

Excelsior Capital Limited

ABN 98 050 542 553

Meeting Documentation

Notice of Extraordinary General Meeting and Explanatory Statement

Date of Meeting:

Friday, 19 March 2021

Time of Meeting:

11am (Sydney time)

Method of Meeting:

Virtual Meeting Only

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Notice of Extraordinary General Meeting

Excelsior Capital Limited ABN 98 050 542 553

Notice is given that an Extraordinary General Meeting (EGM) of Excelsior Capital Limited ("**ECL**" or the "**Company**") will be held at 11.00am (Sydney time) on Friday, 19 March 2021 via a virtual meeting using an online platform provided by Link Share Registry Services.

The online platform will allow shareholders to view the meeting, and vote and submit questions. Instructions on how to do so are included in the Notice of Meeting and further details are published in a user guide on ECL's webpage at <http://www.cmilimited.com.au/Investor-Centre/>.

Lodging a proxy or direct proxy vote in advance of the meeting can be done online at www.linkmarketservices.com.au. Instructions on how to vote or appoint a proxy are detailed on the back of the Proxy Form. Proxies must be received no later than 11.00am (Sydney time) on Wednesday, 17 March 2021 to be valid for the EGM. Proxy votes may be lodged online or proxy form returned by mail in the enclosed reply-paid envelope or by fax on +61 2 9287 0309

AGENDA

A. RESOLUTION

1 Request to modify the Constitution of the Company

To consider and, if thought fit, to pass with or without amendment, the following as a **Special Resolution**:

'That, for the purposes of section 136(2) of the Corporations Act 2001 (Cth) and for all other purposes, approval is given for the Company to modify its existing Constitution in the manner outlined in the Explanatory Memorandum, with effect from the close of the Meeting.'

DATED this 15 February 2021

By Order of the Board



Oliver Schweizer
Company Secretary
Excelsior Capital Limited

NOTES

- (a) The Company has determined in accordance with Regulation 7.11.37 of the *Corporations Regulations 2001* (Cth) that for the purpose of voting at the Meeting, Shares will be taken to be held by those persons recorded in the Company's register of Shareholders as at 7.00pm (Sydney time) on Wednesday, 17 March 2021.
- (b) You may vote by lodging a proxy or direct proxy vote in advance of the meeting online at www.linkmarketservices.com.au or by proxy or attorney received by post or fax. A body corporate may appoint a corporate representative, rather than appoint a proxy, in accordance with section 250D of the Corporations Act in which case the Company will require written proof of the representative's appointment which must be lodged with or presented to the Company before the Meeting. A "Certificate of Appointment of Corporate Representative" form may be obtained from the Company's share registry or online at www.linkmarketservices.com.au.
- (c) A Shareholder who is entitled to attend and cast a vote online at the Meeting is entitled to appoint a proxy. The proxy need not be a Shareholder of the Company.
- (d) Unless the proxy is required by law to vote, the proxy may decide whether or not to vote on any particular item of business. If the appointment of proxy directs the proxy to vote on an item of business in a particular way, the proxy may only vote on that item as directed. Any undirected proxy votes on a given resolution may be voted by the appointed proxy as they choose, subject to the voting exclusions described below.
- (e) A Shareholder who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise. If you appoint two proxies, neither is entitled to vote on a show of hands. To appoint two proxies, use a separate proxy form for each. Shareholders are requested to show on the proxy form the specified proportion or number of the votes each proxy is appointed to exercise. If no proportion or number of votes is specified, each proxy may exercise half of your votes (disregarding fractions) on any poll.
- (f) You can appoint a proxy in four ways:
 - online** (preferred) by visiting www.linkmarketservices.com.au. Shareholders may lodge proxy appointments by logging in at www.linkmarketservices.com.au and clicking on the 'Voting' link on the Holding Details page. Your online proxy appointment will only be valid if you lodge your proxy in accordance with the instructions set out on the webpage above, in which case you are taken to have signed the proxy form; or
 - by post** using the reply-paid envelope to Excelsior Capital Limited, c/o Link Market Services Limited, Locked Bag A14, Sydney South, NSW 1235 Australia; or
 - by facsimile** to 02 9287 0309; or
 - by hand** to Excelsior Capital Limited, c/o Link Market Services Limited, 1A Homebush Bay Drive, Rhodes, NSW 2138.
- (g) The proxy form must be signed by the Shareholder or the Shareholder's attorney. Proxies given by a corporation must be executed in accordance with the Corporations Act and the constitution of that corporation.
- (h) A Shareholder entitled to attend and vote online at the Meeting is entitled to appoint an attorney to attend and vote at the Meeting on the Shareholder's behalf. An attorney need not themselves be a Shareholder. The power of attorney appointing the attorney must be signed and specify the name of each of the Shareholder, the Company and the attorney, and also specify the meeting(s) at which the appointment may be used. The appointment may be a standing one.

