

6 May 2022

The One Management GP Limited
19 Toanga Place
Mount Wellington
Auckland 1062

Attention: Tung Wei Ling

Delivered by Courier: to the above address

Delivered by Email: wei@theonecapital.co.nz

STOP ORDER

Made by the Financial Markets Authority (FMA) pursuant to sections 462 and 463 of the Financial Markets Conduct Act 2013 (Act)

For so long as this Order is in force, The One Management GP Limited (TOM) is prohibited from:

- A. making any offers, issues, sales, or other acquisitions or disposals of units in The One Property LP (the **Fund**);
- B. accepting applications for units in the Fund;
- C. distributing any restricted communication that relates to the offer of units in the Fund; and
- D. accepting further contributions, investments, or deposits in respect of units in the Fund.

The prohibitions in A, B and D above only apply for the period of two months from the commencement date of this Order.

The prohibition in C above applies indefinitely and to all associated persons of TOM (including associated persons that may be incorporated or formed after the date of this Order) and the FMA requires TOM to provide a copy of this Order to all its associated persons pursuant to sections 466(1)(b) and (2)(b) of the Act.

For the purposes of this Order:

- **restricted communication** has the meaning given to that term in section 464 of the Act;
- **associated person** has the meaning given to that term in section 12(1) of the Act; and
- **distribute** has the meaning given to that term in section 6(1) of the Act.

Period for which the Order applies

This Order commences at 5.00pm on 10 May 2022 and remains in force until such time as the FMA varies, suspends or revokes this Order.

Grounds for the Order

The FMA is satisfied under section 462(1)(f)(i) of the Act that restricted communications relating to an offer, or possible offer, of financial products in the Fund by TOM are likely to mislead or confuse investors (including wholesale investors) in a material particular.

Other terms and conditions

The FMA is required to publish this Order on the FMA's website (<https://www.fma.govt.nz>) and to notify the Registrar of Financial Service Providers of the Order in accordance with section 477(1)(b) of the Act.

Reasons for the Order

The FMA makes this Order under section 462 of the Act because certain content in promotional materials relating to the offer is likely to mislead or confuse in a material particular. The promotional materials are:

- a. The One In Longhorn Partnership Fund – Information Memorandum (the **IM**);
- b. A “Frequently Asked Questions” document that states “This FAQ has been prepared solely for information purposes in order to assist prospective investors in making their own evaluation about investing in The One in Longhorn Partnership Fund.” (the **FAQ**);
- c. A media release dated Friday 18 March 2022, provided to NZME Limited, titled “Leading property group offers minimal risk, high return investment opportunity” (the **Media Release**);
- d. A copy of advertisements and related comments distributed via Facebook, including posts made by James Law Realty Limited (the **Facebook Material**);
- e. A sponsored advertisement promoting the Fund, titled “50 per cent fixed returns over three years for wholesale investors.” on the website www.stuff.co.nz (the **Stuff Advertisement**); and
- f. The content in the websites titled The One in Longhorn Partnership Fund, available at <https://theonecapital.co.nz>, and THE ONE PROPERTY GROUP – NZ residential property developer, available at <https://theoneproperty.co.nz> (the **Website Content**),

together referred to as the **Promotional Materials**.

The Promotional Materials are restricted communications, as defined by section 464 of the Act. The returns payable to investors and the level of risk in the investment are both material particulars for the purposes of section 462(1)(f)(i).

Returns payable

The headline reference to a “50% fixed return” is likely to mislead or confuse a typical wholesale investor by creating an impression that the investment offers a return of 50% per annum. The equivalent minimum annualised rate of return of a 50% over three years is 16.7% p.a. on a simple basis or 14.5% p.a. on an annual compounding basis. These percentages differ considerably from 50% p.a.

Presenting annualised returns provides direct comparability of returns for investments that have different investment lengths. Advertising a total holding period return obscures that comparability with the advertised returns of other investments in the market. Any departure from this practice without further explanation in the advertisement, is likely to mislead or confuse investors, including wholesale investors.

Returns payable is an essential characteristic that factors into the assessment of the suitability of an investment for any investor. Accordingly, returns payable in an investment is a material particular.

For the reasons above, the FMA is satisfied that references to 50% fixed return are likely to mislead or confuse a typical wholesale investor as to the return payable to investors, being a material particular of the offer.

