



4 October 2021

Du Val Group NZ Limited and Du Val Capital Partners
Limited c/o Herbert Morton 19 Victoria Street
Cambridge, 3434
New Zealand

DIRECTION ORDER

(Given pursuant to sections 468, 469 and 477 of the Financial Markets Conduct Act 2013 (FMC Act))

Direction Order

1. The FMA hereby directs Du Val Group NZ Limited and Du Val Capital Partners Limited to:
 - a. comply with section 19 of the FMC Act being a Part 2 fair dealing provision: and
 - b. take the steps set out below in order to comply with the above provision.

Defined Terms

2. For the purposes of this Direction Order:

DVCP Video means the video used by Du Val to promote investment in funds entitled “Du Val Partners: Meet [REDACTED INVESTOR]”

Du Val means both Du Val Group NZ Limited and Du Val Capital Partners Limited

Information Memorandum means the Mortgage Fund LP Information Memorandum entitled Private Placement Information Memorandum under the brand Du Val Partners (undated)

Mortgage Fund LP means the Du Val Mortgage Fund Limited Partnership (NZBN 9429048486385)

Required Steps

3. In order to comply with section 19 of the FMC Act, Du Val shall:

- a. cease and desist from publishing or otherwise using, directly or indirectly, the DVCP Video, and to take all practicable steps to remove the DVCP Video from all medium, including all websites and social media accounts owned or controlled by Du Val;
- b. ensure that any publication promoting the Mortgage Fund LP (including any website or social media content) does not include any of the following phrases (or anything similar):
 - i. mortgage-backed security; ii. providing investors with a level of certainty hard to come by in this market; iii. investors' security is registered by way of a mortgage over real assets; iv. investment is secured by registered mortgage;
 - v. mortgage-backed security in land and bricks & mortar investment;
 - vi. seeking both income and capital security on a capital investment;
 - vii. high security and high return; viii. the best of both worlds in terms of security and return; and ix. the highest-ranking security that is available on behalf of investors.
- c. In respect of the Mortgage Fund LP, either,
 - i. ensure that any promotional material (including any website or social media content) does not include any of the following phrases (or anything similar):
 - A. we do not charge fees;
 - B. no management or performance fees; and
 - C. no administration fees; or
 - ii. include the following statement prominently and proximate to any of the representations in i. above (or anything similar) in any promotional material (including any website or social media content):

We retain any profit in excess of the 10% p.a. return to investors.
- d. ensure all current and future promotional material (in whatever form) in connection with financial products relating to property development projects by Du Val or an entity within Du Val's control do not include any references or comparisons to term deposits, bank deposits or other low risk financial products; and
- e. report in writing (including by email) to the FMA's Director of Capital Markets:

- i. within 10 working days of the date of the Direction Order confirming (a) - (c) above have been fully complied with; and
- ii. within 20 working days of the date of the Direction Order confirming how it has reviewed compliance processes around all promotional material and other marketing initiatives to ensure compliance with (d) above.

Reasons for the Direction Order

4. The reasons for the Direction Order above are that –
 - a. We consider certain promotional material (including a website, online video and social media channels) used by Du Val was likely to mislead or deceive potential investors because of the inclusion of representations indicating that:
 - i. the risk associated with the investment was low when the risk associated with early stage finance for a property development project (as outlined in the Information Memorandum) is not low; and
 - ii. there were no fees associated with the investment when the General Partner was entitled to 100% of the profit after investors were paid.
 - b. We consider the representations relating to risk were likely to mislead or deceive potential investors because:
 - i. property development (including associated finance) is inherently risky;
 - ii. the Information Memorandum references:
 - A. security that is second ranking;
 - B. security over assets that are incomplete development projects;
 - C. that the General Partner of the Mortgage Fund LP loans funds to the Du Val entity carrying out the particular property development and takes security over assets, not the Mortgage Fund LP itself,which are factors that add considerable risk to the investment and are not apparent from the promotional materials; and
 - iii. of the presence of real risks associated with property acquisition and development, including those set out in the Information Memorandum.
 - c. We consider the content of the DVCP Video creates the overall impression of high returns and low risk and is likely to mislead or deceive investors about the level of risk associated with the Mortgage Fund LP. Despite prior assurances given by Du Val to the FMA in relation to misleading representations, Du Val continued to make similar representations in its promotional material.
 - d. We consider promotional material posted on social media sites included misleading representations from employees of Du Val (at the relevant time) on

