

Form 603

Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme Excelsior Capital Ltd (ASX:ECL)

ACN/ARSN 050 542 553

1. Details of substantial holder (1)

Name Benjamin Graham and Katerina Graham

ACN/ARSN (if applicable)

The holder became a substantial holder on 13 /08/ 2020

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary shares	1602084	1602084	5.52%

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
See Annexure A	See Annexure A	See Annexure A

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
See Annexure A	See Annexure A	See Annexure A	See Ann. A

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
See Annexure B	See Annexure B	See Annexure B		See Ann. B

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
See Annexure C	See Annexure C

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
See Annexure D	See Annexure D

Signature

print name Benjamin Graham

capacity Self

sign here



date 17/ 08 / 2020

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown".
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

**THIS IS ANNEXURE A AS REFERRED TO IN THE FORM 603 LODGED
IN RELATION TO EXCELSIOR CAPITAL LIMITED ABN 98 050 542 553**

Holder of Relevant Interest	Person Entitled to be Registered as Holder	Nature of Relevant Interest	Number of shares held
Warwick Sauer	Warwick Sauer	Direct holdings	558931
Vera Kalabric	Vera Kalabric	Direct holdings	140000
Kalabric Family Super Pty Ltd atf the Kalabric Superfund	Kalabric Family Super Pty Ltd	Direct holdings held as trustee	280000
Benjamin Graham and Katerina Graham atf the FKR Super Fund	Benjamin Graham and Katerina Graham	Direct holdings held as trustee	180000
Whiley Close Investment Pty Ltd atf the Sims Family Super Fund	Whiley Close Investment Pty Ltd	Direct holdings held as trustee	130000
BAVARIA Industries Group AG ("BIG")	Interactive Brokers Australia Pty Ltd / BNP Paribas Securities Services Australia as custodian	BIG has the power to control the exercise of the right to vote the shares, and the power to exercise control over the disposal of the shares	313153

**THIS IS ANNEXURE B AS REFERRED TO IN THE FORM 603 LODGED
IN RELATION TO EXCELSIOR CAPITAL LIMITED ABN 98 050 542 553**

Date of change	Person whose relevant interest changed	Nature of change	Consideration given in relation to change	Shares bought
Various dates from 13/4/20 to 13/8/20	Warwick Sauer	Purchase of shares	\$71,550.13	59600
	Vera Kalabric	Sale of shares	-\$48,100.00	-40000
	Kalabric Family Super Pty Ltd atf the Kalabric Superfund	Purchase of shares	\$72,605.28	60000
	Benjamin Graham and Katerina Graham atf the FKR Super Fund	N/A	nil	0
	Whiley Close Investment Pty Ltd atf the Sims Family Super Fund	Purchase of shares	\$154,440.00	130000
	BAVARIA Industries Group AG	Purchase of shares	\$374,217.84	313153



17 August 2020

**THIS IS ANNEXURE C AS REFERRED TO IN THE FORM 603 LODGED
IN RELATION TO EXCELSIOR CAPITAL LIMITED ABN 98 050 542 553**

On 13 August 2020, by the attachment comprising Annexure E, the parties listed in Annexure A jointly requested the directors of Excelsior Capital Ltd to call and arrange to hold a meeting of the members of Excelsior Capital Ltd to consider and vote on the following proposed resolution:

That the directors of the company ("ECL"), promptly after the passing of the resolution, and subject always to their legal duties as directors, take all steps reasonably required to do the following in the following order:

- 1. obtain professional advice on maximising the saleability and near term market value of ECL's "CMI Operations" business;*
- 2. promptly act on the advice received;*
- 3. promptly obtain a valuation of the "CMI Operations" business;*
- 4. promptly and actively market the "CMI Operations" business for sale and engage with potential purchasers of it in the manner of a willing but not desperate vendor;*
- 5. provided an offer to purchase the "CMI Operations" business is received, and the offer is on reasonable commercial terms (with consideration being given to, inter alia, the procured valuation), accept the offer and effect the sale of the "CMI Operations" business; and*
- 6. upon the sale being completed and sale proceeds being received by ECL, distribute to ECL's shareholders the net sale proceeds as:*
 - a. a fully franked dividend, to the maximum extent possible;*
 - b. (insofar as that does not wholly account for the net sale proceeds) a capital return, to the maximum extent possible;*
 - c. (insofar as that does not wholly account for the balance of the net sale proceeds) an unfranked dividend, to the maximum extent possible.*

The parties listed in Annexure A have agreed to work together to put forward and promote the resolution. For this reason, they consider themselves to be associates.

