

Market Announcement

2 June 2020

Keybridge Capital Limited (ASX: KBC) – Suspension from Official Quotation - Continuation

Description

The securities of Keybridge Capital Limited ('KBC') were suspended from quotation on 16 July 2019 under Listing Rule 17.3, pending enquiries by ASX.

ASX's enquiries relate, among other matters, to:

- KBC's \$5 million payment made in June 2019 to acquire an interest in Australian Community Media, which remains unsettled;
- The Independent Auditor's Report attached to KBC's full year accounts for the year ended 30 June 2019, which included a disclaimer of opinion with respect to the \$5 million payment and a loan receivable of \$561,225;
- The Independent Auditor's Review Report attached to KBC's half year accounts for the half year ended 31 December 2019, which included a qualified conclusion, again with respect to the \$5 million payment and the loan receivable;
- KBC's compliance with Listing Rule 3.1; and
- The adequacy of KBC's financial condition under Listing Rule 12.2.

Attached is a copy of ASX's query letter dated 18 May 2020 and KBC's letter in response dated 2 June 2020.

ASX's enquiries into KBC are ongoing. In the circumstances, ASX considers it appropriate that trading in KBC's securities remains suspended until further notice.

Issued by

James Gerraty

Senior Manager, Listings Compliance (Melbourne)

2 June 2020

Mr James Gerraty
Senior Manager, Listings Compliance (Melbourne)
ASX
By email: james.gerraty@asx.com.au

Dear James,

Keybridge Capital Limited: Response to Query Letter

Keybridge refers to the query letter from ASX dated 18 May 2020 and responds as set out below (noting that ASX gave Keybridge an extended time to respond to its query letter and Keybridge complied with that extension).

Keybridge uses the same numbers in its response below as used by ASX in its query letter.

1. The Incomplete Deal was confidential and uncertain and accordingly satisfied the carve outs in Listing Rule 3.1A. Keybridge has now released an announcement relating to the Incomplete Deal on ASX Announcement Platform (ASX Announcement).
2. Refer attached minutes for 10 February 2020 and 8 May 2020 (not for release to the market).
3. N/A
4. No
5. The transaction is not with a party under Listing Rule 10.1. Mr Catalano is not the counterpart to the transaction and, in any case, when the transaction was implemented by Keybridge, Mr Catalano was not a related party of Keybridge. If the full shareholding is vested in the Unit Trust (as defined in the ASX Announcement), or if the full \$5,000,000 is transferred instead to the Unit Trust, this will be the conclusion of arrangements reached over 7 months before Mr Catalano became a person to which Listing Rule 10.1 applied. If an alternative transaction is negotiated, the relevant counterparty is the other shareholder referred to in the ASX Announcement, since it will be the creation of a transaction to which that party will consent.
6. No.
7. The 16.67% minority stake in the investment does not enliven Listing Rule 11.1. Keybridge notes that the KBCPA instrument is equity convertible to ordinary shares at Keybridge's election and form part of its scale. Further, the relevant date for the assessment of Listing Rule 11.1 was June 30, 2019 and, accordingly, the relevant financials as at that date ought to apply. As at that time, the value of the transaction represented approximately 24% of the total assets of Keybridge. Keybridge notes that the making of a minority investment in the nature of its Incomplete Deal is consistent with its previous investment history dating back through to 2006.

8. Attached (not for release to the market).

9. Yes.

10.a. Yes

10.b. On 8 November 2019, the Board approved the sale of the ESS shares at 6.9 cents per share. The Board was unable to sell on market, as its shares had been suspended, so sold into the highest unconditional takeover bid, that of ADIT. As a consequence, Keybridge recovered a portion of the loan funds, with recourse to the shares, for a price higher than the then-prevailing net tangible asset value. The transaction was NTA accretive for the Company.

10.c. N/A

11. Please refer to the response in question 10.b above. \$210,000, being 7.0 cents per share.

12.a. Yes.

12.b. Yes.

13. The disclaimer of opinion arose solely due to concerns initially raised by certain (non-Bentley Capital Limited representative) directors that they could not satisfy themselves of certain matters contained in the auditor's questionnaire following Mr William Johnson, Mr Farooq Khan and Mr Victor Ho's conduct in relation steps taken to shut out the officers of the Company from the Company's financial accounts and falsely purport to change the Chairman of the Company to William Johnson. Once Mr Khan and Mr Ho were removed from the Company, and the Federal Court (WA District) ruled that William Johnson was not the Chairman of the Company, the Board reviewed the bank statements and accounting records and were able to satisfy themselves of these matters.

14. The ACM transaction was concluded just prior to 30 June 2019 following an extensive market based sale process. As such, the Board determined that this market based value was an appropriate value to carry the ACM asset at 30 June 2019. In addition, at the time of signing the annual financial statements, Keybridge had obtained a guarantee from Mr Catalano (for \$5 million) underwriting the value of the investment should it not complete. In relation to the outstanding loan receivable of \$561,225, which represents the A\$ value of an earlier offer made by Republic to Keybridge in relation to this investment, Keybridge did not accept the offer as it equated to a small proportion of the previous carrying value. As such, Keybridge considers that a higher value can be obtained through the enforcement of its contractual rights. The carrying value of this asset has not changed materially (with the changes only being FX related) for some time.

