

MEDIA RELEASE

Update - Nominees on Board of Keybridge Capital Limited (ASX:KBC)

Bentley Capital Limited (ASX:BEL) (**Bentley**) refers to an ASX market announcement released by Keybridge Capital Limited (ASX:KBC) (**Keybridge**) on 12 November 2019 entitled "Update on CRPN Early Redemption and past EGM" (**Keybridge Announcement**) in which, amongst other matters, Keybridge made statements pertaining to the status of Bentley's nominees on the Keybridge Board – William Johnson and Simon Cato.

In particular, Keybridge:

- intimates that the tenure of Messrs Johnson and Cato as Directors of Keybridge was in doubt – arising from an apparent dispute in relation to the outcomes of voting on Australian Style Group Pty Ltd's (**ASG**) (unsuccessful) resolutions to remove them as Directors at the ASG s249F EGM¹ held on 14 October 2019 (refer Background below);
- calls for the resignation of Messrs Johnson and Cato as Directors of Keybridge; and
- threatens the commencement of legal proceedings (at Keybridge's cost; as opposed to ASG itself incurring such expenditure) to, in effect, cause the removal of Messrs Johnson and Cato as Directors of Keybridge.

Bentley confirms that Messrs Johnson and Cato had comprehensively responded to the Keybridge Board in relation to these allegations and threats but it appears Keybridge has determined to effectively ignore this response in the Keybridge Announcement.

In summary, Bentley responds to the Keybridge Announcement in this update Media Release, as follows:

- The ASG s249F EGM was chaired by an independent AICD nominee to ensure transparency and objectivity in relation to determining the voting entitlements of shareholders at the general meeting;
- The Independent Chair adopted the same position in relation to the proxy votes that were disallowed at the ASG s249F EGM as John Patton (Chairman of Keybridge) had himself adopted in relation to treating proxy votes at the 2018 AGM of Keybridge;
- It is disingenuous of John Patton and other ASG nominees/representatives on the Keybridge Board to now object to the manner in which the Independent Chair made his bona fide determination as to the validity of proxy votes cast at the ASG s249F EGM;

1 Refer Notice of General Meeting (dated 23 August 2019), Explanatory Statement and Proxy Form released on ASX on 26 August 2019; the ASG s249F EGM was originally scheduled for 23 September 2019 but was postponed to 14 October 2019 – refer Keybridge's ASX announcement dated 20 September 2019: Postponement of General Meetings



- The various ASG nominee/representative Directors on the Keybridge Board are also unilaterally raising objection to the manner in which the Independent Chair acted in circumstances where Bentley is not aware of the actual holders of the shares, whose votes were disallowed, raising any formal objection with Keybridge themselves nor taking any action with respect to the position the Independent Chair adopted with respect to their voting entitlement; and
- It is clear that Keybridge shareholders have supported the tenure of William Johnson and Simon Cato on the Keybridge Board notwithstanding the objections of ASG.

Bentley outlines in further detail below its response to the serious allegations and threats against Messrs Johnson and Cato and in particular, Bentley, William Johnson and Simon Cato:

- reject the sentiments and position expressed in the Keybridge Announcement, for the reasons outlined/particularised below;
- reject the Keybridge Board's call for Messrs Johnson and Cato to resign as Directors of Keybridge; and
- reserve all rights in relation to the allegations and statements outlined in the Keybridge Announcement.

ASG s249F EGM WAS CHAIRED BY INDEPENDENT AICD NOMINEE

Bentley understands that:

- an Independent Chair (nominated by the Australian Institute of Company Directors (AICD)) was appointed by the Keybridge Board to manage and conduct the ASG s249F EGM, including to determine the validity of proxy votes and the outcomes of the Poll voting at the general meeting;
- the whole basis of such an appointment (which was suggested initially by John Patton (Keybridge Chairman), approved by the Keybridge Board and implemented by Keybridge's lawyers) was to ensure that the ASG s249F EGM was conducted on an independent basis without actual or perceived interference or influence from the Chairman of the Board, John Patton (who acts as an ASG representative on the Keybridge Board and who would otherwise be the Chair of the ASG s249F EGM), the Board as a whole or any Keybridge Director individually; and
- the Independent Chair's decisions are considered to be final (as agreed by the Keybridge Board prior to his appointment).