If the proxy form is signed by an attorney, the original power of attorney or a certified copy of it must be sent with the proxy form.

- (i) To be valid, your proxy appointment must be made online or your proxy form must be received by the Company by no later than 11.00am (Sydney time) on Wednesday, 17 March 2021 (being 48 hours before the commencement of the Meeting). Any proxy form received after this deadline including at the EGM will be treated as invalid unless permitted by the Board.
- (j) If you intend to appoint the Chairman of the Meeting as your proxy without providing specific voting directions to the Chairman of the Meeting (an ***Open Proxy***), then by submitting the Proxy Form online you will be expressly authorising the Chairman of the Meeting to exercise your proxy on the relevant resolution. **The Chairman of the Meeting intends to cast all Open Proxies AGAINST the Resolution.**

A proxy form is enclosed with this Notice of Meeting.

If you have any queries on how to cast your votes then call the Company's share registry on 1300 554 474 during business hours.

Explanatory Memorandum

Excelsior Capital Limited ABN 98 050 542 553

The information in this Explanatory Memorandum is provided to Shareholders of Excelsior Capital Limited ("ECL" or the "Company") to assist Shareholders with their consideration of the resolution to be put to the EGM.

This Explanatory Memorandum forms part of the Notice of the Company's Extraordinary General Meeting to be held on Friday, 19 March 2021 at 11:00am (Sydney time) via a virtual meeting using an online platform provided by Link Share Registry Services (**EGM**) where Shareholders can attend and participate by logging into <https://agmlive.link/ECLEGM21>. The online platform will allow shareholders to view the meeting, and vote and submit questions. Instructions on how to do so are included in the Notice of Meeting and further details are published in a user guide on ECL's webpage at <http://www.cmilimited.com.au/Investor-Centre/>.

All Shareholders should read this Explanatory Memorandum in full and if they have any questions, obtain professional advice before making any decisions in relation to the resolution to be put to Shareholders at the EGM.

Subject to the abstention noted below, **the Directors unanimously recommend Shareholders vote Against the Resolution.**

A. Resolution

1 Request to modify the Constitution of the Company

On 29 January 2021 the Company received a request to convene a general meeting of the Company to consider the modification of the Company's Constitution. The Requisition Notice (**Requisition Notice**) was given by the following Shareholders who represent 5.85% of the Company's Shareholders:

Mr Warwick Sauer;

Mr Benjamin Graham and Mrs Katerina Graham atf the FKR Super Fund;

Mr Benjamin Graham and Mrs Cara Graham atf the FCV Super Fund;

BAVARIA Industries Group AG.

Director's comments in relation to the Requisition Notice

The Board does not support or agree with the request to modify the constitution of the Company and considers this request another unnecessary use of Company's resources including the costs incurred to arrange an EGM for this purpose.

The Requisition Notice requests that, pursuant to section 136 (2) of the Corporations Act 2001 (Cth), the constitution (Constitution) of Excelsior Capital Limited be modified by:

- (a) inserting into rule 5 (a) after the words "this Constitution", the additional words "(including without limitation rule 5 (d))";
- (b) inserting the following rule as a new rule 5 (d) immediately after rule 5 (c) of the Constitution:

Other than by way of a pro-rata rights issue to the company's then shareholders offering no more than one new share for every ten then held, or by way of dividend reinvestment plan, without the prior approval of shareholders the company may not in any 12-month period issue Securities (New Issue) where:

- (i) *the number of shares to be issued by the company under the New Issue; and/or*
- (ii) *the number of shares that would be issued upon conversion of any convertible securities to be issued by the company under the New Issue,*

represents more than 0.1% of the number of shares on issue at the time the New Issue is announced.

For the avoidance of doubt, this rule operates despite any other provision to the contrary in this Constitution.