The disclaimer of opinion received from the auditor for the full year accounts related to the items raised in response 13. Keybridge attaches a letter from the Company's Auditor (not for release on ASX), which explains the basis upon which the disclaimer was given and the reasons as to why it was removed. It did not pertain to the ACM investment or the investment in Republic.

15. Yes, this was signed by the Chairman (for the entire financial year) and CEO (for the period 28 May 2019 to 30 June 2019, reflecting his time following his appointment as CEO).

16. N/A.

17. The Audit Committee, comprising Simon Cato (Chairman), Jeremy Kriewaldt and John Patton, considered these matters. In addition, as was customary, Simon Cato liaised with Deloitte directly to understand any concerns they may have had.

18. Yes. Keybridge refers to its response at question 13.

19. Keybridge obtained a favourable judgement in the Federal Court (WA District), declaring that the purported appointment of Mr Johnson as Chairman was invalid. Following this, control of the Company's procedures was returned and the Board was able to sign the auditor's questionnaire without the reservations that had led the Auditor to issue a disclaimer of opinion for 30 June 2019.

20. The disclaimer of opinion matter has been fully resolved with the Auditor. The Company will endeavour to obtain further valuation evidence to resolve the qualification of assets prior to the next reporting period (see answer to Q22).

21.a Yes.

21.b. Yes.

22. The qualification of the half year audit review opinion related to the auditor being unable to obtain sufficient audit evidence. The auditor spoke directly with the CFO (in the US) in relation to outstanding loan receivable, as well as with Mr Catalano in relation to ACM. In both instances, the auditor did not disagree with the directors' assessment as to carrying value, however, the auditor was unable to obtain sufficient documentary audit evidence to support the directors' valuations for these assets for his file.

23. In relation to the outstanding loan receivable, Keybridge refers to its response in 14 above. In relation to ACM, the Board had regard to a range of factors, including (a) the financial performance of ACM, (b) the unqualified audit opinion obtained by Thorney Opportunities Ltd (ASX: TOP) which also holds an investment in ACM, (c) comments from Mr Catalano at the Board meeting on 8 May 2020 to consider the signing of the accounts, and (d) the guarantee provided by Mr Catalano for \$5 million.

24. Yes.

25. N/A.

26. The Board discussed Keybridge's financial records with its Company Secretary, Mr John Patton, being a Chartered Accountant and former partner of Ernst & Young. Similarly, Mr Patton reviewed the underlying financial system, maintained on Xero, for the half year period. It is worth noting that Keybridge only has a few staff and the volume of transactions processed is not great.

27. Yes.

28. The Board has requested its CEO to progress the resolution of the outstanding matters so that the audit qualification can be removed. The Company expects that the full year audit of ACM or,

alternatively, the return of this ACM investment will satisfy the audit qualification of this investment. Keybridge notes that ACM, as an unlisted company, is not required to complete audited half year accounts, which contributed to the difficulty in obtaining underlying verifiable value support for that investment as at the 31 December 2019 audit.

In relation to Republic, Keybridge continues to be offered a cash settlement of its investment at its carrying value by its counterpart. This offer is not acceptable to Keybridge despite supporting, in the Directors' view, its current carrying value. Keybridge will endeavour to reach an outcome on the asset that resolves the qualified opinion for its full year accounts.

29. Refer response provided in 28.

30. Yes. Keybridge has equity at its latest reported financials of approximately \$18m after adjusting for CRPN (which may be converted to ordinary shares at Keybridge's election), subsequent placements and ESP Shares. Its operations continue to be sufficient to warrant reinstatement and continued listing on ASX. Keybridge's current business activities included the originating, making, management and disposal of investments in listed and unlisted securities, financial instruments and loans, the management of various litigation rights and shareholder activism initiatives to generate value to Keybridge. As at 29 April 2020 Keybridge had 515 ordinary shareholders and 769 CRPN shareholders which is well in excess of the minimum required for listing purposes.

31. Yes, Keybridge believes its financial condition to be sufficient to warrant reinstatement and continued listing on ASX. The Keybridge financial condition would be sufficient to justify listing on ASX in its own right if Keybridge were proceeding with an IPO. Its financial condition is stronger than many other entities listed on ASX.

32. N/A.

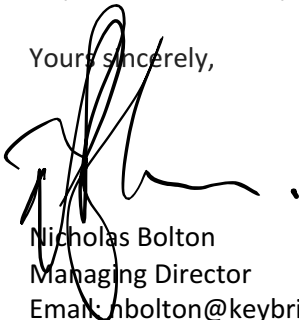
33. Confirmed.

34. Confirmed.

Keybridge consents to this response (excluding the items not for release to market) to be released to the market.

Keybridge hopes that the above responses appropriately address ASX's queries, and Keybridge requests that the suspension of trading in its shares is lifted.

