

ENTITY NAMES: Du Val Capital Partners Limited (**DVCP**) and Du Val Group NZ Limited (**Du Val Group**)

DATE: 9 March 2023

REASON FOR WARNING:

1. The FMA has issued a formal warning to DVCP, the general partner of the Du Val Mortgage Fund Limited Partnership (**MFLP**) and Du Val Group.
2. The FMA is satisfied that DVCP and Du Val Group may have breached section 19 of the Financial Markets Conduct Act 2013 (**FMC Act**) by engaging in misleading or deceptive conduct or conduct that is likely to mislead or deceive investors in MFLP in relation to dealing in financial products.
3. In December 2022, DVCP and Du Val Group contacted investors, informing them of plans to restructure MFLP, whereby MFLP would be wound up and investors' MFLP units would be converted into shares in a new Du Val company, which Du Val Group would then potentially seek to list on the NZX.
4. Investors were subsequently informed that, against the background of the restructure, the DVCP Board had resolved to suspend all cash distributions on their units. Investors were also informed that going forward, cash distributions would be capitalised and added to investors' unit holdings up until the date that units are converted into shares in the new Du Val company.
5. The FMA is satisfied that making those statements may have constituted misleading or deceptive conduct, or conduct that is likely to mislead or deceive, as:
 - DVCP did not inform investors of the underlying reason for the Board's resolution to suspend and capitalise distributions, namely that the MFLP did not have adequate cash flow, and the Board cannot approve a cash distribution that would render the fund unable to meet its other obligations.

Investors were therefore left with a misleading impression as to the reasons for the suspended cash distribution and capitalisation.
 - DVCP also did not inform investors that the proposed capitalisation of distributions into units was not permitted under the terms of the limited partnership agreement, and that investors were not obliged to accept the offer of capitalisation of distributions.

We are satisfied that investors have likely been misled as to what they are receiving in lieu of cash distributions as a result of the capitalisation, and that investors have likely been misled as to their rights under the limited partnership agreement.
6. The FMA has concluded that DVCP and Du Val Group should receive a formal warning concerning this conduct, and that it is in the interest of fair and transparent financial markets that this warning should be published.

7. We consider the conduct detailed above has actively prevented or has not enabled investors to make a properly informed decision about dealing in financial products, including:
 - considering and deciding whether to accept or reject the offer being made by Du Val Group to convert limited partnership units into shares of the new Du Val company and to acquire additional units in MFLP prior to conversion; and
 - considering and taking action to enforce any legal rights they may have, under the limited partnership agreement or otherwise, with respect to cessation of quarterly cash distributions and DVCP's decision to capitalise investor distributions.
8. We consider investors should now be made aware of this in case they wish to obtain independent advice about options available to them in relation to their investment.