

Orbx Investments Limited

Level 16, 56 Pitt Street

Sydney NSW 2000

ACN: 631 760 088

<https://orbxdirect.com/>



Orbx Investments Limited

Notice of 2020 Annual General Meeting

Explanatory Statement | Proxy Form

20 February 2020

9.00AM AEDT

Address

Automic Group

Level 5, 126 Phillip Street

Sydney NSW 2000

This Notice of Meeting should be read in its entirety. If Shareholders are in doubt as to how they should vote, they should seek advice from their professional advisers prior to voting.

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Venue and Voting Information

The Annual General Meeting of the Shareholders to which this Notice of Meeting relates will be held at 8.00AM AEDT on 20 February 2020 at Automic Group, Level 5, 126 Phillip Street, Sydney NSW 2000.

Your vote is important

The business of the Annual General Meeting affects your shareholding and your vote is important.

Voting in person

To vote in person, attend the Annual General Meeting on the date and at the place set out above.

Voting by proxy

To vote by proxy, please use one of the following methods:

| | |
|----------------|---|
| Online | Lodge the Proxy Form online at https://investor.automic.com.au/#/loginsah by following the instructions: Login to the Automic website using the holding details as shown on the Proxy Form. Click on 'View Meetings' – 'Vote'. To use the online lodgement facility, Shareholders will need their holder number (Securityholder Reference Number (SRN) or Holder Identification Number (HIN)) as shown on the front of the Proxy Form. |
| By post | Automic, GPO Box 5193, Sydney NSW 2001 |
| By hand | Automic, Level 5, 126 Phillip Street, Sydney NSW 2000 |

Your Proxy instruction must be received not later than 48 hours before the commencement of the Meeting. **Proxy Forms received later than this time will be invalid.**

Power of Attorney

If the proxy form is signed under a power of attorney on behalf of a shareholder, then the attorney must make sure that either the original power of attorney or a certified copy is sent with the proxy form, unless the power of attorney has already provided it to the Share Registry.

Corporate Representatives

If a representative of a corporate shareholder or a corporate proxy will be attending the Meeting, the representative should bring to the Meeting adequate evidence of their appointment, unless this has previously been provided to the Share Registry.

Notice of Annual General Meeting

Notice is hereby given that an Annual General Meeting of Shareholders of Orbx Investments Limited ACN 631 760 088 will be held at 8.00AM AEDT on 20 February 2020 at Automic Group, Level 5, 126 Phillip Street, Sydney NSW 2000 (**Meeting**).

The Explanatory Statement to this Notice of Meeting provides additional information on matters to be considered at the Annual General Meeting. The Explanatory Statement and the Proxy Form forms part of this Notice of Meeting.

The Directors have determined pursuant to Regulation 7.11.37 of the *Corporations Regulations 2001* (Cth) that the persons eligible to vote at the Annual General Meeting are those who are registered Shareholders at 7:00PM Tuesday AEDT on 18 February 2020.

Terms and abbreviations used in this Notice of Meeting and Explanatory Statement are defined in the Glossary.

Resolutions

Amendments to Constitution

1. **Resolution 1** – Amendments to Constitution

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

"That, for the purposes of section 136 of the Corporations Act and for all other purposes, the constitution of the Company be amended in the form of the document tabled at this Meeting and signed by the Chair for the purposes of identification, effective immediately."

Election of Directors

2. **Resolution 2** – Election of John Venema as Director

To consider and, if thought fit, to pass the following resolution as an **Ordinary Resolution**:

"That, subject to Resolution 1 being passed, for the purposes of rule 23.3(b) of the Amended Constitution, John Venema, a Director appointed as an additional Director and holding office until the next general meeting of the Company after his appointment in accordance with the Company's Constitution, be elected as a Director of the Company, effective immediately following the passing of Resolution 1."

3. **Resolution 3** – Election of Jeffrey Wicks as Director

To consider and, if thought fit, to pass the following resolution as an **Ordinary Resolution**:

"That, subject to Resolution 1 being passed, for the purposes of rule 23.3(b) of the Amended Constitution, Jeffrey Wicks, a Director appointed as an additional Director and holding office until the next general meeting of the Company after his appointment in accordance with the Company's Constitution, be elected as a Director of the Company, effective immediately following the passing of Resolution 1."