Yours sincerely,



Nicholas Bolton
Managing Director
Email: nbolton@keybridge.com.au
Phone: 0412606899



18 May 2020

Reference: 18312

Mr John Patton
Company Secretary
Keybridge Capital Limited
Suite 614, Level 6
370 St Kilda Road
Melbourne VIC 3004

By email: jpatton@aurorafunds.com.au

Dear Mr Patton

Keybridge Capital Limited ('KBC'): Query Letter

ASX refers to:

- A. KBC's request for a trading halt dated 1 July 2019 pending an announcement about a material investment by KBC.
- B. The suspension of KBC's securities from official quotation by ASX on 16 July 2019 under listing rule 17.3, pending enquiries by ASX.
- C. ASX's query letter dated 25 September 2019 ('ASX Query') and KBC's letter in response dated 18 October 2019 ('KBC Response') released together on the ASX Market Announcements Platform ('MAP') on 18 October 2019.

The ASX Query referred to ASX's understanding that KBC had paid approximately \$5 million ('\$5 Million Payment') in connection with a material transaction around 1 July 2019. The KBC Response confirmed:

'The payment was made by way of electronic funds transfer on 27 June 2019. The payment was transferred to the trust account of an Australian law firm, as solicitors for the vendor in the transaction, and was then distributed to the vendor in accordance with directions to pay provided by KBC.'

Question 2(c) of the ASX Query asked why the \$5 Million Payment had not been returned following the failure of the investment to eventuate. The KBC Response stated:

'The counterparty offered to return the payment to KBC when the Transaction was unable to consummate as originally intended by KBC.'

KBC has been, and remains engaged, in ongoing discussions with the counterparty to the proposed Transaction in an attempt to resolve impediments to the Transaction completing as originally intended by KBC. Until those discussions conclude, KBC has elected not to immediately call for the payment to be returned. KBC has, however, obtained a personal guarantee from the Transaction principal to ensure that it has security satisfactory to the KBC board for the ability to obtain return of the payment, should KBC be unable to complete the Transaction as originally intended by KBC.'

Question 2(d) of the ASX Query asked why the \$5 Million Payment had not been disclosed to the market. The KBC Response stated:

'KBC's board regards the current state of the Transaction as satisfying Listing Rule 3.1A – the Transaction is presently an incomplete negotiation that remains confidential. As noted above, KBC has been and remains engaged in ongoing discussions with the counterparty to the proposed Transaction in an attempt to resolve impediments to the Transaction completing as originally intended by KBC.'

intended, or if it will be cancelled in part or in whole (with the payment returned to KBC), or if the Transaction will be renegotiated into some other kind of transaction.

The return to KBC of the payment in relation to the Transaction is callable at KBC's election and is not (in the view of KBC) presently at any risk (in terms of recoverability by KBC). For that reason, KBC's board does not consider the payment itself to be disclose-able [sic].'

- D. The article in the *Weekend Australian* dated 9-10 May 2020 titled 'Tale of two cities: Bolton of Melbourne clashes with Sydney's Wilson over Keybridge' which describes the suspension of trading in KBC securities '*... following the spending of \$5m in an "incomplete deal" involving Mr (Antony) Catalano's Australian Community Media, which owns The Canberra Times and a suite of regional newspapers. Mr Catalano has also guaranteed the transaction if it can't be completed*'.¹
- E. The Form 603 Notice of Initial Substantial Holder lodged on MAP on 19 February 2020 disclosing that Catalano Super Investments Pty Ltd ATF Catalano Superannuation Fund and Associates became a substantial shareholder on 17 February 2020 having a relevant interest in 19,275,000 KBC securities with voting power of 10.76% of KBC's total issued shares. The notice is dated 19 February 2020 and signed by Mr Antony Catalano in his capacity as a director.
- F. KBC's announcement of the appointment of Mr Frank Antony Catalano as a director of KBC on 17 April 2020.
- G. KBC's accounts for the financial year ended 30 June 2019 lodged on MAP on 17 October 2019 ('Full Year Accounts').

Note 9 to the Full Year Accounts refers to the \$5 Million Payment as an investment pending completion or refund without providing further detail, other than KBC, via a unit trust in which KBC is the sole unit holder, had '*completed the acquisition of a 16.67% shareholding in an operating company, in consideration of payment of \$5 million to the vendor of the business operations.*'

The Independent Auditor's Report attached to the Full Year Accounts ('Auditor's Report') contains the following disclaimer of opinion:

'We do not express an opinion on the accompanying financial report of the Group. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of our report, we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion as to whether the financial report is in accordance with the Corporations Act 2001, including whether it:

- i. gives a true and fair view of the Group's financial position as at 30 June 2019 and of its financial performance for the year then ended; and*
- ii. complies with Australian Accounting Standards and the Corporations Regulations 2001.*

Basis for Disclaimer of Opinion

During and subsequent to the end of the financial year, a series of allegations have been made by directors and other key management personnel in respect of a range of issues including alleged breaches of directors' duties under the Corporations Act 2001, transactions being undertaken without appropriate authority or for a proper purpose, and certain directors being denied access to the Group's books and records. The allegations, together with ongoing disputes between the

¹ Earlier media reports make similar comments. For example, an article in The Guardian Australian Edition on 9 November 2019 titled 'Boardroom war: the media mogul, the corporate raider and the missing \$5m', states: '*Sources say Keybridge handed money to Antony Catalano for a stake in Australian Community Media, but never received any shares*'.

directors, resulted in the Company's shares being suspended from trading on the Australian Securities Exchange on 16 July 2019.

