



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/08

Tuesday, 18 February 2020

Keybridge Capital Limited 04 - Panel Receives Application

The Panel has received an application from WAM Active Limited in relation to the affairs of Keybridge Capital Limited.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

On 13 December 2019, WAM Active issued a bidder's statement for an off-market bid for Keybridge at a price of 6.5 cents per Keybridge share. The bid is subject to a number of defeating conditions. The closing date for the bid is currently 3 March 2020.

On 8 January 2020, Aurora Funds Management Limited as responsible entity for the Aurora Dividend Income Trust (**ADIT**) announced an intention to make a competing off-market bid for Keybridge at a price of 6.6 cents per Keybridge share.

On 20 January 2020, Keybridge issued a target's statement in response to the WAM Active bid.

On 21 January 2020, Keybridge made several announcements, including that one Keybridge director was being removed from his position for failing to attend any meetings of directors for 3 consecutive months (although that position is being challenged) and one Keybridge director was retiring from the board and not standing for re-election at Keybridge's annual general meeting.

On 21 January 2020, Keybridge held its annual general meeting. The meeting resulted in a 'second strike' for Keybridge on its remuneration report and a

resolution requiring Keybridge to hold a s250V¹ spill meeting was passed. This meeting is yet to be called by Keybridge.

On 7 February 2020, ADIT issued a bidder's statement in respect of its bid. The bidder's statement noted that ADIT, Aurora as responsible entity for HHY Fund (**HHY**) and Aurora as responsible entity for Aurora Fortitude Absolute Return Fund (**AFARF**) have entered into agreements to fund an aggregate amount of \$3.775m for the ADIT bid.

On 12 February 2020, Keybridge announced that it had agreed to place 22,000,000 ordinary shares to sophisticated investors at an issue price of 6.9 cents per Keybridge share, triggering a defeating condition to the WAM Active bid, and that ADIT had consented to the placement for the purpose of ASX Listing Rule 7.9.

WAM Active submits, among other things, that:

- the conduct of Keybridge and Aurora during, and prior to, the WAM Active bid period, *"including ADIT announcing its competing bid without obtaining funding and then consenting to the Placement"*, has frustrated the WAM Active bid and denied Keybridge shareholders the right to choose between competing control transactions
- there are material disclosure deficiencies in Keybridge's target's statement and ADIT's bidder's statement and
- the cumulative effect of the placement, the material deficiencies in Keybridge's target's statement and ADIT's bidder's statement, and the timing of the ADIT bid (considered in conjunction with Keybridge's director recommendation and the proposed timing of an independent valuation of Keybridge shares), are such that control over voting shares in Keybridge cannot take place in an efficient, competitive and informed market in contravention of the principles in s602(a)-(c).

WAM Active seeks interim orders including an interim order prohibiting Keybridge from issuing any new shares or otherwise taking any action to alter its issued capital for the duration of the WAM Active bid.

WAM Active seeks final orders:

- cancelling the placement shares and returning all subscription monies to investors immediately
- causing Keybridge to, among other things, convene and hold a general meeting for the purposes of s250V and consider a resolution from WAM Active to

¹ All statutory references are to the *Corporations Act 2001* (Cth)

remove Mr Bolton as a director of Keybridge, and release a supplementary target's statement which addresses and corrects alleged defective disclosures in Keybridge's target's statement

- causing Aurora (in its capacity as responsible entity of ADIT) to withdraw the ADIT bid immediately unless it is able to establish to the Panel's satisfaction that it has adequate funding for all Keybridge shares and release either an announcement of that withdrawal or a supplementary bidder's statement that addresses and corrects alleged defective disclosures regarding ADIT's funding arrangements² and
- allowing the WAM Active bid to remain open (without having to offer withdrawal rights) until Keybridge shareholders have been issued and given the opportunity to consider the effect of the aforementioned supplementary disclosures and all necessary member approvals have been obtained.

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² and causing Aurora (in its capacity as responsible entity of HHY and AFARF) to obtain all necessary unitholder consents in respect of the proposed related party funding arrangements as soon as possible (or disclose to members why such approvals are not required)