The outcomes of voting on the resolutions at the ASG s249F EGM has been determined and announced to shareholders and the ASX - ASG was unsuccessful in removing William Johnson and Simon Cato as Directors of Keybridge.²

It is irreconcilable that having approved the appointment of the Independent Chair to mitigate the risk of a dispute arising at the ASG s249F EGM, the Keybridge Board is now apparently raising a dispute by questioning the Independent Chair's 'umpire's call' as it were.

² Refer Keybridge's ASX announcement dated 14 October 2019: Meeting Results

PROXY FORMS SIGNED UNDER POWER OF ATTORNEY

Keybridge's apparent concern is with the status and treatment of the Proxy Forms lodged by "HSBC", BNP Paribas" and "JP Morgan" that were executed/signed under Powers of Attorneys (POA) (POA Proxy Forms) and their impact on the outcomes of voting on the resolutions at the ASG s249F EGM². Bentley understands that "HSBC", BNP Paribas" and "JP Morgan" are custodians/nominees of the ultimate beneficial owners of Keybridge shares, which may include ASG³.

Bentley makes the following observations in response to Keybridge's allegations and concerns:

- (a) the Proxy Form¹ for the ASG s249F EGM was prepared by ASG and the Signing Instructions in respect of Proxy Forms signed under a POA follows similar wording as Keybridge's recent (2018⁴ and 2017⁵) AGM Proxy Forms;
- (b) these Signing Instructions are clear, unambiguous and appear to be straightforward;
- (c) these Signing Instructions and the validity of proxy forms signed under a POA were also the subject of a dispute from a major shareholder and its custodian (HSBC Custody Nominees Pty Ltd) at the Keybridge 2018 AGM⁶ - the Keybridge Chairman at the time (John Patton) invalidated such a proxy form (signed under a POA) received via facsimile;
- (d) it appears that the Independent Chair at the ASG s249F EGM was simply following the same Keybridge Chair practice in relation to the POA Proxy Forms as that adopted by ASG representative and Keybridge Chair, John Patton, in previous shareholder meetings; and
- (e) it is irreconcilable and disingenuous for the Keybridge Board to now attempt to cast doubt on the Independent Chair's treatment of such proxy forms when he followed the exact same practice adopted by the Keybridge Chair, John Patton, at previous Keybridge AGM's.

6 MILLION EXECUTIVE SHARES VOTED BY NICK BOLTON

Bentley also notes that whilst it raised an objection to an aspect of the Independent Chair's determination at the ASG s249F EGM - namely in relation to Nick Bolton's entitlement to vote 6 million Executive Share Plan (ESP) shares in favour of the resolutions to remove Messrs Johnson and Cato as Directors - it has respected the Independent Chair's decision in this regard at the meeting.

Indeed, but for these 6 million ESP share votes, the 13,656,173 votes pertaining to the POA Proxy Forms (assuming they were all cast in favour of the resolutions to remove Messrs Johnson and Cato as Directors) would not have changed the outcome of the voting on the resolutions at the ASG s249F EGM - ie. if the 6 million ESP share votes were properly disallowed (which, in Bentley's view, was the correct position to adopt) and the 13,656,173 POA Proxy Form votes were hypothetically allowed, the resolutions to remove Messrs Johnson and Cato as Directors would still have failed by ~4.5 million votes.²

3 Refer to the Substantial Shareholders table on page 70 of Keybridge's 2019 Annual Report (which was released on ASX on 6 November 2019)