Due to the nature of these allegations we have been unable to satisfy ourselves as to the integrity of the Group's books and records, and in particular, whether certain transactions recorded in the Group's accounting records were appropriately authorised and undertaken for the Group's benefit. As a result of these matters, we were unable to determine whether adjustments might have been found necessary in respect of the Group's financial report.

The Group has other assets of \$5,171,756 as at 30 June 2019. As disclosed in Note 9, included in this other assets amount is an item classified as an advance of \$5,000,000. We have been unable to obtain sufficient appropriate audit evidence or the underlying agreements in respect of this advance to enable us to determine whether it will be recoverable by the Group. Accordingly, we have been unable to determine whether the recoverable amount of the item classified as an advance is at least equal to its carrying value. In the event that the carrying value of this other asset exceeds its recoverable amount, it would be necessary for the carrying value to be written down to its recoverable amount.

The Group has receivables of \$5,399,553 as at 30 June 2019. As disclosed in Note 11, included in this receivables amount is a long outstanding loan receivable of \$561,225. We have been unable to obtain sufficient appropriate audit evidence to determine whether the receivable will be recoverable by the Group. Accordingly, we have been unable to determine whether the recoverable amount of the receivable is at least equal to its carrying value. In the event that the carrying value of this receivable exceeds its recoverable amount, it would be necessary for the carrying value to be written down to its recoverable amount.

Given the above circumstance, the matters are so material and pervasive to the financial report that we are unable to express an opinion on the financial report taken as a whole.'

- H. KBC's half year accounts for the half year ended 31 December 2019 lodged on MAP on 8 May 2020 ('Half Year Accounts').

The Directors' Report in the Half Year Accounts describes KBC as 'an investment financial services group with a diversified portfolio of listed and unlisted investment/loan assets in the private equity (USA), life insurance (New Zealand), property and funds management sectors and strategic holdings in HHY Fund (ASX: HHY), Molopo Energy Limited (ASX: MPO) and Yowie Group Ltd (ASX: YOW)'.

Notes 6 and 8 to the Half Year Accounts disclose the following assets:

- Shares in listed investments \$3,440,195²
- Unlisted investments at fair value \$104,275
- Futures derivatives at fair value \$220,045
- Private equity (net of impairment) \$561,816³

² The securities of HHY and Molopo Energy have been suspended from official quotation on ASX since 27 February 2020 and 27 July 2017 respectively. KBC's most recent Form 604 Details of Substantial Holder for YOW lodged on 11 February 2020 disclosed that KBC had a relevant interest in 50,078,345 YOW securities. YOW last traded at 3.6 cents on 11 May 2020 compared to 6 cents on 31 December 2019, which represents a substantial diminution in value since the Half Year Accounts balance date (albeit that KBC's holding appears to have been lower at 31 December 2019, with YOW's 2019 annual report reporting it to be 43,529,546 shares).

³ The Half Year Accounts disclose that the principal and accrued interest was repayable on maturity on 29 December 2017. As noted at paragraphs G and H of this letter, KBC's Auditor stated that it was unable to obtain sufficient appropriate evidence to determine whether the loan receivable will be recoverable.

- Property (net of impairment) \$835,436⁴
- Insurance \$3,547,905

In addition, KBC's assets at 31 December 2019 comprised cash and cash equivalents of \$3,207,516, other assets \$5,091,162 (which includes the \$5 Million Payment), current receivables of \$435,581 and a deferred tax asset of \$142,956 (see consolidated statement of financial position on page 11 of the Half Year Accounts).

The Independent Auditor's Review Report attached to the Half Year Accounts contains a qualified conclusion:

'Basis for Qualified Conclusion

The consolidated entity has other assets of \$5,091,162 as at 31 December 2019. As disclosed in Note 7, included in this other assets amount is an item classified as an advance of \$5,000,000. We have been unable to sight a written agreement and as a result have been unable to obtain sufficient appropriate evidence in respect of this advance to enable us to determine the nature of the asset to be acquired and whether it will be recoverable by the consolidated entity. Accordingly, we have been unable to determine whether the recoverable amount of the item classified as an advance is at least equal to its carrying value. In the event that the carrying value of the item classified as an advance exceeds its recoverable amount, it would be necessary for the carrying value to be written down to its recoverable amount.

The consolidated entity has Loans and receivables of \$4,970,915 as at 31 December 2019. As disclosed in Note 8, included in this receivables amount is a long outstanding loan receivable of \$561,816. We have been unable to obtain sufficient appropriate evidence to determine whether the loan receivable will be recoverable by the consolidated entity. Accordingly, we have been unable to determine whether the recoverable amount of the loan receivable is at least equal to its carrying value. In the event that the carrying value of the loan receivable exceeds its recoverable amount, it would be necessary for the carrying value to be written down to its recoverable amount.