The Board makes the following comments:

1. Currently, subject to exceptions, the Board has the power to raise capital by issuing securities. If the proposed constitutional amendment is made, it will result in the Company being unable to raise a meaningful amount of new capital in any 12 month period, without shareholder approval, except by way of:
 - a. pro-rata rights issues up to a maximum ratio of one share for every ten held; or
 - b. a dividend reinvestment plan.
2. It is important that the Board is able to make decisions that affect the business and affairs of the Company in the best interests of the Company as a whole. Shareholders are able to hold the Board to account for their decisions by voting on the appointment and removal of Directors at the Company's Annual General Meetings.
3. The proposed amendment restricts the Board's ability to issue new securities and may have a material adverse effect on the Company's ability to take advantage of commercial opportunities which require additional capital that may arise from time to time. If the Board is unable to act in a timely manner to issue equity securities, such commercial opportunities may be lost to the Company. The Board does not consider that such a limitation and the associated risk of lost opportunity is in the best interests of the Company.
4. There are existing shareholder protections in the Listing Rules and the Corporations Act which require shareholder approval of security issues in certain circumstances (for example to issue more than 15% of the Company's share capital in 12 months and to issue to persons in a position of influence or to a related party on non-arm's length

terms). The Board considers these existing requirements appropriately balance the Board's discretion to issue securities with the need to seek shareholder approval and considers that the proposed new requirement is not reasonably required for the protection of shareholders.

5. Section 136(2) of the Corporations Act states that amendment to the Company's Constitution requires a special resolution, meaning it will only be passed if at least 75% of the votes cast on this Item are in favour of the Resolution.

The Directors, unanimously recommend that Shareholders vote AGAINST the Resolution

Glossary of Terms

In the attached Notice of Meeting and Explanatory Memorandum the following words and expressions have the following meanings:

EGM or Meeting	means the extraordinary general meeting of the Company to be held on Friday, 19 March 2021 (virtually).
ASX	means ASX Limited ACN 008 624 691 or the financial products market operated by it, as the context requires.
Board	means the board of Directors of the Company.
Chairman	means the Chairman of the Company as approved from time to time and includes an acting Chairman.
Company or ECL	means Excelsior Capital Limited ABN 98 050 542 553.
Constitution	means the Constitution of the Company from time to time.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Directors	means the Directors of the Company from time to time, and Director means any one of them.
Explanatory Memorandum	means the explanatory memorandum to and forming part of the notice of Meeting contained in this booklet.
Group	means the Company and its Related Bodies Corporate.
Listing Rules	means the official listing rules of ASX.
Related Body Corporate	has the meaning given to that term in section 50 of the Corporations Act.
Share or Ordinary Share	means an ordinary share in the capital of the Company.
Shareholders	means the holders of the Shares from time to time.

Annexure One – Requisition Request Notice

See attached

(THIS IS ANNEXURE B AS REFERRED TO IN THE FORM 603 LODGED IN RELATION TO
EXCELSIOR CAPITAL LIMITED ACN 050 542 553)

**REQUEST FOR DIRECTORS OF EXCELSIOR CAPITAL LTD TO CALL A GENERAL MEETING OF EXCELSIOR
CAPITAL LTD**

To: Excelsior Capital Ltd ("ECL")

The following members of ECL hold at least 5% of the votes that may be cast at the requested general meeting:

1. Mr Warwick Sauer;
2. Mr Benjamin Graham and Mrs Katerina Graham atf the FKR Super Fund;
3. Mr Benjamin Graham and Mrs Cara Graham atf the FCV Super Fund;
4. BAVARIA Industries Group AG,

(the **Requisitioning Shareholders**).

The Requisitioning Shareholders request under section 249D of the *Corporations Act* 2001 (Cth) (the **Act**) that the directors of ECL call and arrange to hold a meeting of the members of ECL to consider and vote on the following resolution:

That, pursuant to section 136(2) of the Corporations Act 2001 (Cth), the constitution (Constitution) of Excelsior Capital Ltd be modified by:

- (a) *inserting into rule 5(a), after the words "this Constitution", the additional words "(including without limitation rule 5(d))";*
- (b) *inserting the following rule as a new rule 5(d) immediately after rule 5(c) of the Constitution:*

Other than by way of a pro-rata rights issue to the company's then shareholders offering no more than one new share for every ten then held, or by way of dividend reinvestment plan, without the prior approval of shareholders the company may not in any 12-month period issue Securities (New Issue) where:

- (i) *the number of shares to be issued by the company under the New Issue; and/or*
 - (ii) *the number of shares that would be issued upon conversion of any convertible securities to be issued by the company under the New Issue,*
- represents more than 0.1% of the number of shares on issue at the time the New Issue is announced.*

For the avoidance of doubt, this rule operates despite any other provision to the contrary in this Constitution.