4. **Resolution 4** – Election of Craig Cameron as Director

To consider and, if thought fit, to pass the following resolution as an **Ordinary Resolution**:

“That, subject to Resolution 1 being passed, for the purposes of rule 23.3(b) of the Amended Constitution, Craig Cameron, a Director appointed as an additional Director and holding office until the next general meeting of the Company after his appointment in accordance with the Company’s Constitution, be elected as a Director of the Company, effective immediately following the passing of Resolution 1.”

Appointment of Auditor

5. **Resolution 5** – Appointment of Auditor

To consider and if thought fit, to pass the following resolution as an **Ordinary Resolution**:

“That, for the purposes of section 327B(1) of the Corporations Act and for all other purposes, Deloitte Touche Tohmatsu, having been nominated by shareholders and consented in writing to act as auditor of the Company, be appointed as auditor of the Company, effective immediately.”

Issue of Options

6. **Resolution 6** – Approval of Issue of Options to Odgers Berndtson

To consider and, if thought fit, to pass the following resolution as an **Ordinary Resolution**:

“That, subject to Resolution 1 being passed, for the purposes of rule 3.10(b) of the Amended Constitution, the Shareholders of the Company approve the issue and allotment of 7,812,500 options to Braithwaite Steiner & Pretty Pty Ltd (T/a Odgers Berndtson) and otherwise on the terms and conditions set out in the Explanatory Statement which accompanies and forms part of this Notice of Meeting following the passing of Resolution 1.”

Voting Exclusion Statement: The Company will disregard any votes cast in favour of Resolution 6 by or on behalf of:

- (a) a person who is expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being a holder of ordinary securities in the Company); or
- (b) an Associate of those persons.

However, the Company will not disregard a vote if:

- (i) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- (ii) it is cast by the Chair as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

Adoption of Employee Share Scheme and Plan

7. Resolution 7 – Adoption of Employee Share Scheme and Plan

To consider and, if thought fit, to pass the following resolution as an **Ordinary Resolution**:

“That, for the purposes of sections 257B(1), 259B(2) and 260C(4) of the Corporations Act, the Shareholders of the Company approve the adoption of the ESS, on the terms and conditions set out in the Explanatory Statement which accompanies and forms part of this Notice of Meeting.”

Voting Exclusion Statement: The Company will disregard any votes cast in favour of Resolution 7 by or on behalf of:

- (a) any Director of the Company (except one who is ineligible to participate in any employee incentive scheme in relation to the Company); or
- (b) an Associate of those persons.

However, the Company will not disregard a vote if:

- (i) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- (ii) it is cast by the Chair as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

BY ORDER OF THE BOARD

Maggie Niewidok
Company Secretary

Explanatory Statement

This Explanatory Statement has been prepared for the information of the Shareholders in connection with the business to be conducted at the Annual General Meeting to be held at 8.00AM AEDT on 20 February 2020 at Automic Group, Level 5, 126 Phillip Street, Sydney NSW 2000.

The purpose of this Explanatory Statement is to provide information which the Directors believe to be material to Shareholders in deciding whether or not to pass the Resolutions in the Notice of Meeting.

If you are in any doubt about what to do in relation to the Resolutions contemplated in the Notice of Meeting and this Explanatory Statement, it is recommended that you seek advice from an accountant, solicitor or other professional advisor.

Full details of the business to be considered at the Annual General Meeting are set out below.