Reddit. Consistent with the DVCP Video and other promotional material, the overall impression created by the posts was that the Mortgage Fund LP was a low risk investment.

- e. In addition to the misrepresentations relating to the risk around investing in the Mortgage Fund LP, we consider representations made about the lack of any fees were also misleading in the absence of transparency about the General Partner's right to all profits made by the Mortgage Fund LP. We consider the right to retain any and all profit is effectively a performance-based fee.
5. We consider the Direction Order is appropriate because –
 - a. it requires Du Val to take reasonable steps to comply with section 19 of the FMC Act:
 - b. despite prior engagement with the FMA, Du Val has continued to use promotional material that is likely to mislead or deceive investors: and
 - c. the marketing channels used by Du Val for advertising the Mortgage Fund IP do not target experienced investors but appear to target inexperienced investors by using social media and other online channels.

Other Information

6. The FMA considers it is relevant to address certain submissions made on behalf of Du Val against the issue of this Direction Order.
7. It was submitted that information made available to potential investors (on request) in the Information Memorandum meant that investors would not be misled by the advertisements containing the representations. We do not accept this submission. At law, a misleading advertisement cannot be cured by subsequent information. The NZ Court of Appeal (*Godfrey Hirst NZ Limited v Cavalier Bremworth Limited* CA564/2013 [2014] NZCA 418 [27 August 2014]) has confirmed the relevant question is “whether the advertisement viewed as a whole has a tendency to entice consumers into “the marketing web” by an erroneous belief engendered by the advertiser, even if the consumer may come to appreciate the true position before the transaction is concluded.” In this case, we consider Du Val enticed potential investors into its ‘marketing web’ by making misleading representations on its website, in an online video and through social media.
8. It was submitted that because the Mortgage Fund LP offer is only open to “wholesale investors” (as defined in the FMC Act) the level of seriousness of conduct and public interest in enforcement action are low. In support of this, it was further submitted that wholesale investors are inherently more sophisticated than others. We do not agree with either of these submissions. We consider the misleading representations are sufficiently serious in nature to support publication of the Direction Order and generate public interest. We also consider some “large investors” (as specified in clause 39 of Schedule 1 of the FMC Act) who fall within the scope of a “wholesale investor” are not inherently

sophisticated (which we take to mean knowledgeable about particular investment products and the risks associated with them). Further, we consider that Du Val's widespread promotion of interests in the Mortgage Fund LP, particularly through social media, demonstrates that an inexperienced audience are exposed to representations made by Du Val and enticed into its marketing web.

9. In respect of the representations relating to the absence of any fees, Du Val submitted that they were factually true, that the Information Memorandum makes it clear the General Partner retains all profit above the 10% return to investors, that such a profit share arrangement is not a fee in the way a 'fee' is ordinarily understood, and that given the offer is only open to wholesale investors, no investor would be under the impression that profit in excess of the 10% return to investors would not be retained by Du Val. We take a broad interpretation of the term "fee" and consider that it includes any means of payment to the General Partner by the fund. Accordingly, if Du Val is to make representations about the absence of fees, it needs to be upfront and transparent about other means by which it can generate revenue from the Mortgage Fund LP. As stated above, the Information Memorandum cannot cure a misleading advertisement.

Dated this 4th day of October 2021



Sarah Vrede
Director of Capital Markets
Financial Markets Authority