4 Refer Keybridge's Notice of Annual General Meeting (dated 9 October 2017), Explanatory Statement and Proxy Form released on ASX on 24 October 2017

5 Refer Keybridge's Notice of Annual General Meeting (dated 18 October 2018), Explanatory Statement and Proxy Form released on ASX on 23 October 2018

6 Refer Keybridge's ASX announcement dated 28 November 2018: Invalidity of Proxy Forms at Annual General Meeting

In Bentley's view, there are serious issues in relation to Nick Bolton's ESP shares and whether he should be permitted to exercise voting rights over these shares, including the following matters (also refer to Background below):

- (a) Nick Bolton resigned as a Keybridge Director on 17 December 2015, which Keybridge advised was after ASIC had made an order disqualifying him from acting as a director or taking part in the management of corporations for 3 years⁷. As at the date of his resignation from Keybridge, only 1/3rd of Nick Bolton's 9 million ESP shares had vested (on 1 October 2015), with 1/3rd subject to vesting on 1 October 2016 and 2017.

Bentley questions why Nick Bolton was able to retain his ESP shares (including 6 million ESP shares which had not yet vested to him) after his resignation from Keybridge when all rights to retain the ESP shares should have expired on termination of employment?

- (b) Nick Bolton owes Keybridge \$1,316,000 under the ESP Loan that funded the issue of 9 million ESP shares to him in December 2014. This ESP Loan was due and payable on maturity at 31 December 2017 and remains outstanding and unpaid (as at 30 June 2019 and currently, so far as Bentley is aware). Furthermore, Keybridge has a security interest over the ESP shares to secure repayment of the ESP Loan.

Accordingly, Bentley believes there is no basis for Nick Bolton to be allowed to exercise any economic rights over his ESP shares (including any voting rights) in circumstances where he is in default of his obligations with respect to repayment of the ESP Loan.

Bentley questions why Nick Bolton was able to exercise voting/economic rights at the ASG s249F EGM in respect of his ESP shares in these circumstances?

- (c) In accordance with clause 7.8(f) of the Keybridge Constitution, a member is not entitled to exercise voting rights which attach to shares where the member owes an amount to Keybridge in respect of those shares which have not been duly paid.

Bentley questions why Nick Bolton was able to exercise voting rights which attach to his ESP shares in apparent contravention of the Keybridge Constitution?

Bentley's concerns (as above) were conveyed to Keybridge (and the Independent Chair) prior to the ASG s249F EGM. Bentley's representative at the ASG s249F EGM also expressed concerns in relation to Nick Bolton's entitlement to vote his 6 million ESP shares.

The Independent Chair advised the general meeting that, due to the complicated nature of the eligibility of the voting entitlements to Nick Bolton's ESP shares and the fact that he had not had an opportunity to properly consider the matter, he would leave the determination of the voting entitlements to the Keybridge Board Chair, John Patton (who is an ASG representative).

John Patton determined to allow Nick Bolton to vote 6 million ESP shares at the ASG s249F EGM.

⁷ Refer Keybridge's ASX announcement dated 18 December 2014: Managing Director Resignation; refer also ASIC Media Release 14-403MR dated 21 December 2015: ASIC Disqualifies Melbourne Director (refer URL <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2015-releases/15-403mr-asic-disqualifies-melbourne-director/>)

DISPUTE OVER OUTCOMES OF ASG s249F EGM

The sentiments, allegations and position outlined in the Keybridge Announcement appears to be very much aligned with the views of shareholders who may be dissatisfied with the outcomes of the ASG s249F EGM – this includes ASG, who called and convened the ASG s249F EGM and served notices for the removal of Messrs Johnson and Cato as Directors.

It is understandable that ASG (and their associates) would be dissatisfied with their failure to remove Messrs Johnson and Cato as Directors.