Resolutions

Amendments to Constitution

Resolution 1 – Amendments to Constitution

Shareholder approval is being sought under this Resolution to:

- (a) permit the Company to issue 'Equity Securities' (as that term is defined in the Constitution) without having to offer them to other shareholders, while still requiring that all other issues of shares and securities by the Company be offered to the Company's shareholders, if the issue is approved by Shareholders at a general meeting or they are being issued to employees and/or directors under the ESS (the subject of Resolution 7);
- (b) be compliant with the recent changes to the ASX Listing Rules relating to restricted securities which came into effect on 1 December 2019, should the Company ever become admitted to the Official List of the ASX;
- (c) clarify that any directors appointed by the Bombora Member or the Founder Members (as defined in the constitution of the Company) will not be subject to re-election at the Company's third AGM since their appointment until such time as the Company is admitted to the official list of the ASX; and
- (d) clarify that a director who is appointed by the Directors pursuant to rule 23.3(a) of the Constitution will cease to hold office at the conclusion of the next annual general meeting unless re-elected by Shareholders at that annual general meeting.

Accordingly, the Company has prepared an amended Constitution (**Amended Constitution**) which makes the following amendments:

- (a) By deleting rule 2.5 in its entirety and replacing with a new rule 2.5:

2.5 Restricted Securities

If, at any time the Exchange classifies any of the Company's share capital as 'restricted securities', then despite anything in this constitution:

- a) the member holding the restricted securities must not dispose of, or agree or offer to dispose of, the restricted securities during the escrow period applicable to those securities except as permitted by the Listing Rules or the Exchange;*
- b) if the restricted securities are in the same class as securities quoted on the Exchange, the member holding the restricted securities will be taken to have agreed in writing that the restricted securities are to be kept on the company's issuer sponsored sub register and are to have a holding lock applied for the duration of the escrow period applicable to those securities;*

- c) *the company will, except as permitted by the Listing Rules or the Exchange, refuse to acknowledge any disposal of the restricted securities during the escrow period applicable to those securities;*
- d) *the member holding the restricted securities will not be entitled to participate in any return of capital on those securities during the escrow period applicable to those securities except as permitted by the Listing Rules or the Exchange; and*
- e) *if the member holding the restricted securities breaches a restriction deed required by the Listing Rules or a provision of this constitution restricting a disposal of the restricted securities, the member will not be entitled to any dividend or distribution or to exercise any voting rights, for those securities for so long as the breach continues.*

(b) By inserting the following new rule 3.10:

3.10 Excluded issues

Rule 3 does not apply to an issue of Equity Securities:

- (a) to employees or directors of the Company under an employee share or option scheme approved by the board in accordance with rule 12; or*
- (b) that is approved by members by ordinary resolution at a general meeting.*

(c) By inserting the following words after 'his or her appointment' in rule 23.3(b):

unless elected by members by resolution at that AGM

(d) By deleting rule 23.4(c) in its entirety and replacing with a new rule 23.4(c):

No director who is not a managing director may hold office without re-election beyond the third AGM following the meeting at which the director was last elected or re-elected or the date the director became subject to this rule. This rule 23.4(c) does not apply to any directors appointed under rule 23.2 until such time that the Company is admitted to the Official List of the Exchange.

(e) By amending rules 23.4(d) to 23.4(g) by deleting any reference to rule 23.4 and replacing with rule 23.4(b).

Prior to the Meeting, a copy of the Amended Constitution is available for review by Shareholders at the Company's registered office during normal business hours. A copy of the Amended Constitution can also be sent to Shareholders of the Company upon a request being made to the Company Secretary on +61 2 8072 1400.

A complete signed copy of the Amended Constitution will be tabled at the Meeting.

Pursuant to section 136(2) of the Corporations Act, any amendment to the Company's Constitution can only be effected by way of a Special Resolution passed by its Shareholders. Therefore, this Resolution is a Special Resolution that can only be passed if at least 75% of the total votes cast by Shareholders entitled to vote on this Resolution are voted in its favour.

Professional Advice

If you have any doubt or do not understand this Resolution, it is strongly recommended that you seek advice from a solicitor or other professional advisor.

Directors' Recommendation

The Board of Directors recommend Shareholders vote for this Resolution.

Election of Directors

Resolution 2 – Election of John Venema as Director

The Company's Constitution provides that any Director appointed by the existing Directors will hold office until the next following annual general meeting. The Constitution is being amended to clarify that such directors will continue to hold office if re-elected by Shareholders at that annual general meeting. Shareholder approval is being sought under Resolution 1 of this Notice of Meeting to amend the Constitution accordingly and this Resolution 2 is subject to Resolution 1 passing.

