

Thursday, 2 August 2018

ASX Codes : KBC; KBCPA

# ASX MARKET ANNOUNCEMENT

## UPDATE ON MOLOPO MATTERS

Keybridge Capital Limited (ASX:KBC) (**Keybridge**) provides the following update on various matters pertaining to Molopo Energy Limited (ASX:MPO) (**Molopo**).

### Takeovers Panel Proceedings

On 30 July 2018, the Takeovers Panel published its Final Reasons in the matter of Molopo Energy Limited 10 & 11<sup>1</sup>, a summary of which is as follows:

- The Panel found that Molopo's failure to disclose certain transactions and events in accordance with its disclosure obligations meant that the acquisition of control over voting shares in Molopo has not taken place in an efficient, competitive and informed market. In addition, by virtue of Molopo taking those actions, Aurora's bid may be withdrawn or lapse in circumstances where Molopo shareholders were not offered a choice between those actions and Aurora's bid. The Panel made compensation and costs orders in favour of Aurora.
- The Panel was "very troubled by the serious disclosure failures of Molopo over an extended period of time and during a takeover period when greater care is required in a target's communications with shareholders".
- In the Panel's view, "there has been a blatant disregard of Molopo's disclosure obligations by the Former Directors" (being Messrs Baljit Johal, Matthew Cudmore and Richard Matthews who were all removed as Directors at Molopo's AGM<sup>2</sup> held on 31 May 2018<sup>3</sup>).
- The Panel identified an extensive list of concerns and questions regarding the conduct of Molopo and its former directors in relation to the Orient and Drawbridge Transactions including:
  - (a) "the reasons why Molopo's board repeatedly chose not to disclose material transactions and events to Molopo shareholders";
  - (b) the then Molopo Board's approval of the Orient Transaction announced in July 2017 and subsequent loan transactions (including the intended purpose and actual use of the loan funds);
  - (c) the limited due diligence undertaken by Molopo on the Orient / Drawbridge Transactions, including counterparty due diligence and Molopo's limited access to information on Drawbridge before and after the Drawbridge Transaction;
  - (d) the decision of the Former Directors not to obtain any independent valuations regarding the Drawbridge Transaction;
  - (e) the reasons why Gil Feiler did not match Molopo's US\$4.5 million loan to Orient and why this outstanding contribution was not factored into the US\$7 million paid to Gil Feiler's special purpose vehicle to buy back his 50% interest in Orient; and

1 Refer Takeovers Panel Reasons for Decision in [Molopo Energy Limited 10 & 11 \[2018\] ATP 12](#)

2 Refer MPO Notice of AGM and Explanatory Statement dated and released on ASX on 30 April 2018

3 Refer MPO ASX announcement dated 31 May 2018: AGM Results

- (f) *“the reasons why Molopo considered it appropriate to make a total payment of US\$14 million for Orient in circumstances where the total consideration payable by Orient for its co-investment in the Orient Project with Kerogen had only been US\$2 million (of which US\$1 million was payable in two installments due on 1 July 2017 and 1 September 2017)”*.
- The Panel proposes to *“make a referral to ASIC to consider potential breaches of directors duties by the Former Directors, as well as other matters, including the genuineness of the transactions”*.
  - The Panel also identified *“concerns regarding Molopo’s requests for withholding information from parties and the redaction of information in documents received under subpoena in this proceeding (before the Directors Replacement) and Molopo Energy Limited 09<sup>4)</sup>”* and the Panel proposes to *“make a referral to ASIC to investigate whether one or more of the Former Directors breached section 199(1) or 200(1)(a) of the Australian Securities and Investment Commission Act 2001 (Cth) in relation to this proceeding and/or Molopo Energy Limited 09, including whether any written submissions given to the Panel (and ASIC) gave information or evidence that “is false or misleading in a material particular”*”.

On 20 July 2018, Molopo applied for a review of the Panel’s decision on final orders in Molopo Energy Limited 10 & 11<sup>5</sup> (which Keybridge supports).