It is also understandable that the Keybridge Board appears to share ASG's dissatisfaction having regard to the fact that John Patton, Nick Bolton, Jeremy Kriewaldt and Richard Dukes are all Directors appointed to the Keybridge Board as representatives/nominees of ASG and furthermore, in the case of Nick Bolton, where he appears to have a beneficial interest in ASG's assets and in the case of Richard Dukes, where he is the sole Director of ASG (refer also Background below).

Any Keybridge shareholder or other stakeholder (eg. the custodians of the POA Proxy Forms or ASG, as the convenor of the ASG s249F EGM) is entitled to assert their legal rights in relation to the conduct and outcomes of the ASG s249F EGM – it has been more than one month since the ASG s249F EGM held on 14 October and the failure of any dissatisfied shareholder to formally assert their rights is telling.

Any dissatisfied Keybridge shareholder is also entitled to initiate a fresh process to seek the removal of Messrs Johnson and Cato as Directors (pursuant to the Corporations Act) - the failure of any dissatisfied shareholder to serve formal notices in this regard is also telling.

Accordingly, Bentley does not believe that it is appropriate for Keybridge to anticipate a potential shareholder claim and initiate any course of action in its own right (at this time or at all).

For the Keybridge Board to incur costs in this regard (and also shortly before Keybridge's AGM on 29 November 2019⁸ at which the composition of the Board could potentially materially change) would not be the proper use of company funds or the proper exercise of director's duties, in Bentley's view.

As outlined above, any dissatisfied shareholder can assert their rights and initiate fresh processes to seek the removal of Messrs Johnson and Cato as Directors – it is not for the Keybridge Board to assert dissatisfied shareholders' rights or embark on a course of action at the company's cost to pro-actively assert dissatisfied shareholders' rights in this regard.

⁸ Refer Keybridge's Notice of Annual General Meeting (dated 30 October 2019), Explanatory Statement and Proxy Form released on ASX on 30 October 2019

BACKGROUND

By way of background in relation to the recent Keybridge general meetings concerning the composition of the Board:

- (1) John Patton⁹ and Jeremy Kriewaldt¹⁰ were appointed to the Keybridge Board to represent the interests of Australian Style Group Pty Ltd (ASG);
- (2) William Johnson and Simon Cato are nominees of Bentley¹¹ on the Keybridge Board;
- (3) ASG (22.67%¹²) and Bentley (20.17%¹³) are major shareholders of Keybridge¹⁴;
- (4) on 14 October 2019, there were two Keybridge general meetings convened to consider the composition of the Keybridge Board:
 - (a) a general meeting called and convened by ASG under section 249F of the Corporations Act to consider resolutions to remove William Johnson and Simon Cato as Directors of Keybridge (ASG s249F EGM)¹⁵; and
 - (b) a general meeting called and convened by Bentley under section 249F of the Corporations Act to consider resolutions to remove John Patton and Jeremy Kriewaldt as Directors of Keybridge and consider the re-election of William Johnson and Simon Cato¹⁶ as Directors of Keybridge (BEL s249F EGM)¹⁷;
- (5) prior to the commencement of the ASG s249F EGM and BEL s249F EGM, the Keybridge Board had agreed to appoint an independent Chairman (nominated by the Australian Institute of Company Directors (AICD)) to oversee both general meetings. A nominee member of the AICD was engaged to act as the independent Chairman of the meetings and in such capacity was responsible for, amongst other matters, independently determining the entitlement and validity of Keybridge shareholders' votes at both such meetings;
- (6) on 13 October 2019 (on Sunday, on the eve of the ASG s249F EGM and BEL s249F EGM), the Keybridge Board (comprising John Patton and Jeremy Kriewaldt only as William Johnson and Simon Cato were not in attendance due to their stated unavailability) resolved nonetheless to appoint Nick Bolton as Managing Director and Richard Dukes as a Director¹⁸:

9 Refer Keybridge's ASX announcement dated 10 August 2016: Board Changes

10 Refer Keybridge's ASX announcement dated 13 October 2016: Board and Corporate Changes

11 Refer KBC's Notice of General Meeting dated 7 June 2016 and ASX announcement dated 29 July 2016: Results of General Meeting and Board Changed

12 Refer also ASG's Change of Substantial Holder Notice dated 24 March 2014

13 Refer also Bentley's Change of Substantial Holder Notice dated 23 October 2017

14 Refer also Keybridge's 2019 Annual Report released on ASX on 6 November 2019

15 Refer Notice of General Meeting (dated 23 August 2019), Explanatory Statement and Proxy Form released on ASX on 26 August 2019; the ASG s249F EGM was originally scheduled for 23 September 2019 but was postponed to 14 October 2019 with the consent of ASG (to be held at the same location 2 hours before the postponed BEL s249F EGM) – refer Keybridge's ASX announcement dated 20 September 2019: Postponement of General Meetings

16 On the basis of William Johnson and Simon Cato agreeing to voluntarily retire and stand for re-election at the BEL s249F EGM

17 Refer Notice of General Meeting (dated 1 August 2019), Explanatory Statement and Proxy Form released on ASX on 5 August 2019; the BEL s249F EGM was originally convened for 25 September 2019 (in Perth) but was postponed to 14 October 2019 (to a location in Melbourne) with the consent of Bentley (on 19 September 2019) – refer Keybridge's ASX announcement dated 20 September 2019: Postponement of General Meetings

18 Refer Keybridge's ASX announcement dated 14 October 2019: Company Update & Board Appointments

- (a) Nick Bolton was appointed the CEO of Keybridge on 28 May 2019 and has also previously served as a Keybridge Director between 30 December 2011 and 9 October 2012 and between 2 January 2013 and 17 December 2015¹⁹; as advised in Keybridge's 2019 Annual Report, "*Mr Bolton's service as Managing Director was interrupted because of an order made by ASIC in November 2015, which has since expired prior to the resolution of an ongoing appeal*"²⁰; Nick Bolton is also a former Director of ASG and had previously disclosed a relevant interest in ASG's shareholding in Keybridge²¹; and
- (b) Richard Dukes is the Sole Director and Company Secretary of ASG²²;
- (7) at the ASG s249F EGM held on 14 October 2019, Keybridge shareholders did not support ASG's resolutions to remove William Johnson and Simon Cato as Directors.²³
- (8) at the BEL s249F EGM held subsequent to the ASG s249F EGM (at which John Patton's removal as a Director was the subject of Resolution 1), John Patton (as Chairman of the Keybridge Board) failed to hand the Chair of the meeting to the AICD Independent Chairman (as previously agreed by the Board) and adjourned the BEL s249F EGM to 30 October 2019 (to a different location, in Sydney) without the consent of Bentley (**Adjournment**);
- (9) on 28 October 2019, Bentley announced that²⁴:
- (a) in Bentley's view, John Patton's unlawful Adjournment (of the BEL s249F EGM) was likely to mean that the BEL s249F EGM no longer complied with the statutory/constitutional time periods required for the holding of the meeting; and
- (b) in light of the fact that:
- (i) Keybridge shareholders had supported William Johnson and Simon Cato remaining on the Board at the ASG s249 EGM; and
- (ii) Keybridge shareholders were scheduled to vote on the re-election of John Patton and Jeremy Kriewaldt as Directors at the upcoming Keybridge Annual General Meeting (**AGM**) to be held on 29 November 2019²⁵,
- Bentley, as the convening shareholder of the BEL s249F EGM, had determined to withdraw the BEL s249F EGM and accordingly that meeting will not be proceeding;
- (10) on 30 October 2019, Keybridge announced the cancellation of the BEL s249F EGM;²⁶ and
- (11) on 30 October 2019, Keybridge convened its AGM to be held on 29 November 2019 at which, amongst other items of business, John Patton, Jeremy Kriewaldt and Richard Dukes will retire and stand for re-election as Directors of Keybridge.²⁷