John Venema was appointed as an additional Director of the Company on 28 June 2019 and has since served as a Director of the Company.

Under this Resolution, John Venema seeks election as a Director of the Company at this AGM.

John founded Orbx in 2006 and as CEO, grew the company to nearly \$6m in revenue and built the leading brand in consumer flight simulation software with a portfolio of 300 products and over 140,000 customers. Prior to Orbx, John had 26 years' experience working in Australia, New Zealand, the USA, Asia and Europe for multinational IT companies in various management roles including sales, marketing, product management and technical support.

Directors' recommendation

The Directors (excluding Mr Venema) recommend that Shareholders vote for this Resolution.

Resolution 3 – Election of Jeffrey Wicks as Director

The Company's Constitution provides that any Director appointed by the existing Directors will hold office until the next following annual general meeting. The Constitution is being amended to clarify that such directors will continue to hold office if re-elected by Shareholders at that annual general meeting. Shareholder approval is being sought under Resolution 1 of this Notice of Meeting to amend the Constitution accordingly and this Resolution 3 is subject to Resolution 1 passing.

Jeffrey Wicks was appointed as an additional Director of the Company on 28 June 2019 and has since served as a Director of the Company.

Under this Resolution, Jeffrey Wicks seeks election as a Director of the Company at this AGM.

Jeff had a 45-year career in civil aviation with 39 years of those as an airline pilot based in the UK, the Pacific and primarily Hong Kong. Roles included management, training and as a company test pilot. Throughout that time, he has also been a property investor and is now more actively involved as an investor in Brisbane CBD and near-CBD office buildings as well as developer of residential townhouses, units and land. Jeff has an honours degree in Aeronautical Engineering from the University of NSW.

Directors' recommendation

The Directors (excluding Mr Wicks) recommend that Shareholders vote for this Resolution.

Resolution 4 – Election of Craig Cameron as Director

The Company's Constitution provides that any Director by the existing Directors will hold office until the next following annual general meeting. The Constitution is being amended to clarify that such directors will continue to hold office if re-elected by Shareholders at that annual general meeting. Shareholder approval is being sought under Resolution 1 of this Notice of Meeting to amend the Constitution accordingly and this Resolution 4 is subject to Resolution 1 passing.

Craig Cameron was appointed as an additional Director of the Company on 28 June 2019 and has since served as a Director of the Company.

Under this Resolution, Craig Cameron seeks election as a Director of the Company at this AGM.

Craig has 30 years' CEO experience in a broad range of industries and lived and worked in the USA, Canada, Japan, Australia and New Zealand. He has run start-ups, turnarounds and mature businesses in IT services, nutraceuticals, information technology, communications, healthcare and clean technology industries. Craig was chief strategist and head of business development for both a Fortune 100 company in the US and for Telstra in Australia. He has been a director of multiple listed and unlisted companies in the USA, Japan, Australia, the UK, Singapore, UAE and New Zealand. Craig has a Civil Engineering Degree from the University of Queensland.

Directors' recommendation

The Directors (excluding Mr Cameron) recommend that Shareholders vote for this Resolution.

Appointment of Auditor

Resolution 5 – Appointment of Auditor

Deloitte Touche Tohmatsu Limited is currently the auditor of the Company.

Under section 327A(2) of the Corporations Act, an auditor who has been appointed under section 327A(1) of the Corporations Act only holds office until the company's next annual general meeting.

This is the Company's first Annual General Meeting. Accordingly, the Company is required to appoint an auditor at this Meeting (as it its first annual general meeting) pursuant to section 327B(1) of the Corporations Act.

Pursuant to section 328B of the Corporations Act, the Company received a valid notice of nomination which nominated Deloitte Touche Tohmatsu to be appointed as the new auditor of the Company. A copy of the notice of nomination is set out in Annexure A of this Notice of Meeting.

Deloitte Touche Tohmatsu has provided the Company its written consent to act, subject to Shareholder approval being obtained, as the Company's auditor in accordance with section 328A(1) of the Corporations Act.

