



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP20/14

Thursday, 12 March 2020

## Keybridge Capital Limited 06 – Panel Receives Application

The Panel has received an application from Keybridge Capital Limited in relation to its affairs. Keybridge is the subject of competing takeover bids from WAM Active Limited and Aurora Funds Management Limited as responsible entity for the Aurora Dividend Income Trust.

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 bidder's statement was despatched to Keybridge shareholders on 3 January 2020.

On 10 February 2020, WAM Active announced that it had extended its bid to 3 March 2020 (following an earlier extension).

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, with the issue triggering a prescribed occurrence condition to the WAM Active bid (**Defeating Condition**).

On 24 February 2020, WAM Active announced among other things that it had elected to waive the majority of the conditions to its bid, whilst noting that its bid remained subject to the Defeating Condition.

On 25 February 2020, WAM Active purported to issue a section 630(3)<sup>1</sup> notice (as to the status of the conditions to its bid) reiterating that the WAM Active bid remained subject to the Defeating Condition, that the bid has been freed of all other conditions

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<sup>1</sup> All statutory references are to the *Corporations Act 2001* (Cth)

and stating that, as far as WAM Active was aware, the Defeating Condition had not been fulfilled.

On 2 March 2020, WAM Active gave notice under section 650F purporting to free the WAM Active bid of the Defeating Condition, announcing that the bid was unconditional and issuing a notice extending the bid until 3 April 2020.

Keybridge submits, among other things, that:

- for the purposes of section 650F, WAM Active needed to free its bid of the Defeating Condition not less than 7 days before the end of the offer period<sup>2</sup>
- this did not occur, meaning that the WAM Active bid was not freed of the Defeating Condition, and the condition remains on foot and
- WAM Active was not able to extend its bid on 2 March 2020 or in any case without notifying Keybridge shareholders of their withdrawal rights.

The Acting President made interim orders in relation to this matter on 11 March 2020 (see [TP20/12](#)).

Keybridge seeks final orders including:

- declaring that WAM Active has not properly freed its bid from a defeating condition for the purpose of section 650F
- declaring that Keybridge shareholders who accepted the WAM Active bid on or after 25 February 2020 have their acceptances cancelled (and any processing and transfers which have occurred to date be reversed)
- entitling Keybridge shareholders who accepted the WAM Active bid before 25 February 2020 be provided with at least one month's notice of withdrawal rights, or alternatively that such acceptances should be cancelled and
- requiring WAM Active to release an announcement in such form as the Panel determines correcting any misleading statements made by it in relation to the status of its bid.

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<sup>2</sup> As (i) the Defeating Condition includes an event or circumstance not referred to in section 652C as the reference to "Controlled Entities" in section 10.7(c)(i) of WAM Active's bidder's statement goes beyond section 652C(1)(a); and (ii) due to the effect of section 10.8(c) of WAM Active's bidder's statement, the condition in section 10.7(c)(iv) of WAM Active's bidder's statement could only be freed as a result of the state of mind or opinion of WAM Active