



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/31

Friday, 22 April 2022

Keybridge Capital Limited 04, 05 & 06 – Further Variation of Orders

On the application of WAM Active Limited, the Panel has varied the Panel's orders in *Keybridge Capital Limited 04, 05 & 06* (see [TP20/24](#)). These orders were previously affirmed by the review Panel in *Keybridge Capital Limited 08R, 09R & 10R* (see [TP20/34](#)) and subsequently varied by the variation Panel (see [TP20/54](#)).

Relevantly, Order 3 of the orders gives persons who accepted into WAM Active's off-market takeover bid for Keybridge¹ (**WAM Bid**) and had their acceptances processed (such persons defined in the orders as **Processed Shareholders**) a perpetual withdrawal right. The withdrawal rights are expressed to be operative "[u]nless a Court makes orders or a declaration inconsistent with [Order 3]...".

WAM Active sought a variation of the orders to clarify the operation of the withdrawal rights in light of the decisions of the Supreme Court of New South Wales in the matter of *Keybridge Capital Ltd* [\[2020\] NSWSC 1917](#) (on 24 December 2020) and the New South Wales Court of Appeal in the matter of *Keybridge Capital Ltd v WAM Active Ltd* [\[2021\] NSWCA 203](#) (on 8 September 2021).

On 7 March 2022, the Panel announced that it was minded to vary the orders so that there is an end date on Order 3 (i.e. so that the withdrawal rights are no longer perpetual in nature), subject to there being a one month period of notice to Processed Shareholders. The Panel invited Processed Shareholders to make submissions in respect of its proposed decision prior to Thursday, 7 April 2022 (see [TP 22/19](#)). The Panel did not receive any submissions in response.

Accordingly, the Panel has varied the orders so that there is an end date on Order 3. Processed Shareholders who wish to withdraw their previous acceptance of the WAM Bid have until **Thursday, 26 May 2022** to exercise their withdrawal rights in Order 3.

¹ Announced on 13 December 2019

The variation of orders also requires WAM Active to provide written notice to Processed Shareholders² informing them of the end date on Order 3.

The variation to the orders is set out in Annexure A.

The sitting Panel was Chelsey Drake, Bruce McLennan and Sharon Warburton (sitting President).

The Panel will publish its reasons for the decision in due course on its website.

Allan Bulman
Chief Executive, Takeovers Panel
Level 16, 530 Collins Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au

² Other than those that had previously exercised their withdrawal rights



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."

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