

28 November 2024

Mr James Gerraty
Head of Listings Compliance
ASX Limited
525 Collins Street, Rialto
North Tower Level 4
Melbourne VIC 3000

By email: james.gerraty@asx.com.au

Dear Mr Geratty

RE: KEYBRIDGE CAPITAL LIMITED – ASX QUERIES

We refer to your email received at 2.39pm on Thursday, 21 November 2024, attaching a letter of the same date (**Letter**), with a number of queries.

Set out below is Keybridge's response to each of the questions in your letter (in bold). Capitalised terms used in this letter have the meaning given in your letter unless otherwise defined.

KEYBRIDGE RESPONSE TO ASX QUERIES

Question 1

Please provide August, September and October 2024 NTAB reports in suitable detail?

In circumstances where Keybridge's largest shareholder has caused the Company to incur substantial costs because of its misguided concerns drawn from previous NTAB reports, Keybridge has elected to adopt a concise monthly report to advise of its net tangible asset backing, consistent with the disclosures made by most other investment related companies. Further, Keybridge will continue to make ASX Announcements in circumstances where material developments occur.

Question 2

Does KBC still consider its financial condition is adequate to warrant continued quotation of its securities as required by Listing Rule 12.2? If so why?

Consistent with earlier responses provided to the ASX on this matter, Keybridge considers its total assets of more than \$25 million and a profit after tax of more than \$7 million in the year ended 30 June 2024 warrants the continued quotation of its securities as required by Listing Rule 12.2. In addition, the Company continues to explore and secure various debt or equity capital raising opportunities.

Please answer with reference to the following:

- The matters set out in note 26 of the financial report contained in the Annual Report, which appear to have had a significant, cumulative negative effect on the net assets and liquidity of KBC.

Apart from the unfavourable verdict in relation to the claim against the former directors of PR Finance Group Limited (in Liquidation), which was disclosed by way of ASX Announcement on 29 August 2024, each of the other matters in note 26 either had a neutral impact on the net asset position of the Company (eg. loans which were later repaid) or had been adequately provisioned at 30 June 2024. Consequently, Keybridge does not consider there to be a cumulative negative effect on its net assets or liquidity.

As previously advised, the Company was offered debt finance of \$3.5 million secured against its Mainly property related assets (at a 50% LVR) by an external debt financier. Whilst no steps have been taken to refine the terms and conditions of such a debt facility, this could be pursued if the Company requires funding.

- The concerns described in the Supreme Court of NSW judgment in relation to the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton and KBC's ability to recover it.

The concerns described in the Supreme Court of NSW judgment were not concerns of the court but rather a description by the court of the concerns raised by our opponents in the litigation. There was no evidence for the court to form a view on these concerns and those concerns are otherwise denied. A draft loan agreement did exist; however, it hadn't been finalised or executed due, in part, to third party dependencies. On 30 September 2024, a loan agreement was executed with the Borrowers, being the 'asset rich entity', Crotto Del Nino, S.r.l., and Mr Bolton, being jointly and severally liable to repay the Loan (**Borrowers**).

The Loan is on commercial terms and must be repaid either by the proceeds of the Restraint of Conduct Liability or, failing that, by the Borrowers.

The Loan was authorised pursuant to the conditional approval in favour of the Borrowers, granted by the Board of the Company by resolution on 6 June 2024. The only condition attached to approval was the receipt of confirmatory advice from an independent law firm that the granting of the loan to a related party of the company was permissible, including in compliance with ASX listing rule 10.1. The condition was satisfied prior to the draw of the loan.

Question 3

Please provide any update to the events described in note 26 of the financial report contained in the Annual Report and any new material events relating to KBC's assets, liabilities and liquidity. If there are no new, material events please confirm the same.

WAM Winding up court action was heard in the NSW Supreme Court between 11-13 November 2024, and on 27 November 2024, His Honour Nixon J ruled in favour of Keybridge on all matters. Consistent with the unqualified audited financial statements for the year ended 30 June 2024 and His Honour's judgement, Keybridge is indeed solvent.