By way of background:

- (a) On 8 June 2018, the Panel announced that it had made a declaration of unacceptable circumstances in relation to the affairs of Molopo arising out of, inter alia, the Orient<sup>6</sup> and Drawbridge<sup>7</sup> Transactions including that<sup>8</sup>:
- (i) Molopo shareholders have not been given enough information to enable them to assess the merits of AFARF’s takeover bid<sup>9</sup> and have not had a reasonable and equal opportunity to participate in any benefits accruing under the bid; and
  - (ii) The Former Directors by their action, including such action which may contribute to AFARF’s bid not proceeding, have not given Molopo shareholders a reasonable and equal opportunity to participate in any benefits accruing under the bid.
- (b) On 18 July 2018, the Panel announced its final orders requiring Molopo to pay Aurora compensation in relation to certain of Aurora’s bid costs and Aurora’s costs in relation to the Panel proceedings (totalling \$70,581.66).<sup>10</sup>

For further details, refer to the following publications released by the Takeovers Panel (available from their website - <https://www.takeovers.gov.au/>):

- 8 June 2018 Media Release TP18/42: Molopo Energy Limited 10 & 11 – Declaration of Unacceptable Circumstances;
- 18 July 2018 Media Release TP18/53: Molopo Energy Limited 10 & 11 – Orders; and
- 30 July 2018 Reasons for Decision in Molopo Energy Limited 10 & 11 [2018] ATP 12.

4 Refer Takeovers Panel Media Release No. TP17/60 dated [8 December 2017: Molopo Energy Limited 09 – Panel Declines to Make Declaration](#)

5 Refer Takeovers Panel Media Releases NO. TP 17/59 dated [27 November 2017: Molopo Energy Limited 09 – Panel Receives Application](#) and No. TP18/54 dated [20 July 2018: Molopo Energy Limited 12R – Panel Receives Review Application](#)

6 Refer MPO ASX announcement dated 22 August 2017: Molopo Acquires Interest in US Oil and Gas Project

7 Refer MPO ASX announcement dated 8 May 2018: Molopo De-Risks By Diversifying its Oil and Gas Exploration Portfolio, MPO Quarterly Report for the quarter ending 31 March 2018 dated and released on ASX on 8 May 2018 and MPO Annual Report for the year ended 31 December 2017 released on ASX on 8 May 2018

8 Refer Takeovers Panel Media Release No. TP18/42 dated [8 June 2018: Molopo Energy Limited 10 & 11 – Declaration of Unacceptable Circumstances](#)

9 Aurora Funds Management Limited (**Aurora** or **AFML**) (as Responsible Entity of the Aurora Absolute Return Fund (ASX:[ABW](#)), Aurora Global Income Trust (ASX:[AIB](#)) and unlisted Aurora Fortitude Absolute Return Fund (**AFARF**)) has launched a cash and/or scrip takeover bid for Molopo at \$0.135 per share, which is currently scheduled to close on 20 August 2018. Refer AFARF’s ASX announcements dated 26 October 2017: Bidder’s Statement and 12 June 2018: Notice of Variation of MPO Bid and MPO’s ASX announcements dated 28 November 2017: Target’s Statement, 19 January 2018: Supplementary Target’s Statement, 19 March 2018: Second Supplementary Target’s Statement and 28 May 2018: Third Supplementary Target’s Statement

10 Refer Takeovers Panel Media Release No. TP18/53 dated [18 July 2018: Molopo Energy Limited 10 & 11 – Orders](#)

## Victorian Supreme Court Litigation

On 18 July 2018, in relation to Keybridge's proceeding against Molopo and Baljit Johal, Richard Matthews and Matthew Cudmore<sup>11</sup> (being former Molopo Directors who were all removed as Directors at Molopo's AGM held on 31 May 2018), vis a vis, amongst other matters, oppression of Molopo shareholders and false and misleading conduct, the Court ordered by minutes of consent orders (agreed by all parties to the proceedings) that:

- Molopo replace Keybridge as a Plaintiff to the proceeding;
- Molopo file and serve an amended originating process and statement of claim against the Defendants (Messrs Johal, Matthews and Cudmore) by 10 August 2018;
- The Defendants file and serve their defences by 7 September 2018; and
- The matter be next considered at a directions hearing on 14 September 2018.

By way of background, on 30 May 2018, Keybridge commenced legal action seeking a number of declarations and orders against Molopo and Messrs Johal, Matthews and Cudmore on the basis of, amongst other matters, oppression by Molopo of its shareholders, false and misleading conduct by Molopo and Messrs Johal, Matthews and Cudmore, and breaches by Molopo of the ASX Listing Rules.

On 19 July 2018, in relation to Keybridge's proceeding against Molopo<sup>12</sup> to seek further information vis a vis the Orient Transaction, the matter was dismissed by minutes of consent orders (agreed with Molopo) with no order as to costs.