Enclosed is a statement prepared by the Requisitioning Shareholders in accordance with section 249P of the Act. The Requisitioning Shareholders request that ECL provide this statement to all members of ECL along with the notice of the meeting requested in this document.

Dated: 29 January 2021

Signed by:

Warwick Sauer		
Benjamin Graham and Katerina Graham atf the FKR Super Fund		
Benjamin Graham and Cara Graham atf the FCV Super Fund		
BAVARIA Industries Group AG		

Annexure Two – Requisitioning Shareholder Statement

See Attached

The shareholders who requisitioned the Resolution have requested that the following statement accompany the Resolution. The Board and the Company DO NOT endorse and are not responsible for the contents of the statement or for any inaccurate or misleading statements contained in it.

ANNEXURE TWO

MEMBERS' STATEMENT

29 January 2021

Vote

FOR

the Resolution

#NotExcellingAtAllsior

Dear Fellow ECL Shareholder,

In 2016, ECL sought shareholder approval to change the nature of its business to that of a "listed investment entity". The supporting votes of entities controlled by Leanne Catelan ensured that that vote succeeded.

ECL subsequently created an "Investment Portfolio" and funded it with around \$20m. Since that occurred, ECL's key assets have been its Electrical Business, and the Investment Portfolio.

The Electrical Business has – as it always has been – remained a consistent if not stellar performer. The performance of the Investment Portfolio, however, has been absolutely dire.

ECL does not provide to shareholders clear and transparent information on the returns achieved by the Investment Portfolio. However, by piecing together the scant information ECL *has* provided, we estimate that compared to the All Ordinaries Accumulation Index, for the period from 1 January 2017 to 30 June 2020, ECL's "Investment Portfolio" delivered average annual underperformance of around 10.5%.

The Investment Portfolio's relative performance since the end of June 2020 seems to have followed the same course as it did from inception: the portfolio has yet again badly underperformed. That is perhaps because - over a period in which stock markets worldwide have skyrocketed - the "Investment Portfolio" appears to have almost wholly comprised cash or equivalents. That is demonstrated by the Investment Portfolio's NTA each month being exceptionally stable, and changing by at most 0.35%.

Date	NTA of IP	Change from prior month
31/7/2020	\$0.6460	
31/8/2020	\$0.6464	0.0619%
30/9/2020	\$0.6444	-0.3094%
31/10/2020	\$0.6466	0.3414%
30/11/2020	\$0.6462	-0.0619%
31/12/2020	\$0.6457	-0.0774%

As you may know, when ECL became a "listed investment entity", it engaged an active manager for investment advice under a five year contract. However, for a few reasons, the atrocious destruction of value visited upon ECL by the astounding underperformance of the Investment Portfolio cannot be blamed wholly on that manager:

1. First, that manager gave ECL recommendations that ECL sometimes followed...but sometimes did not.
2. Secondly, around three years into the contract's five year term, ECL paid

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out that entire five year term and started liquidating the Investment Portfolio (as evidenced by the fact that by July 2020, when there was more than a year to run on that contract, the Investment Portfolio was seemingly almost wholly 'invested' in cash).

Rather than trying to actively manage the \$20m, and paying through the nose for five years' advice on how to do so (albeit then not always following that advice!), ECL could simply have put the \$20m into an index fund. If it had done so, ECL – the company of which you are part owner - would be worth literally **many million dollars more** than it now is.

Given the Investment Portfolio's consistently atrocious performance and the fact it has now for months been largely committed only to cash, it seems plain that:

1. ECL does not need more money for any purposes related to the electrical division – it has (and has had for months now) cash reserves of over \$18m which could be used to meet any funding needs; and
2. ECL should not be given any more money for 'investing' purposes – given that any such money seemingly:
 - a. would be left to sit in cash, or
 - b. if actively invested, would likely be rapidly depleted.

The resolution we are proposing, if passed, will:

1. permit ECL to raise money via pro-rata rights issues up to a maximum ratio of one share for every ten held; and
2. permit ECL to raise money via a dividend reinvestment plan; and
3. permit ECL to raise only a small amount of money via other means in any 12 month period.

ECL director Danny Herceg said at ECL's 2020 AGM that ECL's board "*hopes to encourage greater participation by shareholders*". We would love to see you all fulfil Danny's wish by participating enthusiastically in the vote on the resolution we are proposing.

Warwick, Ben, Katerina, Cara, and Daniel

ECLActivists@gmail.com