 24 July to announce the proceedings on ASX. Perhaps it is because, as WAM Active submitted in another context *“The ASIC relief and Interlocutory Application are not inconsistent; they operate in different ways (the relief applying to the new Offer; the application dealing with the former bid).”* If WAM Active considered that it was required, WAM Active could issue a supplementary bidder’s statement.
93. In the end, we come to the view based on our commercial judgement and experience that, while the disclosure is not perhaps as clear or complete as it might have been, it is not so deficient as to give rise to unacceptable circumstances. We would not interfere at this stage of the bid. We do not agree with Keybridge that fundamentally wrong statements were made by WAM Active. All the issues identified are marginal concerns, in our view, and present no real problems for Processed Shareholders (and other Keybridge shareholders) even if the disclosure is less than perfect.
94. If Keybridge remains of the view that more disclosure is necessary to assist Processed Shareholders (and other Keybridge shareholders), it can disclose such information itself in a supplementary target’s statement.
95. We also directed our attention to whether there might be unacceptable circumstances because of coercion, namely that Processed Shareholders could use the Acceptance Facility but to exercise the reversal right they had to contact WAM Active directly.

³⁷ Replacement bidder’s statement, page 13 at the bottom of section 1.15

Takeovers Panel

Reasons – Keybridge Capital Limited 11, 12 & 13 [2020] ATP 16

96. Keybridge submitted that it was coercive, involving the need for a competing buyer for the Processed Shares to require the Processed Shareholder to contact WAM Active, wait for a response, repay 6.9c to WAM Active, wait for WAM Active to return those shares by processing on the register, and then effecting the purchase. WAM Active submitted that it was not coercive, noting that the Acceptance Facility was simply a mechanism and Processed Shareholders could also accept the Catalano Offer and Mr Catalano would contact WAM Active on their behalf.
97. We do not think there is coercion, noting that shareholders, including Processed Shareholders, are not required to do anything.
98. For all these reasons we decline to make a declaration of unacceptable circumstances. We consider that it is not against the public interest to decline to make a declaration and we had regard to the matters in section 657A(3).

DECISION

99. As part of our consideration, we looked at whether the court proceedings affected the Panel proceedings. We do not think so. Keybridge submitted that, if WAM Active were successful in its court proceedings, there would not be any need to rely on the relief permitting WAM Active to vary its offer terms. But the consequences of interfering with the relief, as explained above, appear to extend beyond correcting errors made in the previous WAM Active bid. And the relief affects the Current WAM Active bid, which is made to all Keybridge shareholders not just the Processed Shareholders.
100. Accordingly we affirmed ASIC's decisions and declined to make a declaration of unacceptable circumstances.
101. In relation to the timeliness of Keybridge's ASIC relief applications, WAM Active submitted that "*The Applications were not made in a timely fashion. The Panel stated in Lion-Asia Resources Pte Ltd [2009] ATP 25, that the appropriate time to challenge decisions by ASIC is when those decisions were first made.*" Given our views on the substantive merits of Keybridge's ASIC relief applications, we do not need to decide whether the applications were timely. However, if we had been minded to do something other than affirm ASIC's relief we would have considered this issue further.

Orders

102. Given that we affirm ASIC's decisions and make no declaration of unacceptable circumstances, we make no final orders, including as to costs.
103. As we have determined these proceedings, our interim order dated 30 July 2020 ceases to have effect.

David Williamson

President of the sitting Panel

Decision dated 7 August 2020

Reasons given to parties 27 August 2020

Reasons published 31 August 2020

Takeovers Panel

Reasons - Keybridge Capital Limited 11, 12 & 13
[2020] ATP 16

Advisers

Party	Advisers
Keybridge Capital Limited	Baker McKenzie
WAM Active Limited	Mont Lawyers



Australian Government

Takeovers Panel

Annexure A
CORPORATIONS ACT
SECTION 657E
INTERIM ORDERS

KEYBRIDGE CAPITAL LIMITED 11, 12 & 13

Keybridge Capital Limited (**Keybridge**) has made an application in relation to its affairs, which is the subject of Panel proceeding Keybridge 13.

(Keybridge has also made applications in relation to reviews of ASIC decisions made under section 655A of the *Corporations Act 2001* (Cth), which are the subject of Panel applications Keybridge 11 and 12.)

The Panel ORDERS that, without the consent of the Panel, WAM Active Limited (**WAM Active**) must not take any or any further steps, or allow any or any further steps to be taken, to process any:

1. Acceptances received under, or any transfers in relation to, WAM Active's bid for Keybridge.
2. "Withdrawal/Acceptance Forms" received (as that term is used in WAM Active's replacement bidder's statement dated 6 July 2020 – **Replacement Bidder's Statement**). For avoidance of doubt order 2 includes not taking steps 2 to 4 as described in section 1.16 of the Replacement Bidder's Statement.

These interim orders have effect until the earliest of:

- (i) further order of the Panel
- (ii) the determination of the proceedings and
- (iii) 2 months from the date of these interim orders.

Tania Mattei
Counsel
with authority of David Williamson
President of the sitting Panel
Dated 30 July 2020