

To:

David Elgar McEwen (**Mr McEwen**);
Stockfox Limited (Company Number 8289125);
Cosmopolitan Holdings Limited (8653366);
Strategy Services Limited (8359661);
Fund Administration Services Limited (8245572);
Digitech 1 Limited (8752708);
M and A Holdings 1 Limited (8488674);
M and A Holdings 2 Limited (8552087);
Agtech 1 Limited (8593870);
Agtech 2 Limited (8667648);
Agtech 3 Limited (8709168);
Startight Holdings Limited (3298868);
Innovative Capital Limited (5564965); and
McEwen's Limited Partnership (Registration number 50071829)
(separately, and together, referred to as "**McEwen and Associates**")

STOP ORDER

made by the Financial Markets Authority (**FMA**)
pursuant to
sections 462, 463 and 466 of the Financial Markets Conduct Act 2013 (**Act**)

While this stop order (**Order**) is in force:

(a) McEwen and Associates are prohibited from:

- (i) making offers, issues, sales or other disposals of McEwen and Associates' Financial Products; and
- (ii) distributing any restricted communication that relates to an offer of McEwen and Associates' Financial Products; and
- (iii) accepting further contributions, investments, or deposits in respect of McEwen and Associates' Financial Products; and

(b) McEwen and Associates, as offeror of the McEwen and Associates' Financial Products, are prohibited from accepting applications for McEwen and Associates Financial Products; and

(c) the associated persons are prohibited from distributing any restricted communication that relates to the offer of McEwen and Associates' Financial Products.

The associated persons (including associated persons that may be incorporated or formed after the date of this Order) are required to comply with paragraph (c) above of this Order.

McEwen and Associates is required to provide a copy of this Order to the associated persons.

Definitions

In this Order (unless the context otherwise requires):

associated person has the meaning given to that term in section 12(1) of the Act;

distribute, offeror and **person** have the meanings given to those terms in section 6(1) of the Act;

financial benefit has the meaning given to that term in section 9(1) of the Act;

financial product has the meaning given to that term in section 7 of the Act, irrespective of whether those financial products actually exist or are intended to be issued;

issued has the meaning given to that term in section 11 of the Act;

issuer has the meaning given to that term in section 11 of the Act;

restricted communication has the meaning given to that term in section 464 of the Act;

McEwen and Associates Financial Products means:

- (a) any financial products offered, or intended to be offered, by McEwen and Associates;
- (b) any interests in (being rights to participate in, or receive, financial benefits in) financial products offered by McEwen and Associates;
- (c) any financial products issued or caused to be issued by Mr McEwen as a director or controlling shareholder of any entity; and
- (d) any other financial products issued, or intended to be issued, by McEwen and Associates and offered in New Zealand.

Period for which this Order is in force

This Order is in force from the time at which it is made until such time (if any) as the FMA varies, suspends or revokes this Order.

Reasons for this Order

The FMA has exercised the power to make this Order under section 462 (and, in particular, under section 462(1)(f)) of the Act because it is satisfied that restricted communications (authorised or instigated by, or on behalf of, McEwen and Associates) relating to offers, or intended offers, of financial products (namely, McEwen and Associates Financial Products) are:

- a. false or misleading, or are likely to mislead or confuse, in a material particular; or
- b. contain material misdescription or material error; or
- c. do not comply with the Act (with respect to unsubstantiated representations made as to the value of the McEwen and Associates financial products offered).

More particularly, the FMA is satisfied that the various presentations and materials (including but not limited to slides, email messages, sale and purchase agreements, shareholder agreements, convertible notes and telephone calls) distributed by McEwen and Associates and associated persons to clients of McEwen and Associates and investors or potential investors, are together restricted communications being (in terms of section 464 of the Act) a form of communication:

- (i) that—
 - A. directly or indirectly refers to an offer, or intended offer, of financial products [i.e., the offer of McEwen and Associates' Financial Products]; or
 - B. is reasonably likely to induce persons [i.e. recipients of the restricted communications] to apply for financial products [i.e., the McEwen and Associates' Financial Products]; or
 - C. is reasonably likely to induce persons to make further contributions, investments, or deposits referred to in section 11(2)(c); and
- (ii) that is authorised or instigated by, or on behalf of, the offeror [i.e. McEwen and Associates] or an associated person of the offeror or that is prepared with the co-operation of, or by arrangement with, any of those persons; and
- (iii) that is to be, or has been, distributed to a person [i.e. investors and/or potential investors].

Specifically the FMA notes the following examples, which are types of restricted communications issued by McEwen and Associates and associated persons, which were provided to the FMA during the course of its investigation:

Convertible Note Agreements (CNAs) relating to offers of financial products which:

- contained a material misdescription or error as to one of the parties of the CNA and the authorising signatory; and/or
- included claims that the assets were not 'pledged, loaned or encumbered in any way' when there were prior-dated CNAs in existence, meaning that the assets were subject to other interests or encumbrances; and/or
- were undated, meaning that the investor has no certainty as to when certain obligations and requirements should be met; and/or
- contained an unsubstantiated representation as to the value of the underlying assets.

Option to Acquire Units Agreements relating to an offer of financial products (namely, units in a Limited Partnership) contained a material error, because Mr McEwen signed the agreements on behalf of the vendor when he did not have authority to do so.

Shareholder agreements which were false or misleading, or likely to mislead or confuse, in a material particular, as they made inaccurate statements about the company's holding of shares on behalf of investors at that time.

Sale and Purchase Agreements (S&PAs) relating to offers of financial products in two instances were false or misleading, or were likely to mislead or confuse, in a material particular, because they included a representation that the investor would be entitled to receive a return on investment that would be paid out in the form of additional equity where it was unclear and confusing as to how this would be enforceable since the equity issuer is not a party to the S&PA.

Email messages to current and prospective investors that do not comply with the Act because they made representations as to the value of the relevant companies, including shares/assets held in those companies, that were unsubstantiated at the time they were made and the FMA considers that McEwen and Associates had no reasonable grounds for making such representations.

The FMA is concerned that, in the absence of this Order, the conduct prohibited by this Order will continue and contraventions of the Act will result.

This Order prohibits McEwen and Associates and the associated persons from taking steps that will, or are likely to, result in repeat unlawful behaviour that may cause material financial harm. This Order therefore prevents:

- (a) McEwen and Associates from accepting money from clients, investors or potential investors and others who are aware of any form of restricted communications distributed by McEwen and Associates and associated persons and who, in each case, pay that money in reliance on representations made about the McEwen and Associates' Financial Products that are false or misleading, or likely to mislead or confuse in a material particular, or that contain a material misdescription or error, or contain unsubstantiated representations;
- (b) McEwen and Associates and the associated persons from distributing restricted communications that relate to the offer of McEwen and Associates' Financial Products.

The FMA is satisfied that making this Order meets the purposes of the Act, specifically it will promote the confident and informed participation of businesses, investors, and consumers in the financial markets.

Other terms and conditions

The FMA must give the Registrar of Financial Service Providers written notice of the terms and conditions of this Order, the reasons for this Order and any other information the FMA thinks relevant in the circumstances and make the notice available on the FMA's Internet site (<https://www.fma.govt.nz>) in accordance with section 477(1)(b) of the Act. Under section 477(1)(e) of the Act, the FMA may also give notice to any other person of those matters.

This Order is made at 4:48pm on this 6th day of December 2023



Paul Gregory
Executive Director – Response & Enforcement
Financial Markets Authority