Qualified Conclusion

Based on our review, which is not an audit, except for the effects of the matters described in the Basis for Qualified Conclusion section of our report, we have not become aware of any matter that makes us believe that the half-year financial report of Keybridge Capital Limited is not in accordance with the Corporations Act 2001, including:

- (a) *Giving a true and fair view of the consolidated entity's financial position as at 31 December 2019 and of its performance for the half-year ended on that date; and*
- (b) *Complying with Accounting Standard AASB 134 Interim Financial Reporting and the Corporations Regulations 2001.'*

- I. KBC's listed Convertible Redeemable Promissory Notes ('CRPNs') issued under a prospectus dated 17 June 2015 having a face value of \$1.00 per CRPN with a maturity date of 31 July 2020. At maturity, a holder has the ability to request a conversion of their CRPNs into ordinary shares of KBC at a 2.5% discount to the VWAP of KBC's ordinary shares at the time. KBC may respond to the holder's request by either converting the CRPNs into ordinary shares or redeeming the CRPN for cash at face value. KBC may also elect to convert CRPNs to ordinary shares at a 5% discount to VWAP at maturity or redeem the CRPNs for cash on the occurrence of certain trigger events.

⁴ The Half Year Accounts disclose that KBC has registered mortgages as security for loans to private companies which are in liquidation. The carrying value of the loan is 'based on the Directors' judgement'.

Note 6 to the Half Year Accounts refers to the notification to holders of CRPNs that an event of default had occurred as a consequence of the suspension of KBC securities from trading on ASX and that:

'On 22 January 2020, the Company announced that it had determined to redeem 2,000,000 of the outstanding early redemption CRPN requests for cash plus accrued interest to date. These have now been paid, which reduced the outstanding early redemption CRPN requests to 2,517,153 notes. The Company is able to satisfy the redemption requests from the sale of assets, the introduction of new debt/equity and/or converting the CRPN obligations (in part or full) to ordinary equity.'

- J. KBC's Corporate Governance Statement for the year ended 30 June 2019 lodged on MAP on 6 November 2019 which provides confirmation that KBC complies with recommendation 4.2 of the ASX Corporate Governance Principles and Recommendations which states:

'The board of a listed entity should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.'

- K. The executive share plan ('ESP') and the grant of 9 million shares to KBC's Managing Director, Mr Nicholas Bolton under the ESP ('ESP Shares') approved by KBC shareholders at the annual general meeting held on 28 November 2014.

- L. KBC's announcement titled 'Appendix 3B Further Detail Regarding Issuance of Loan Funded Shares' released on MAP on 19 December 2014, which disclosed the grant of the ESP Shares to Mr Bolton and stated:

'The shares will be released to the relevant participants pursuant to specific vesting and service conditions including the repayment of the loan, any interest and any Release Fees.'

A summary of the shares issued today is set out below:

Managing Director LTI Package	No of shares issued	Issue Price (per share)*	Final Cost Price (per share)*	Vesting Date
Tranche 1	2,000,000	\$0.1865 ¹	\$0.23 ¹	1 October 2015
Tranche 1	2,000,000	\$0.1865 ¹	\$0.23 ¹	1 October 2016
Tranche 1	2,000,000	\$0.1865 ¹	\$0.23 ¹	1 October 2017
Tranche 2	1,000,000	\$0.1865 ²	\$0.345 ²	1 October 2015
Tranche 2	1,000,000	\$0.1865 ²	\$0.345 ²	1 October 2016
Tranche 2	1,000,000	\$0.1865 ²	\$0.345 ²	1 October 2017

* Under the loan funded share plans, the executives are paying \$0.1865 per share on the initial purchase of the shares, plus interest charged at 6.45% per annum and for Tranche 2 a further 11.5 cents per share 'release fee' to bring the total amount paid per share up to a final cost price by the time the loans are repayable on 31 December 2017.

¹ Executives will pay a total of 4.35 cents per share in interest in respect of Tranche 1 shares bringing the total amount payable per share to 23.0 cents.

² Executives will pay a total of 4.35 cents per share in interest plus an additional 'release fee' of 11.5 cents in respect of Tranche 2 shares bringing the total amount payable per share to 34.5 cents.

The initial purchase price paid for the above shares is \$0.1865 per share, as set out in the attached Appendix 3B, however the loan balance, interest and release fees (Total Cost Price) must be paid before any disposal restrictions are lifted from the shares.'

- M. The Full Year Accounts include the following statements (on page 17):

'On 19 December 2014, the Company issued 9 million ESP shares to Nicholas Bolton (who was the Managing Director at the time) with the initial cost (\$1,678,500) funded by an ESP loan granted to Mr Bolton (ESP Loan). After allowing for dividends and capital returns (\$362,500) paid by the Company (Adjustment Amounts), the balance of the ESP Loan principal (\$1,316,000) and accrued interest at 6.45% pa (\$336,164) to 31 December 2017 was \$1,652,164. The principal component of the ESP Loan is limited recourse to the ESP shares issued – as such, the Company is entitled to cancel Mr Bolton's 9 million ESP shares against the \$1.316 million principal loan balance; the Company has not recognised the principal component as a receivable asset. The interest component is full-recourse – as such, Mr Bolton is liable to pay this balance to the Company; the Company has recognised the interest component as a receivable asset.

As at 30 June 2018 balance date, the Company determined to make a full provision in respect of recognising the interest component as a receivable asset (based on the Directors' judgement); an amount of \$336,164 was reduced from Loans and Receivables (Other) with a corresponding decrease in the Share based payments reserve in equity (there was no impact on the Statement of Profit or Loss). This provision does not prejudice the Company's rights (including recovery) under the terms of the ESP Loan. If the Company receives a payment in respect of this interest component, the Company will recognise a corresponding increase in the Share based payments reserve in equity to the extent of such receipt. The Company acknowledges that Mr Bolton has a contrary view in relation to, inter alia, the application of the Adjustment Amounts to reduce the principal amount of the ESP Loan ahead of reducing the accrued interest component of the ESP Loan. Mr Bolton has reserved his rights in the matter, as has the Company, in respect of its view and position in the matter.