Further, Keybridge advises of the following additional matters:

- \$0.750 million loan from Yowie under an existing Reciprocal Loan Facility Agreement;
- \$0.750 million offer of debt finance from Roadnight Capital, which is still being finalised; and
- \$1.7 million equity capital raise, subject to a draft Notice of Meeting and Explanatory Memorandum (which is currently with the ASX for review).

Question 4

Does the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton remain undocumented?

No.

4.1 If the answer to question 4 is 'no', please state when it was entered into and provide a copy of the agreement (not for release to the market) and a description of the key terms of the agreement (for release to the market).

The Loan was executed on 30 September 2024, refer attached for a copy. Key terms of the agreement are as follows:

- The Loan is on commercial terms and must be repaid by the proceeds of the Restraint of Conduct Liability or, failing that, by the Borrowers
- Loan Amount: \$4.95 million (comprising \$4.75 million for Restraint of Trade Liability and \$0.2 million for Bonus)
- Interest Rate: 10% per annum
- Maturity Date: aligned with the Restraint of Trade Liability owed by the Company to Mr Bolton, being a date no later than 10 December 2025, with the loan repayment to be
- Security: Unsecured

4.2 If the answer to question 4 is 'yes', why?

Not applicable.

Question 5

What, if any, evidence or submissions were provided to the auditor in relation to the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton to support the Directors' Declaration and the Auditor's Report? Please provide details.

The loan was advanced in July 2024, and a copy of the Loan Agreement was provided to the auditors along with a copy of the Restraint of Conduct Agreement.

The auditors reviewed Board minutes and made enquiries of management regarding the unsecured loan and required details to be included in the Remuneration Report in the financial statements for the year ended 30 June 2024, notwithstanding the loan occurred in July 2024.

The Loan is on commercial terms and must be repaid either by the proceeds of the Restraint of Trade Liability or, failing that, by the Borrowers.

Details of the Restraint of Conduct Liability were also set out in the Remuneration Report in the financial statements for the year ended 30 June 2024. Further, an independent expert has reviewed the Restraint of Conduct Agreement and the Loan Agreement and found the quantum of the Restraint of Conduct liability and the Loan Agreement to be reasonable.

In June 2024, Magellan unitholders overwhelmingly approved the conversion of MGF's Closed Class securities to Open Class, with 927,204,710 units (representing 99.78%) being voted in favour. The gap between the market price on the ASX and the NAV at 30 April 2023 was 35.8 cents per unit, resulting in a total gain of \$494.5 million to ALL Closed Class unitholders. Consequently, with the MGFO options also having expired on 1 March 2024, Keybridge (excluding Mr Bolton) considers the prospect of Mr Bolton being able to disrupt the Magellan Global Fund, and thereby breach the Standstill Agreement, to now be practically impossible, with the Magellan Global Fund having more than \$8 billion in funds under management and the flexibility to issue as many Open Class units on AQUA as it desires. This is detailed in the Magellan ASX announcement of 26 June 2024.

As such, Keybridge considers the funds advanced under the Loan Agreement will be offset against the Restraint of Conduct Liability (in December 2025), which is recorded as a liability in the Company's balance sheet, rather than having to be repaid by Mr Bolton. Consequently, the Keybridge Board considers the risk of Mr Bolton breaching the Standstill Agreement to be remote. In addition, an independent expert has opined:

Commercially, the only reason to defer the payment to Mr Bolton for his execution of the Standstill Deed was to protect Keybridge should Mr Bolton breach its covenants. That risk

having all but disappeared, amending the retention to the form in the Loan Agreement is consistent with the residual risk to Keybridge. I have seen similar events where, for example an earn out condition will clearly be met. The goodwill garnered is precious.

Question 6

In the KBC directors' view, were sufficient and appropriate disclosures, as required by relevant Australian Accounting Standards, made in the Annual Report in relation to the Supreme Court of NSW judgement dated 27 September 2024 regarding the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton?

Yes, the Keybridge Board considers that the disclosures made in the Annual Report in relation to the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton to be sufficient and appropriate.

Question 7

If the answer to question 6 is 'yes', please explain the basis for such view.