The references to returns payable include:

- The Stuff Advertisement is titled “50 per cent fixed returns over three years for wholesale investors.”. A typical wholesale investor is likely to be misled or confused about what the annual rate of return might be. Potential annualised returns include 50% p.a. and 16.7% p.a. (as detailed below).
- The Facebook Material includes an advertisement that said:

50% FIXED RETURN OVER A MAXIMUM PERIOD OF 3 YEARS BEFORE TAX, PAID UPON COMPLETION.

This is likely to mislead or confuse investors as to the annualised rate of return on the investment for the reasons above.

- The IM has a table, at page 12, titled “Key Details of the Offer”. Included in that table is the following statement:

Distributions / Target Return – 50% fixed return over a maximum period of 3 years before tax, paid upon completion of the project.

This is likely to mislead or confuse investors as to the annualised rate of return on the investment for the reasons above. Note, it also indicates the rate of return is a targeted return, which is inconsistent with a return that is fixed in contractual terms, and therefore confusing.

- The FAQ says, at the top of page 2:

... the general partner has the right to issue further partnership units (e.g. to new incoming investors) on such terms, at such price, and in such numbers as it considers reasonably necessary to carry out the business. As a result, the investors under this offer could have their partnership interest diluted. As the return for investors is not fixed, this dilution will not affect investors returns.

Note that describing the returns as “not fixed” is inconsistent with numerous other representations that the rate of return is fixed and is therefore likely to confuse an investor.

The level of investment risk

Representations made in restricted communications about the level of risk to investors being minimal are likely to mislead or confuse wholesale investors because:

- a. the guarantee may expire before there is any default;
- b. the mortgage is contingent on settlement under a sale and purchase of the land; and
- c. the net assets of The One Property Group Holdings Limited (**TOPGH**) and subsidiaries are not relevant to the risk profile of the investment because the shares in that entity are held on trust.

It is likely that the security and guarantee referred to in the Promotional Materials will provide little or no protection to investors. Accordingly, representations about the level of risk as minimal are likely to mislead or confuse. Risk is an essential characteristic that factors into the assessment of the suitability of an investment for any investor. Accordingly, the level of risk in an investment is a material particular.

The references to the level of investment risk being minimal include:

- The Stuff Advertisement describes the offer as a “minimal risk, high return opportunity” and refers readers to James Law Realty Limited for more information.
- The Media Release provided to NZME Limited includes in its heading the phrase “minimal risk, high return investment opportunity”.
- The IM, at page 9, states that:

All lending will be secured by registered mortgage security over the land and properties of the borrower and general security agreement granted by the borrower, which will rank behind any other lender(s) to the borrower.

A typical wholesale investor is likely to be misled or confused by the language referenced in the Promotional Material that described the level of investment risk as minimal. The risk to investors in the Fund is significant for the reasons outlined below.

Guarantee

There are numerous references to a guarantee given by Tung Wei Ling and Manna Wang in the restricted communications, including the IM, the FAQ and the Media Release. The FMA has reviewed a Deed of Guarantee and Indemnity dated 17 March 2022 (**Guarantee**) where each of Tung Wei Ling and Manna Wang unconditionally and irrevocably guarantees to the Fund the due payment of moneys owed by The One Longhorn Limited (being the property development company for the Longhorn project). Clause 4.1 of the Guarantee provides that it will remain in force until the earlier of (a) the whole of the Guaranteed Money and all other money payable under the Guarantee has been paid or satisfied in full; or (b) the date that is 36 months from the date of this document. Accordingly, the Guarantee will terminate on or before 17 March 2025.

The FMA has reviewed an unsigned (template) version of a Subscription Agreement between the Fund and together with an executed version dated 22 March 2022 (**Subscription Agreement**). Schedule 1 of the Subscription Agreement sets out the details of the parties and investment. Under the heading “Preference Unit Rights” there is a section sub-titled “Redemption”. That section effectively provides that the investor may redeem the preference units held on the earliest of (a) a disposal of all or substantially all of the assets

of the Fund; (b) completion of the Longhorn property development project; (c) a listing of units in the Fund on a recognised stock exchange; or (d) 36 months after Completion.

“Completion” is defined in the Subscription Agreement with reference to “Completion Date” which is defined as the later of 30 April 2022 or the fifth Business Day following all of the conditions having been satisfied or waived in accordance with clause 3.2, or such other date as the parties may agree in writing.