Without prejudice to each party's rights under the terms of the ESP Loan, pursuant to an amendment (dated 27 May 2019) to Mr Bolton's employment agreement, Mr Bolton has agreed to pay \$42,020.51 to the Company each quarter (commencing on 30 September 2019 and ending on 30 June 2021) towards reducing the \$336,164 interest component of Mr Bolton's ESP Loan. The parties have also agreed that Mr Bolton is entitled to assert his rights in relation to the matter and if the matter is resolved in favour of Mr Bolton (subject to compliance with the Corporations Act and ASX Listing Rules) and Mr Bolton has paid quarterly amounts in excess of what the Company was entitled to receive, the Company will repay Mr Bolton with interest calculated at 6.45% pa.'

- N. Mr Bolton's Appendix 3Y released on MAP on 20 April 2020, which refers to the disposal of 3 million ESP Shares on 16 April 2020.
- O. 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.
- P. The definition of 'aware' in Chapter 19 of the Listing Rules, which states that:
- 'an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity' and section 4.4 in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information.'*
- Q. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.

'3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:

3.1A.1 One or more of the following applies:

- It would be a breach of a law to disclose the information;
- The information concerns an incomplete proposal or negotiation;
- The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
- The information is generated for the internal management purposes of the entity; or
- The information is a trade secret; and

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and

3.1A.3 A reasonable person would not expect the information to be disclosed.'

R. Listing Rule 10.1, which provides:

'10.1 An entity (in the case of a trust, the responsible entity) must ensure that neither it, nor any of its child entities, acquires a substantial asset from, or disposes of a substantial asset to, any of the following persons without the approval of holders of the entity's ordinary securities.

10.1.1 A related party of the entity.

10.1.2 A child entity of the entity.

10.1.3 A person who is, or was at any time in the 6 months before the transaction or agreement, a substantial (10%+) holder in the entity.

10.1.4 An associate of a person referred to in rules 10.1.1 to 10.1.3.

10.1.5 A person whose relationship to the entity or a person referred to in rules 10.1.1 to 10.1.4 is such that, in ASX's opinion, the transaction should be approved by security holders.'

S. Listing Rule 11.1, which provides:

'11.1 If an entity proposes to make a significant change, either directly or indirectly, to the nature or scale of its activities, it must provide full details to ASX as soon as practicable. It must do so in any event before making the change. The following rules apply in relation to the proposed change.

11.1.1 The entity must give ASX information regarding the change and its effect on future potential earnings, and any information that ASX asks for.

11.1.2 If ASX requires, the entity must get the approval of holders of its ordinary securities and must comply with any requirements of ASX in relation to the notice of meeting. The notice of meeting must include a voting exclusion statement.

11.1.3 If ASX requires, the entity must meet the requirements in chapters 1 and 2 as if the entity were applying for admission to the official list.'

T. Listing Rule 12.1 which states:

'12.1 The level of an entity's operations must, in ASX's opinion, be sufficient to warrant the continued quotation of the entity's securities and its continued listing.'

U. Listing Rule 12.2 which states:

'12.2 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.'

V. Listing Rule 19.11A which states:

'19.11A If a listing rule requires an entity to give ASX accounts, the following rules apply.'

- (a) If the entity controls an entity within the meaning of section 50AA of the Corporations Act or is the holding company of an entity, required by any law, regulation, rule or accounting standard, or if ASX requires, the accounts must be consolidated accounts.*
- (b) The accounts must be prepared to Australian accounting standards. If the entity is a foreign entity the accounts may be prepared to other standards agreed by ASX.*
- (c) If the listing rule requires audited accounts, the audit must be conducted in accordance with Australian auditing standards by a registered company auditor. If the entity is a foreign entity, the audit may be conducted in accordance with other standards agreed by ASX and may be conducted by an overseas equivalent of a registered company auditor.*
- (d) If the listing rule requires accounts to be reviewed, the review must be conducted in accordance with Australian auditing standards. If the entity is a foreign entity, the review may be conducted in accordance with other standards agreed by ASX. Unless the listing rule says an independent accountant may conduct the review, it must be conducted by a registered company auditor (or, if the entity is a foreign entity, an overseas equivalent of a registered company auditor).*
- (e) If there is a directors' declaration that relates to the accounts, the directors' declaration must be given to ASX with the accounts.*
- (f) If there is a directors' report that relates to the period covered by the accounts, the directors' report must be given to ASX with the accounts.'*

Compliance with Listing Rules 3.1, 10.1, 11.1, 12.1 and 12.2

Given the information identified above, ASX is concerned:

- Whether KBC is in compliance with Listing Rule 3.1 given that satisfactory details about the \$5 Million Payment have not yet been disclosed to the market.

In this regard, ASX refers to the information in paragraph D of this letter which indicates KBC can no longer rely on the carve-outs to immediate disclosure in Listing Rule 3.1A, as claimed in the KBC Response, given that details of an incomplete deal have now been reported in the media and therefore have ceased to be confidential ('Incomplete Deal').