Keybridge considers the following disclosures made in the financial statements for the year ended 30 June 2024 provide sufficient information to its shareholders, including:

- Pg 10 Remuneration Report

In July 2024, the Company advanced an unsecured loan of \$4.95 million to an audited asset rich entity owned by Mr Bolton, pursuant to a loan agreement, equal to the unpaid restraint of conduct fee (\$4.75 million) and bonus (\$0.2 million). The loan is on commercial terms with an interest rate of 10% p.a., capitalising yearly and the maturity date is tied to, and is to be set off against, the restraint of conduct liability (in December 2025). In circumstances where the Company requires the loan to be repaid, including due to a breach of the standstill agreement, the audited asset rich entity has sufficient assets to repay the loan and the obligation to do so is joint and several with Mr Bolton.

- Pg 12 Remuneration Report

In relation to Cash Salary and Fees, Mr Bolton was paid \$165,003 (and not \$330,000) during the year, with the balance of \$164,997 being accrued at year end. In relation to, Other Benefits, section '(2) Remuneration Policy' above sets out details on the Restraint of Conduct payment arrangement with Mr Bolton which has a net present value of \$4,467,132 and is scheduled to be offset against a payment in December 2025 and the unsecured loan of \$4.95 million advanced in July 2024 to an audited asset rich entity owned by Mr Bolton, pursuant to a loan agreement, equal to the unpaid standstill fee (\$4.75 million, has a net present value of \$4,467,132 and with the loan repayment to be offset against the Restraint of Conduct payment in December 2025) and bonus (\$0.2 million) earned during the year and payable at balance date.

- Note 26 subsequent events

In July 2024, the Company advanced an unsecured loan of \$4.95 million to an audited asset rich entity owned by Mr Bolton, pursuant to a loan agreement, equal to the unpaid restraint of conduct fee (\$4.75 million) and bonus (\$0.2 million). The loan is on commercial terms with an interest rate of 10% p.a., capitalising yearly and the maturity date is tied to, and is to be set off against, the restraint of conduct liability (in December 2025). In circumstances where the Company requires the loan to be repaid, including due to a breach of the standstill agreement, the audited asset rich entity has sufficient assets to repay the loan and the obligation to do so is joint and several with Mr Bolton.

Question 8

Please confirm that KBC is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

Keybridge confirms that it is in compliance with the Listing Rules, including Listing Rule 3.1.

Question 9

Please confirm that KBC's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of KBC with delegated authority from the board to respond to ASX on disclosure matters.

Keybridge confirms its responses to the above questions have been reviewed by all the directors of the Board.

Yours faithfully,



John Patton
Company Secretary



21 November 2024

Reference: 103546

Mr John Patton
Company Secretary
Keybridge Capital Limited
Suite 614
370 St Kilda Road
Melbourne VIC 3004

By email:

Dear Mr Patton

Keybridge Capital Limited ('KBC'): 2024 Annual Report and Listing Rule 12.2 compliance

ASX refers to the following:

- A. KBC's 2024 annual report ('Annual Report') released on the ASX Market Announcements Platform ('MAP') at 3:09pm on 30 October 2024 disclosing in note 26 'Events occurring after the reporting period' of the financial report the following.
- (a) advance of an unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton in July 2024;
 - (b) payment in July of \$0.2 million to Mr Catalano to extinguish a success fee liability;
 - (c) entry on 3 July 2024 into a short-term debt facility and borrowing of \$3 million and its repayment on 12 August 2024;
 - (d) entry into a short-term debt facility and \$0.5 million borrowing on 25 September 2024;
 - (e) payment of \$0.2 million to Bell Potter pursuant to a Settlement Deed on 25 September 2024; and
 - (f) payment in October 2024 of the costs claim made by Wilson Asset Management (which according to a reference in the review of operations section contained in the Directors' Report would approximate \$0.275 million plus interest).
- B. The independent auditor's report to the members of KBC prepared by KBC's auditor William Buck and signed on 29 October 2024 ('Auditor's Report') expressing the following opinion on the financial report.
- In our opinion, the accompanying financial report of Keybridge Capital Limited (the Company) and its controlled entities (together, the Group) is in accordance with the Corporations Act 2001, including:*
- *giving a true and fair view of the Group's financial position as at 30 June 2024 and of its financial performance for the year then ended; and*
 - *Complying with Australian Accounting Standards and the Corporations Regulations 2001.*
- C. The Auditor's Report stating in its basis of opinion:
- We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.*
- D. Three of five key audit matters referred to in the Auditor's Report were 'non-current loans and receivables', 'employee loans' and 'Disclosure of Related Party transactions'.