Accordingly, under this Resolution, Shareholder approval is being sought to appoint Deloitte Touche Tohmatsu as the auditor of the Company.

Directors' recommendation

The Board of Directors recommend that Shareholders vote for this Resolution.

Issue of Options

Resolution 6 – Approval of Issue of Options to Odgers Berndtson

Background

This Resolution seeks Shareholder approval to issue and allot 7,812,500 options to Braithwaite Steiner & Pretty Pty Ltd (T/a Odgers Berndtson) (**Odgers**) pursuant to an agreement whereby Odgers would provide the Company with recruitment services for the purposes of appointing a CEO (**Agreement**).

Under the terms of the Agreement, the full fee payable to Odgers for its services is capped at \$125,000. It is agreed that 50% of the fee payable will be awarded as options which will be convertible to equity in Orbx. Accordingly, the Company proposes to issue 7,812,500 options with an exercise price of 0.8 cents (having an aggregate exercise price of \$62,500) to Odgers.

The following information is provided to Shareholders:

- (a) The maximum number of options to be issued is 7,812,500 (subject to their terms, exercisable to 7,812,500 Shares).
- (b) These options will be issued by the Company within 3 months of Shareholder approval being obtained by the Company.

- (c) The options will be offered for nil cash consideration.
- (d) The allottee is Odgers.
- (e) The full terms of the options are set out in Annexure B of this Notice of Meeting.
- (f) Funds will not be raised from the issue of these options as the issue is proposed to be made to satisfy the Company's payment obligations under the Agreement, although funds will be raised from the payment of the exercise price if the options are ever exercised.

In order to issue these options without first having to offer them to all other shareholders (and without seeking waivers from existing shareholders), it will be necessary to amend the Constitution to allow the Company to issue securities without triggering the aforementioned right of first refusal if such an issue is approved by shareholders. Shareholder approval is being sought under Resolution 1 of this Notice of Meeting to amend the Constitution accordingly and this Resolution 6 is subject to Resolution 1 passing.

Directors' Recommendation

The Board of Directors recommend Shareholders vote for this Resolution.

Adoption of Employee Share Scheme and Plan

Resolution 7 – Adoption of Employee Share Scheme and Plan

Background

Shareholder approval is being sought to adopt an employee incentive scheme entitled "Employee Share Scheme" (**ESS**) under Resolution 7 of this Notice of Meeting.

The ESS will provide eligible persons with an opportunity to share in the ownership of the Company in order to:

- (a) promote the long-term success of the Company;
- (b) provide a strategic, value-based reward for eligible persons who make a key contribution to that success;
- (c) align eligible persons' interest with the interests of the Company's shareholders; and
- (d) promote the retention of eligible persons.

The ESS will permit the Board to offer shares to any employee, officer or director of the Company who is decided by the board to be an eligible person for the purposes of the ESS (**Eligible Participants**).

Upon invitation by the Company, Eligible Participants may apply for and be granted ordinary shares in the capital of the Company. Shares will be issued for market value, as determined by the Board. Eligible Participants will be offered a non-recourse interest free loan by the Company to fund the issue price of the shares.

A summary of the key terms of the ESS is set out in Annexure A, and a copy of the rules of the ESS is available upon request from the Company.

In order to adopt the ESS and issue shares under the ESS, it will be necessary to amend the constitution of the Company to allow the Company to issue shares to employees and directors pursuant to the ESS without first having to offer those same shares to all other shareholders. Shareholder approval is being sought under Resolution 1 of this Notice of Meeting to amend the Constitution accordingly and this Resolution 7 is subject to Resolution 1 passing.

Permit the Company to take security over its own Shares

Section 259B(1) of the Corporations Act prohibits a company taking security over shares in itself or in a company that controls it, unless one of the exceptions in subsections 259B(2) or 259(3) applies. Section 259(2) of the Corporations Act permits the taking of security by a Company over its own Shares, if the security is taken over shares issued under an employee share scheme approved at a meeting of shareholders via an ordinary resolution.