- Whether any agreement to pursue the Incomplete Deal requires security holder approval under Listing Rule 10.1.

In this regard, ASX refers to the information in paragraphs E and F of this letter, which establishes that Mr Catalano is a person whose relationship with KBC is such that Listing Rules 10.1.1 and 10.1.3 will apply to an acquisition by KBC of assets from Mr Catalano.

Also, KBC's consolidated statement of financial position as at 31 December 2019 in the Half Year Accounts discloses that KBC has equity interests of \$9,153,030. Since 5% of that amount is \$457,652, the asset being acquired for the \$5 Million Payment is a substantial asset as defined in Listing Rule 10.2.

- Whether any agreement to pursue the Incomplete Deal attracts Listing Rule 11.1, potentially requiring security holder approval under Listing Rule 11.1.2 and KBC to re-comply with chapters 1 and 2 of the Listing Rules under Listing Rule 11.1.3.

In this regard, ASX refers to the information in paragraphs G and H of this letter, which indicates that the majority of KBC's existing investments have uncertain prospects of recoverability or realisation, being as they are, loans that are past due or owed by entities in liquidation, or equity investments in ASX listed securities which are either suspended or whose value has substantially declined. In addition, the fact that KBC will be required to satisfy redemption requests from CRPN holders on or before 31 July 2020, suggests that the \$5 Million Payment represents a material component of KBC's asset base and therefore the activity KBC may undertake in connection with that payment would be a significant change in the nature or scale of KBC's activities.

- Whether KBC's current level of operations is sufficient under Listing Rule 12.1 to warrant, in this case, reinstatement to quotation of its securities on ASX (as opposed to continued quotation).

Again, ASX refers to the information in paragraphs G and H of this letter, making the same observations about the recoverability or realisation of KBC's assets and KBC's obligations to satisfy redemption requests from CRPN holders on or before 31 July 2020. ASX also refers to the concerns expressed by the Auditor about the recoverability of the \$5 Million Payment.⁵

- Whether KBC's financial condition under Listing Rule 12.2 is sufficient to warrant, in this case, reinstatement to quotation of its securities on ASX (as opposed to continued quotation).

Again, ASX refers to the information in paragraphs G and H of this letter, making the same observations about the recoverability or realisation of KBC's assets, KBC's obligations to satisfy redemption requests from CRPN holders on or before 31 July 2020 and the concerns expressed by the Auditor about the recoverability of the \$5 Million Payment.⁶

Questions and Request for Information

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

1. Please explain why the Incomplete Deal has not been disclosed to the market in accordance with Listing Rule 3.1.
2. Please provide a copy of all KBC board minutes that reference the Incomplete Deal subsequent to those provided with the KBC Response (not for release to the market).
3. Please provide a copy of all documents evidencing or relating to the Incomplete Deal subsequent to those provided with the KBC Response (not for release to the market).
4. If negotiations relating to the Incomplete Deal advance to a stage capable of the transaction completing, does KBC intend to seek security holder approval in accordance with Listing Rule 10.1?
5. If the answer to question 4 is 'no', why?
6. If negotiations relating to the Incomplete Deal advance to a stage capable of the transaction completing, does KBC consider Listing Rule 11.1 will apply?
7. If the answer to question 6 is 'no', why?

⁵ As noted at paragraphs G and H of this letter, KBC's Auditor also advised it was unable to obtain sufficient appropriate evidence to determine whether the payment will be recoverable.

⁶ Ibid.

8. Please provide a copy of the terms of the ESP, offer documents and loan agreements in relation to the grant of ESP Shares to Mr Nicholas Bolton (not for release to the market).
9. Are there any restrictions on the transfer or disposal of ESP Shares held by Mr Bolton?
10. If the answer to question 9 is 'yes',
- (a) Did the disposal of the 3 million ESP Shares by Mr Bolton on 16 April 2020 comply with the restrictions on transfers or disposals of ESP Shares?
 - (b) If the answer to (a) is 'yes', how did the disposal of the 3 million ESP Shares on 16 April 2020 comply with the restrictions on transfers or disposals of ESP Shares?
 - (c) If the answer to (a) is 'no', why did the disposal of the 3 million ESP Shares on 16 April 2020 occur?
11. Please provide full details of the disposal by Mr Bolton of 3 million ESP Shares. How did he dispose of the ESP shares, to whom and for how much?
12. In the opinion of KBC's directors did the Full Year Accounts:
- (a) comply with the relevant Accounting Standards; and
 - (b) give a true and fair view of KBC's financial performance and position?
13. Please explain the basis for and the factors considered by the directors to satisfy themselves that the Full Year Accounts met the standards set out in question 12 despite the matters identified by the Auditor in the disclaimer of opinion in relation to the Full Year Accounts.
14. Noting the disclaimer of opinion related to the Auditor's inability to obtain sufficient information to verify the carrying values of the \$5 Million Payment and the outstanding loan receivable of \$561,225, please explain how the directors satisfied themselves that the carrying values for these assets in the Full Year Accounts were appropriate and adhered to the current Australian Accounting Standards. In answering this question, reference should be made to the underlying assumptions used by the directors in coming to this conclusion, as well as any independent valuations and the validity of the assumptions upon which these valuations were based.
15. In relation to the Full Year Accounts, did the Board receive the CFO and CEO declaration, as described in section 4.2 of KBC's Corporate Governance Disclosure, that in the opinion of the CFO and CEO, the financial records of KBC had been properly maintained and that the financial statements complied with the appropriate accounting standards and gave a true and fair view of the financial position and performance of KBC and that the opinion had been formed on the basis of a sound system of risk management and internal control which was operating effectively?
16. If the answer to question 15 is 'no', why did the Board not receive the CEO and CFO declaration as described in section 4.2 of KBC's Corporate Governance Disclosure?
17. What other enquiries did the Board make of management to satisfy itself that the financial records of KBC had been properly maintained over the period covered by the Full Year Accounts and that the Full Year Accounts complied with the appropriate accounting standards and gave a true and fair view of the financial position and performance of KBC?
18. Commenting specifically on the Auditor's disclaimer of opinion, does the Board consider that KBC had a sound system of risk management and internal control which was operating effectively over the period covered by the Full Year Accounts?
19. What (if any) steps has KBC taken since the release of the Full Year Accounts to address the matters identified by the Auditor in the disclaimer of opinion in relation to the Full Year Accounts and to obtain an unqualified opinion in respect of its future financial statements?