- E. KBC's Directors' declaration signed 29 October 2024 contained on page 56 of the Annual Report and forming part of the financial report (the 'Directors' Declaration') which states:

The Directors of the Company declare that:

(1) The financial statements, comprising the Consolidated Statement of Profit or Loss and Other Comprehensive Income, Consolidated Statement of Financial Position, Consolidated Statement of Cash Flows, Consolidated Statement of Changes in Equity, and accompanying notes as set out on pages 22 to 55 are in accordance with the Corporations Act 2001 (Cth) and:

- comply with Australian Accounting Standards, the Corporations Regulations 2001 and other mandatory professional reporting; and*
- give a true and fair view of the Consolidated Entity's financial position as at 30 June 2024 and of its performance for the financial year ended on that date;*

(2) In the Directors' opinion, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable

- F. The Supreme Court of NSW judgment in the matter of Keybridge Capital Limited [2024] NSWSC 1215 dated 27 September 2024, citing at paragraphs 16, 17 and 19 in reference to the \$4.95 million loan to an 'asset rich entity' owned by Mr Bolton the following.

[16]: Mr Patton also refers to an exchange of emails between Mr Bolton and himself on or about 2 July 2024, and there is also evidence of an exchange of emails between Mr Patton and Mr Catalano, another director of Keybridge. Those emails appear to contemplate that the funds would be held in trust by Crotto until the transaction was documented, but that was not done. An email dated 2 July 2024 referred to Keybridge having taken legal advice from a solicitor's firm in respect of the transaction. The summary of that advice is redacted, but then refers to the proposed terms and the need to ensure that the transaction is on "commercial arm's length" terms, expressly including:

"...documentation, an appropriate loan agreement needs to be prepared and executed." (emphasis added).

[17]: It is apparent, of course, that some two and a half months later, that has not occurred, given Mr Patton's evidence that there is currently no written loan agreement between Keybridge and Crotto.

[19]: that in an affidavit dated 18 September 2024 Mr Bolton confirmed that:

the 'asset rich entity' is Crotto, and indicates that he had engaged an Italian notary public to pay the entirety of the funds paid to Crotto by way of Keybridge's loan to creditors of Crotto, and to vendors of a "quota", which he indicates is similar to shares in Crotto. He refers to the disbursement of the loan funds on 8 July 2024, indicating that those funds are no longer available to Crotto in order to meet a repayment to Keybridge, although I recognise that Crotto may itself have assets (or at least a property at Lake Como) which could potentially be released to fund such a payment.

- G. KBC's net asset backing reports at month ends ('NTAB reports') released on MAP for periods during FY24 and the first month of FY25 which contained information about cash, listed securities, managed funds, other investments, loan receivables, other assets and liabilities compared to KBC's NTAB reports released on MAP for the period since then which are more limited in detail. KBC's October 2024 NTAB report released on MAP on 18 November 2024 referenced the Yowie investment valued at \$3.830 million and an investment subject to dispute with the trustee held at 'nil' that could alternatively be carried at an equity accounted value of approximately \$7.35 million. The October 2024 NTAB report provided no further information about other investments and assets, nor cash and did not give any information about liabilities.