**THIS IS ANNEXURE D AS REFERRED TO IN THE FORM 603 LODGED
IN RELATION TO EXCELSIOR CAPITAL LIMITED ABN 98 050 542 553**

Name of holder	Address
Warwick Sauer	c/ PO Box 573, Paddington, Qld 4064
Vera Kalabric	90 Evelyn St, Sylvania, NSW 2224
Kalabric Family Super Pty Ltd atf the Kalabric Superfund	90 Evelyn St, Sylvania, NSW 2224
Benjamin Graham and Katerina Graham atf the FKR Super Fund	c/ GPO Box 9981, Adelaide, SA 5001
Whiley Close Investment Pty Ltd atf the Sims Family Super Fund	Level 1/58-60 Glebe Road, The Junction, NSW, 2291
BAVARIA Industries Group AG	Bavariaring 24, 80336 Munich, Germany

THIS IS ANNEXURE E AS REFERRED TO IN ANNEXURE C TO THE FORM 603 LODGED
IN RELATION TO EXCELSIOR CAPITAL LIMITED ABN 98 050 542 553

**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. Mrs Vera Kalabric;
3. Kalabric Family Super Pty Ltd atf the Kalabric Superfund;
4. Mr Benjamin Graham and Mrs Katerina Graham atf the FKR Super Fund;
5. Whiley Close Investment Pty Ltd atf the Sims Family Super Fund;
6. 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 the directors of the company ("ECL"), promptly after the passing of the resolution, and subject always to their legal duties as directors, take all steps reasonably required to do the following in the following order:

1. *obtain professional advice on maximising the saleability and near term market value of ECL's "CMI Operations" business;*
2. *promptly act on the advice received;*
3. *promptly obtain a valuation of the "CMI Operations" business;*
4. *promptly and actively market the "CMI Operations" business for sale and engage with potential purchasers of it in the manner of a willing but not desperate vendor;*
5. *provided an offer to purchase the "CMI Operations" business is received, and the offer is on reasonable commercial terms (with consideration being given to, inter alia, the procured valuation), accept the offer and effect the sale of the "CMI Operations" business; and*
6. *upon the sale being completed and sale proceeds being received by ECL, distribute to ECL's shareholders the net sale proceeds as:*
 - a. *a fully franked dividend, to the maximum extent possible;*
 - b. *(insofar as that does not wholly account for the net sale proceeds) a capital return, to the maximum extent possible;*
 - c. *(insofar as that does not wholly account for the balance of the net sale proceeds) an unfranked dividend, to the maximum extent possible.*

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: 7 August 2020

MEMBERS' STATEMENT

7 August 2020

Vote

FOR

the Resolution

VOTE FOR CHANGE — VOTE FOR THE RESOLUTION!

Dear Fellow Shareholder,

Shares in Excelsior Capital Ltd ("ECL"), formerly named CMI Limited, currently trade on ASX at around \$1.20.

Recent sale prices of similar businesses suggest **ECL's electrical business alone is worth \$1.75 to \$2.40+ per share**. And, ECL has an investment portfolio worth another ≈65c per share.

So why don't ECL shares trade vastly higher?

We think investors avoid ECL because they have serious concerns about how ECL has been run, and they do not see things changing.

The resolution we are proposing would ensure shareholders obtain full value from ECL's electrical business, despite ECL's history.

Here are some examples of that history.

1. Catelan entities acquired nearly 10% of ECL in one transaction, without offering to buy the whole company - in breach of the Corporations Act.

ECL shareholders raised this with the Australian Government's Takeovers Panel. Despite the Catelan entities arguing otherwise, the Panel declared it to be "**Unacceptable Circumstances**".

The Catelan entities didn't accept that, and demanded a review. The Panel reiterated it was "**Unacceptable Circumstances**".

The Catelan entities didn't accept *that*, and appealed to the Federal Court. And the Federal Court confirmed, again, it was "**Unacceptable Circumstances**".

This history matters hugely to investors, because interests of Leanne Catelan now hold nearly half of all ECL's shares.

2. ECL resisted fixing its capital structure until being sued and forced to

For years, ECL had both ordinary shares and Preference / Class A shares.

Also for years, ECL paid a dividend of \$nil on the Preference / Class A shares. Thus, despite being originally sold for \$1.20, those shares traded on ASX around 40c.