- For personal use only
20. What (if any) steps does KBC intend to take to address the matters identified by the Auditor in the disclaimer of opinion in relation to the Full Year Accounts and to obtain an unqualified audit opinion in respect of its future financial statements?
 21. In the opinion of KBC's directors did the Half Year Accounts:
 - (a) comply with the relevant Accounting Standards; and
 - (b) give a true and fair view of KBC's financial performance and position?
 22. Please explain the basis for and the factors considered by the Directors to satisfy themselves that the Half Year Accounts met the standards set out in Question 21 despite the matters identified by the Auditor in the qualified conclusion in relation to the Half Year Accounts.
 23. Noting the qualified conclusion again related to the Auditor's inability to obtain sufficient information to verify the carrying values of the \$5 Million Payment and the outstanding loan receivable of \$561,816, please explain how the directors satisfied themselves that the carrying values for these assets in the Half Year Accounts were appropriate and adhered to the current Australian Accounting Standards. In answering this question, reference should be made to the underlying assumptions used by the directors in coming to this conclusion, as well as any independent valuations and the validity of the assumptions upon which these valuations were based.
 24. In relation to the Half Year Accounts did the Board receive the CFO and CEO declaration, as described in section 4.2 of KBC's Corporate Governance Disclosure, that in the opinion of the CFO and CEO, the financial records of KBC had been properly maintained and that the Half Year Accounts complied with the appropriate accounting standards and gave a true and fair view of the financial position and performance of KBC and that the opinion had been formed on the basis of a sound system of risk management and internal control which was operating effectively?
 25. If the answer to question 24 is 'no', why did the Board not receive the CEO and CFO declaration as described in section 4.2 of KBC's Corporate Governance Disclosure?
 26. What other enquiries did the Board make of management to satisfy itself that the financial records of KBC had been properly maintained over the period covered by the Half Year Accounts and that the Half Year Accounts complied with the appropriate accounting standards and gave a true and fair view of the financial position and performance of KBC?
 27. Commenting specifically on the Auditor's qualified conclusion, does the Board consider that KBC has a sound system of risk management and internal control which was operating effectively over the period covered by the Half Year Accounts?
 28. What (if any) steps has KBC taken since the release of the Half Year Accounts to address the matters identified by the Auditor in the qualified conclusion in relation to the Half Year Accounts and to obtain an unqualified opinion in respect of its future financial statements?
 29. What (if any) steps does KBC intend to take to address the matters identified by the Auditor in the qualified conclusion in relation to the Half Year Accounts and to obtain an unqualified audit opinion in respect of its future financial statements?
 30. Does KBC consider that its level of operations is sufficient to warrant reinstatement to quotation of its securities on ASX and its continued listing as required under listing rule 12.1? In answering this question, please explain the basis for this conclusion and comment specifically on the nature of the KBC's current business activities.
 31. Does KBC consider that the financial condition of KBC is sufficient to warrant reinstatement to quotation of its securities on ASX and its continued listing as required under Listing Rule 12.2? In answering this question, please also explain the basis for this conclusion.

-
32. If the answer to questions 30 or 31 is 'no', please explain what steps KBC has taken, or proposes to take, to warrant continued listing on ASX under the requirements of Listing Rules 12.1 and 12.2.
33. Please confirm that KBC is complying with the Listing Rules and, in particular, Listing Rule 3.1.
34. Please confirm that KBC's responses to the questions above have been authorised and approved under 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

Please note that ASX reserves its right under Listing Rule 18.7A to release this letter and KBC's response to the market. Accordingly, KBC's response should address each question separately and be in a format suitable for release to the market.

Unless the information is required immediately under Listing Rule 3.1, a response is requested as soon as possible and, in any event by no later than **9:30 am AEST on Friday, 29 May 2020**.

Any response should be sent to me by return email. It should not be sent to the ASX Market Announcements Office.

Enquiries

If you have any queries regarding any of the above, please contact me.

Yours sincerely

James Gerraty
Senior Manager, Listings Compliance (Melbourne)