Employee share scheme is defined widely by the Corporations Act and includes the ESS.

Accordingly, Shareholder approval is being sought under this Resolution to approve the ESS in order for the Company to take security over its own Shares issued under the ESS if required to do so.

Exemption for financial assistance

Section 260A of the Corporations Act provides that a company may financially assist a person to acquire shares in the company or a holding company of the company only if:

- (a) giving of the assistance does not materially prejudice the interests of the company or its shareholders, or the company's ability to pay its creditors;
- (b) the assistance is approved by shareholders under section 260B of the Corporations Act; or
- (c) the assistance is exempted under section 260C of the Corporations Act.

Section 260C(4) of the Corporations Act provides an exemption to financial assistance, if the financial assistance is given under an employee share scheme approved at a meeting of shareholders via an ordinary resolution.

As noted above and set out in Annexure A, the terms of the ESS envisages the giving of financial assistance by the Company to eligible and invited participants in the form of interest free, limited recourse loans to acquire loan funded shares in the Company.

Although the Board does not consider that the giving of financial benefit under the ESS will materially prejudice the interests of the company or its shareholders, or the company's ability to pay its creditors, Shareholder approval is being sought under this Resolution to enable the Company to qualify for the special exemption offered by section 260C(4) of the Corporations Act.

Employee share scheme buy-back

Section 257B(1) of the Corporations Act sets out the procedure for various forms of share buy-back, including an "employee share scheme buy-back". In order for the Company to undertake a buy-back of Shares under the ESS using the employee share scheme buy-back procedure under the Corporations Act, the ESS must be approved by Shareholders.

Accordingly, Shareholder approval is being sought under this Resolution to approve the ESS in order for the Company to undertake a buy-back of Shares under the ESS using the employee share scheme buy-back procedure under the Corporations Act.

Directors Recommendation

The Board of Directors recommend that Shareholders vote for this Resolution.

Enquiries

Shareholders are asked to contact the Company Secretary on +61 2 8072 1400 if they have any queries in respect of the matters set out in these documents.

Glossary

AEDT means Australian Eastern Daylight Time as observed in Sydney, New South Wales.

Agreement has the meaning given to that term on page 9 of the Explanatory Statement.

Amended Constitution has the meaning given to that term on page 6 of the Explanatory Statement.

Annual General Meeting or **AGM** or **Meeting** means an Annual General Meeting of the Company and, unless otherwise indicated, means the meeting of the Company's members convened by this Notice of Meeting.

Associate has the meaning given to it by the Corporations Act.

Board means the current board of Directors of the Company.

Chair means the person chairing the Meeting.

Company means Orbx Investments Limited ACN 631 760 088.

Constitution means the Company's constitution.

Corporations Act means the *Corporations Act 2001* (Cth) as amended or replaced from time to time.

Director means a current director of the Company.

Dollar or "\$" means Australian dollars.

Eligible Participants has the meaning given to that term on page 10 of the Explanatory Statement.

ESS has the meaning given to that term on page 10 of the Explanatory Statement.

Explanatory Statement means the explanatory statement accompanying this Notice of Meeting.

Notice of Meeting or **Notice of Annual General Meeting** means this notice of annual general meeting dated 28 January 2020 including the Explanatory Statement.

Odgers has the meaning given to that term on page 9 of the Explanatory Statement.

Option means an option which, subject to its terms, could be exercised into a Share.

Ordinary Resolution means a resolution that can only be passed if at least 50% of the total votes cast by Shareholders entitled to vote on the resolution are voted in its favour at the meeting.

Proxy Form means the proxy form attached to this Notice of Meeting.

Resolutions means the resolutions set out in this Notice of Meeting, or any one of them, as the context requires.

Securities mean Shares and/or Options (as the context requires).

Share means a fully paid ordinary share in the capital of the Company.

Shareholder means a holder of a Share.

Share Registry means Automic Group, Level 5, 126 Phillip Street, Sydney NSW 2000.

Special Resolution means a resolution that can only be passed if at least 75% of the total votes cast by Shareholders entitled to vote on the resolution are voted in its favour at the meeting.