Based on the FMA’s review, the effect of the Subscription Agreement appears to be that the repayment date for investors in the Fund could be on or after the date that is 36 months after Completion Date which can be no earlier than 30 April 2025 unless otherwise agreed by the parties.

The FMA has reviewed the Loan Agreement between The One Longhorn Limited (as borrower) and the Fund (as lender) signed but undated (**Loan Agreement**). The Loan Agreement defines “Final Repayment Date” as “subject to the Lender’s right under this agreement to require payment at an earlier date, 36 months from Commencement Date”. “Commencement Date” is defined as “the date of initial Drawing under this agreement”. TOM confirmed that there has been no drawdown under the Loan Agreement in an email dated 8 April 2022 from Anthony Harper.

Applying the Subscription Agreement, the Guarantee and the Loan Agreement as summarised above, the Guarantee appears to have been contemplated only as a temporary protection, because it can terminate prior to:

- a. the date the Fund is due to be repaid under the Loan Agreement; and
- b. the date that investors are due to be repaid under the Subscription Agreement.

Because the Guarantee may terminate prior to the relevant repayment dates, the FMA considers the Guarantee is likely to provide no protection to the Fund or investors in the Fund in the event of default by The One Longhorn Limited. For this reason, any reference to the Guarantee in the restricted communications is considered likely to mislead or confuse investors, including wholesale investors.

Mortgage

It is apparent from the IM, at page 17, under the section titled “Strategy & Objectives” that the mortgage over the land securing advances by the Fund to The One Longhorn Limited will not be in place at the time of initial drawdowns under the Loan Agreement. A relevant section in the IM states, at page 17:

These payments will be made before the property purchase has settled and as such, before security has been granted.

Further, the IM, at page 19, has a section titled “Security”. That section states:

The LP’s loan to The One Longhorn Limited will be secured by way of general security agreement and registered mortgage over the Longhorn property. The One Longhorn Limited does not own the Longhorn property yet but is party to an unconditional sale and purchase agreement to purchase the property which is due to settle in December 2022.

The Fund will advance the loan to the One Longhorn Property Limited before the property purchase settles as [The One Property Group Limited] has already part paid of the deposit for the

property and will incur additional costs in applying for resource and building consent to progress the development as well as the operating costs.

The FAQ, at page 3, refers to the security granted by the borrower to the Fund including “registered mortgage over the development site at 38 & 48 Longhorn Drive once this is acquired in December 2022”.

In the FMA’s view, these references to a mortgage over land that will not be in place until after investment funds have been paid to the Fund are likely to mislead or confuse a typical investor (including a wholesale investor) as to the level of risk in the investment. The mortgage is contingent on settlement of a sale and purchase agreement in the future, at which time the land will be owned by The One Longhorn Limited. For this reason, the FMA considers any reference to a mortgage over the land is likely to mislead or confuse without reference to the risk associated with such contingencies.

Family Trust

The FAQ, at page 3, states:

Wei and Manna Wang are ... trustees and beneficiaries of the trust that owns the shares in The One Property Group Holdings Limited.

The IM includes a letter from BDO New Zealand Limited (**BDO**) that estimates the value of net assets of TOPGH as at 31 January 2022 (based on information provided) at \$22.47 million.

The guarantors under the Guarantee are Tung Wei Ling and Manna Wang in their personal capacity, not as trustees of any trust. The FMA considers it is likely that shares of TOPGH (and therefore the net assets referred to in the BDO letter) are not at risk under the Guarantee. If so, the letter from BDO has no relevance to the security offered to investors. This materially undermines the benefit to investors of the Guarantee, contrary to the impression given by including the BDO letter in the IM.

It is not clear from the IM or other information what effective security or protection is available to mitigate the risk for investors at the time the proceeds from their investment are lent by the Fund to The One Longhorn Limited. There are no details of any land or other collateral over which security is to be taken at the inception of the loan to The One in Longhorn Limited. There are no details of what collateral supports a general security interest or Guarantee, but inclusion in the IM of the letter from BDO implies that the assets of TOPGH are at risk when it appears they are not.

Dated this 6th day of May 2022.



Paul Gregory
Acting Director of Capital Markets
Financial Markets Authority