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- H. ASX's query letter dated 20 September 2024 and KBC's letter in response dated 25 September 2024 released on MAP at 5:27pm AEST on 25 September 2024 in which KBC submitted that it is in compliance with Listing Rule 12.2 stating:
- 'Keybridge considers its total assets of more than \$25 million and the improvement in its net asset position from 30 June 2023 to 31 December 2023 followed by a further improvement to 30 June 2024, warrants the continued quotation of its securities'.*
- I. ASX's email addressed to KBC dated 2 December 2020 setting out certain conditions to the reinstatement of KBC's securities including:
- (a) KBC agreeing to lodge monthly NTAB reports on the ASX market announcements platform as if Listing Rule 4.12 applied to it (i.e. by no later than 14 days after the end of each calendar month) commencing with an NTAB report for the month ended 30 November 2020 and continuing until further notice.
 - (b) KBC agreeing to incorporate an appropriate level of disclosure in relation to its investments in the monthly NTAB reports (noting that ASX considers that an appropriate level of disclosure was provided in the monthly NTAB "template" that KBC was using during the early months of 2019).
- J. KBC's acceptance of the conditions for the content of NTAB reports leading to reinstatement of its securities on 10 December 2020.
- K. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- L. Annexure B in *Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B* describing the statutory prohibitions against false or misleading disclosures and the criminal offences that a breach of section 1309(1) and 1309(2) of the Corporations Act would constitute.
- M. Listing Rule 12.2 which states an entity's financial condition (including operating results) must, in ASX's opinion, be adequate to warrant the continued quotation of its securities and its continued listing.

NTAB reports and Listing Rule 12.2

ASX notes that:

- the events (c) and (d) described in paragraph A above and the events occurring since 1 July 2024, referred to in note 26 of the financial report contained in the Annual Report, give rise to a question whether KBC has been experiencing financing difficulties or a significant negative impact on its net assets and liquidity;
- the information cited in paragraph F raises concern about the recoverability of the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton;
- the October, September and August NTAB reports do not meet the condition for content of these reports as agreed to by KBC in December 2020;
- each of the October, September and August NTAB reports are inadequate for the market to assess KBC's investments and allow trading in KBC securities to occur on a properly informed basis; and
- the above points taken together mean that ASX does not accept the currency of the answer at paragraph H given in KBC's response to question 3 of the ASX query dated 20 September 2024 in relation to KBC's compliance with Listing Rule 12.2.

Directors' Declaration and Audit Report

ASX notes that:

- The unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton would likely have come under one or more of the areas of focus of the auditor referred to in paragraph D above.

Request for information

ASX asks KBC to respond separately to each of the following questions and requests for information.

1. Please provide August, September and October 2024 NTAB reports in suitable detail.
2. Does KBC still consider its financial condition is adequate to warrant continued quotation of its securities as required by Listing Rule 12.2? If so why? Please answer with reference to the following:
 - The matters set out in note 26 of the financial report contained in the Annual Report, which appear to have had a significant, cumulative negative effect on the net assets and liquidity of KBC.
 - The concerns described in the Supreme Court of NSW judgment in relation to the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton and KBC's ability to recover it.
3. Please provide any update to the events described in note 26 of the financial report contained in the Annual Report and any new material events relating to KBC's assets, liabilities and liquidity. If there are no new, material events please confirm the same.
4. Does the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton remain undocumented?
 - 4.1 If the answer to question 4 is 'no', please state when it was entered into and provide a copy of the agreement (not for release to the market) and a description of the key terms of the agreement (for release to the market).
 - 4.2 If the answer to question 4 is 'yes', why?
5. What, if any, evidence or submissions were provided to the auditor in relation to the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton to support the Directors' Declaration and the Auditor's Report? Please provide details.
6. In the KBC directors' view, were sufficient and appropriate disclosures, as required by relevant Australian Accounting Standards, made in the Annual Report in relation to the Supreme Court of NSW judgement dated 27 September 2024 regarding the unsecured loan of \$4.95 million to an 'asset rich entity' owned by Mr Bolton?
7. If the answer to question 6 is 'yes', please explain the basis for such view.
8. Please confirm that KBC is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
9. Please confirm that KBC's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of KBC with delegated authority from the board to respond to ASX on disclosure matters.

When and where to send your response

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **5:00pm AEDT on Thursday 28 November 2024**.

You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, KBC's obligation is to disclose the information 'immediately'. This may require the information to be disclosed before the deadline set out above and may require KBC to request a trading halt immediately if trading in KBC's securities is not already halted or suspended.

Your response should be sent by e-mail to **ListingsComplianceMelbourne@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow us to review your response to confirm that it is in a form appropriate for release to the market, before it is published on MAP.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to KBC's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. It should be noted that KBC's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

Release of correspondence between ASX and entity

We reserve the right to release all or any part of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A. The usual course is for the correspondence to be released to the market.

Yours sincerely

ASX Compliance