19 Refer Keybridge's ASX announcement dated 18 December 2014: Managing Director Resignation

20 Refer also ASIC Media Release 14-403MR dated 21 December 2015: ASIC Disqualifies Melbourne Director (refer URL <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2015-releases/15-403mr-asic-disqualifies-melbourne-director/>), Bolton and Australian Securities and Investments Commission [2015] AATA 977 (17 December 2015), Bolton and Australian Securities and Investments Commission [2018] AATA 976 (24 April 2018), Bolton and Australian Securities and Investments Commission [2018] AATA 4640 (29 November 2018)

21 Refer Keybridge's ASX announcement dated 10 January 2014: Revised Appendix 3Y

22 Refer Keybridge's ASX announcement dated 17 October 2019: Initial Director's Interest Notice - R Dukes

23 Refer Keybridge's ASX announcement dated 14 October 2019: Meeting Results

24 Refer Bentley's ASX announcement dated 28 October 2019: Withdrawal of Section 249F General Meeting of Keybridge Capital Limited

25 Refer Keybridge's ASX announcement dated 25 October 2019: Date of 2019 Annual General Meeting

26 Refer Keybridge's ASX announcement dated 30 October 2019: Keybridge Cancels EGM Called by Bentley

27 Refer Keybridge's Notice of Annual General Meeting (dated 30 October 2019), Explanatory Statement and Proxy Form released on ASX on 30 October 2019

By way of background in relation to Nick Bolton's Executive Share Plan (**ESP**) shares²⁸:

- (1) Nick Bolton (who was the Managing Director of Keybridge at the time) was issued 9 million ESP shares on 19 December 2014 – at an initial cost of \$1,678,500 (at 18.65 cents each) funded by a limited-recourse loan granted by Keybridge (**ESP Loan**). These ESP shares were subject to vesting conditions (with 3 million (1/3rd) vesting on each of 1 October 2015, 2016 and 2017) and 3 million also subject to payment of a further 'release amount' (of 11.5 cents each);
- (2) Nick Bolton's ESP Loan matured on 31 December 2017 with \$1,652,164 outstanding, comprising the principal balance of \$1,316,000 (after allowing for dividends and capital returns paid by Keybridge) and accrued interest (at 6.45% pa) of \$336,164. The principal component of the ESP Loan is limited recourse to the ESP shares issued – as such, Keybridge is entitled to cancel Nick Bolton's 9 million ESP shares against the \$1.316 million principal loan balance. The interest component is full-recourse – as such, Nick Bolton is liable to pay this balance to Keybridge. So far as Bentley is aware, Nick Bolton has not paid any amount to Keybridge towards discharging his ESP Loan;
- (3) Keybridge has stated that "*All rights to retain shares under the ESP expire on the earlier of their expiry date or termination of the individual [holder's] employment. The shares vest progressively....., subject to continuing employment and the outstanding loan and accumulated interest balance being paid in full*";²⁹ and
- (4) Keybridge has stated that it has "*taken security over those [ESP] ordinary shares, and are held in escrow to secure repayment of the relevant [ESP] loan*".³⁰

FOR FURTHER INFORMATION:

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²⁸ Refer Keybridge's 2015, 2016 and 2019 Annual Reports, Keybridge's Notice of AGM and Explanatory Statement dated 29 October 2014 and Keybridge's ASX Announcement dated 19 December 2014: Appendix 3B and Further Detail Regarding Issuance of Loan Funded Shares

²⁹ Refer Keybridge's 2015 Annual Report (at page 23)

³⁰ Refer Keybridge's 2015 Annual Report (at pages 21 and 71); and also Keybridge's ASX Announcement dated 19 December 2014: Appendix 3B and Further Detail Regarding Issuance of Loan Funded Shares