It took a long-fought campaign by a major shareholder to force change. That shareholder requisitioned two separate meetings, *and* sued ECL and its directors (including current directors Leanne Catelan and Danny Herceg) in the Queensland Supreme Court.

After "vigorously defending" the lawsuit for months, ECL capitulated and said it was willing to pay Class A shareholders 95c per share. On top of that, ECL and other defendants paid over \$500,000 towards the complaining shareholder's legal costs.

VOTE FOR CHANGE — VOTE FOR THE RESOLUTION!

3. ECL created an “investment portfolio” against the wishes of most shareholders, and that portfolio has massively underperformed

Late in 2016, ECL proposed putting over \$20m - the vast majority of its cash - into an “investment portfolio”, with eye-watering fees payable to its manager.

Excluding the >13.8m shares held by interests of Leanne Catelan, over 82% of shareholder votes cast on this proposal opposed it. The Catelan votes however ensured the proposal passed.

Since its creation, the “investment portfolio” has performed terribly, gaining just 1.96% versus the ASX's All Ordinaries Accumulation Index's >21% as at 30 June.

4. ECL's board of directors is a revolving door

The table below details movements in ECL's directorial and secretarial positions since August 2011. The longer someone oversees a business, the more they learn about it – and deeper knowledge produces better decision-making. Yet many of ECL's directors have served for mere months (and on one occasion, for just two months). Is it any surprise that that might be of grave concern to investors? What has caused so many directors to quit, so soon after being appointed?

Date	Appointed	Ceased	Notes
2011 – August	Leanne Catelan	Ray Catelan Richard Catelan	
2012 – February	Somerville		
June		Somerville	Served ~four months
December	Lonie		
2013 – February		Lonie	Served ~two months
March		Ryan	Forced out upon <u>criminal conviction</u>
	Williams		
May	Rolfe		
2014 – April		Rolfe	Served <12 months
	Buckley		
		Herceg	
	Forbes		
		Williams	Served 13 months
2015 – December		Buckley	Served 20 months
2016 – February	Green		
		Forbes	Served 22 months
March	Miotti		
December		Williams*	
	Glennon		
	Sandham*		
2017 – February		Miotti	Served <12 months
October		Sandham*	Served <12 months
	Cohen*		
2018 – December		Cohen*	Served ~14 months
	Glennon*		

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2019 – May		Glennon*	Served ~5 months
	Copeland*		
September		Green	
	Copeland		
October		Glennon	
	Herceg		
2020 – January	Cohen*		
		Copeland	
	Schweizer		
		Copeland*	Served ~8 months

*company secretary role

So what is the solution?

If our resolution is passed, ECL must in summary:

1. obtain a valuation of its electrical business;
2. actively market that business for sale;
3. sell the business if it receives an offer no lower than the valuation; and
4. pay the net sale proceeds to shareholders – with a large proportion potentially via fully franked dividend.

We understand that potential acquirers of the electrical business have approached ECL about potentially buying it, but ECL has engaged with them either minimally or not at all.

Businesses like ECL's electrical business change hands regularly. Based on recent sales, we think ECL's electrical business is worth \$50m at an absolute minimum, and perhaps even \$70m or more – ie **\$1.75 to \$2.40+ per ECL share**. That is in addition to the “investment portfolio” worth ~65c per share.

By voting for our resolution, you will be voting for net proceeds from any sale of the electrical business to go into your hip pocket – where that money belongs. You would also still retain your shares in ECL, which would retain the “investment portfolio”.

We think the decision is easy. Risk your shares being perennially undervalued, and accept that undervalue if you sell them. Or - vote for the resolution, to unlock ECL's huge intrinsic value.

Who are we?

We are ECL shareholders just like you. Together we have nearly \$2,000,000 invested in ECL – so our interests are wholly aligned with yours.

Your vote is important!

Retaining the status quo may result ECL's share price continuing to reflect investors' concerns about how the company has been managed. **This is your opportunity to change that.**

VOTE FOR CHANGE — VOTE FOR THE RESOLUTION!

We look forward to your participation at the meeting and your vote in favour of the resolution.

We would welcome contact from fellow investors. Our e-mail address is ECLActivists@gmail.com.

Sincerely,

Warwick Sauer, Vera Kalabric, Elvis Kalabric, Ben Graham, Katerina Graham, and Daniel Sims