On 20 July 2018, in relation to Keybridge's proceeding against Molopo and former Molopo Director, Ronnen Rosengart,<sup>13</sup> vis a vis, amongst other matters, oppression of Molopo shareholders, the matter was adjourned to a further directions hearing on 10 August 2018. Keybridge has proposed (with the agreement of Molopo) to seek to have:

- Molopo replace Keybridge as a Plaintiff to the proceeding; and
- the proceeding considered together with the proceeding against former Molopo Directors (Messrs Johal, Matthews and Cudmore)<sup>1</sup> referred to above.

Mr Rosengart has not consented to this course of action and accordingly Molopo have advised Keybridge that they will instead be applying to join Mr Rosengart as Defendant to the proceedings against the other former Molopo Directors.

By way of background, Keybridge commenced legal action in September 2017 against Molopo in what it believes to be in the interests of all Molopo shareholders seeking, amongst other matters:

- Further information in relation to a number of matters including the Orient Transaction, the financial status and technical capacity of Orient and the conduct of the Molopo Board in the management and administration of Molopo – refer Keybridge ASX announcement dated [11 September 2017: Commencement of Legal Action Against Molopo Energy Limited to Access Information](#); and
- A number of orders against Molopo and a then Molopo Director (Ronnen Rosengart, who has since resigned) on the basis of oppression by Molopo of its shareholders and breaches by Molopo of the ASX Listing Rules – refer Keybridge ASX announcement dated [15 September 2017: Commencement of Further Legal Proceedings Against MPO and Ronnen Rosengart](#).

<sup>11</sup> Keybridge Capital Limited v. Molopo Energy Limited & Ronnen Rosengart, Supreme Court of Victoria Proceedings S ECI 2018 00120

<sup>12</sup> Keybridge Capital Limited v. Molopo Energy Limited & Ronnen Rosengart, Supreme Court of Victoria Proceedings SCI 2017 04750

<sup>13</sup> Keybridge Capital Limited v. Molopo Energy Limited & Ronnen Rosengart, Supreme Court of Victoria Proceedings SCI 2017 04752

Keybridge and Molopo have also agreed that in relation to the abovementioned proceedings where it is proposed Molopo replaces Keybridge as Plaintiff, Keybridge's costs (to be agreed by the parties or as determined by a cost assessor) will be paid out of any funds recovered by Molopo from any source.

### **Judicial Review of Takeovers Panel Matter: Molopo Energy Limited 03R, 04R & 05R**

Aurora has applied for a judicial review<sup>14</sup> of the Panel's decision in Molopo Energy Limited 03R, 04R & 05R<sup>15</sup>.

Keybridge has entered a submitting appearance in respect of this proceeding such that Keybridge will submit to any order that the Court may make in the proceeding.

This matter is scheduled to be heard in the Federal Court of Australia in Sydney on 22 and 23 October 2018.

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#### **FOR FURTHER INFORMATION:**

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#### **ABOUT [KEYBRIDGE CAPITAL LIMITED](#) (ASX: [KBC](#))**

Keybridge is an investment and financial services group with a diversified portfolio of listed and unlisted investments/loan assets including in the private equity (US), life insurance (New Zealand), property and funds management sectors and strategic holdings in HHY Fund (ASX:[HHY](#)), Molopo Energy Limited (ASX:[MPO](#)), Metgasco Limited (ASX: [MEL](#)) and Yowie Group Ltd (ASX:[YOW](#)). Keybridge is also the Investment Manager of HHY.

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14 Refer AIB and ABW ASX Announcements dated 11 September 2017: AFARF, ABW and AIB – Takeovers Panel 03R, 04R & 05R and Takeovers Panel Media Release No. TP14/48 dated 15 September 2017: Molopo Energy Limited 03R, 04R & 05R – Application for Judicial Review

15 Refer Takeovers Panel Reasons for Decision dated [22 August 2017: Molopo Energy Limited 03R, 04R & 05R \[2017\] ATP 12](#); Takeovers Panel Media Release No. TP17/37 dated [10 July 2017: Molopo Energy Limited 03R, 04R & 05R - Orders](#); Takeovers Panel Media Release No. TP17/34 dated [30 June 2017: Molopo Energy Limited 03R, 04R & 05R – Declaration of Unacceptable Circumstances](#)