



ASIC
Australian Securities &
Investments Commission

Product design and distribution obligations

Meeting with the Australian Institute of Superannuation
Trustees

Jane Eccleston, SEL Superannuation

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Key messages

- DDOs will involve trustees taking **greater accountability** for how their decisions affect members.
- Issuers and distributors should be **well advanced** in their DDOs preparations.
- Implementation needs to be **holistic** and consider:
 - All relevant aspects of the business
 - The impacts of complementary reforms (e.g. Member Outcomes, anti-hawking)

Key messages

- The DDOs create a **product governance review cycle** in which target markets and distribution conditions are periodically reviewed and reconsidered on the basis of all relevant information available.

Figure 2: Consumer-centric approach to design and distribution





Commencement

- The obligations commence on **5 Oct 2021** following a 2.5 year+ transition period.
- ASIC does **not intend** to defer commencement of the DDOs.
- ASIC expects issuers and distributors to **work with each other** on implementation and development of TMDs.
- Issuers **should provide notice** of the planned target market, planned distribution conditions and reporting obligations **well before 5 Oct 2021**.
- If distributors are unable to comply with their DDOs due to lack of information from issuers, they may **refuse distribution** for a period of time.



ASIC guidance

- ASIC **cannot** provide legal advice
- ASIC comments on how we **administer** the legal requirements
- ASIC is not proposing **further** regulatory guidance
- **Refer** to:
 - [Regulatory Guide 274](#) *Product design and distribution obligations*
 - [Joint ASIC-APRA letter](#) on Member Outcomes and the DDOs



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Significant dealings





Significant dealings

- Significant dealings to have regard to **object** of the DDOs to promote the provision of suitable financial products to consumers.
- **RG 274.159** outlines factors issuers can consider in determining whether a significant dealing exists, including:
 - **proportion** of consumers not in the target market
 - **actual or potential harm** to consumers, including amount of loss, and
 - nature and extent of **inconsistency** of distribution to TMD.
- Objective criteria for a significant dealing should be based on the **nature and risk profile** of a product.



Significant dealings contd.

- We do not propose to provide a **'ball-park' proportion** of clients outside the target market that represents a significant dealing.
- It is not solely quantum of clients invested outside the target market relevant.
Concentration may matter.
- The **reason** a client is outside the target market may impact why distribution to them represents a significant dealing.



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Retail product distribution conduct





Distribution conduct

- A ‘distributor’ is a **‘regulated person’** [s994A(1)]:
 - issuers and sellers of products
 - AFS licensees and authorised representatives
 - most persons not required to hold an AFS licence because of Corps reg 7.6.01
- **‘Retail product distribution conduct’** [s994A(1)] includes:
 - issuing or arranging to issue a financial product
 - giving of a PDS for a product, or
 - providing of financial product advice



Distribution conduct contd.

- ASIC **cannot** provide legal advice.
- Providing **financial product advice** in relation to a product to a retail client is retail product distribution conduct.
- [Regulatory Guide 36](#) has guidance on ‘arranging’.
 - Table 4 lists **examples** of our approach to determining if particular activities are arranging.
 - **RG 36.51** states we consider providing a person with factual information is unlikely to constitute arranging.



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DDOs application





DDOs application

- **DDOs do not apply** to MySuper products, ‘defined benefit interests’ (within the meaning of the SIS regulations) or interests in eligible rollover funds.
- **Closed products** for which no further offers or issues will be made from 5 Oct 2021 will also not be affected by the DDOs.
- If there is to be a **new super product** issued from 5 Oct 2021, and the product is not exempt from the DDOs (e.g. MySuper products), the DDOs will apply.
- A transactional view of the DDOs is likely to create **additional complexity** in product governance arrangements.



DDOs application contd.

- The DDOs apply at the **product level**
- Investment options are a **key attribute**, and will affect whether the product is likely consistent with likely objectives, financial situation and needs of consumers.
- One or more options offered may be more 'suited' to particular **groups of members** based on their likely objectives, financial situation and needs.
- Failure to identify **investment option sub-markets** risks consumer being issued a product via an option whose characteristics are not consistent with their likely objectives, financial situation and needs.



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MySuper Exemption





MySuper exemption

- **Exclusion of MySuper products** from the DDOs was a Government decision.
- Despite the exclusion, some aspects of the DDOs will touch on MySuper products:
 - Many trustees have the same default insurance offering for MySuper and choice products
 - Many members arrive in choice products after being defaulted into a MySuper product
 - Many trustees treat MySuper as a balanced investment option in terms of their product governance arrangements



MySuper exemption contd.

- **Switches from MySuper product to choice product:**
 - Each choice product will already have a TMD, which covers distribution arrangements
 - Switches from MySuper product is one route of distribution
 - Trustees have **reasonable steps** obligations to ensure distribution consistent with TMD in respect of switches from MySuper to choice products.
- **Insurance:** Trustees need to ensure that insurance included in choice products is **appropriate** to the target market for that product notwithstanding that it may be the same offering for the MySuper product.
- Some trustees have indicated they will adopt a **consistent product governance arrangement** across both their choice and MySuper products in order to reduce complexity.



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Personal advice exemption





Personal advice exemption

The following is not personal advice:

- Collecting information **solely** to determine whether a consumer is in the target market for the relevant product; **and**
- **Informing the consumer** of the result of that determination: see s766B(3A)
- There is **no requirement** that the acts of asking for information and informing the consumer occur in the context of a sales transaction.



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Reasonable steps





Reasonable steps obligation

- Issuers must **take reasonable steps** that will, or are reasonably likely to, result in distribution being consistent with the TMD, unless personal advice has been provided.
- It does not **automatically follow** that, because a client terminates their advice relationship, trustees must restrict investment switches and/ or available investments.
- What are reasonable steps will depend on the circumstances and should be **determined objectively** i.e. the distributor must meet the standard of behaviour expected of a reasonable person in their position that is offering the same product and subject to the same legal obligations.
- There is **no requirement** that reasonable steps be consistent across distribution channels.



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Target Market Determinations





Target Market Determination (TMD)

- A TMD must be made at the **product level**.
- A trustee may elect to **make a TMD for an investment option**
- If investment options are likely to be consistent with the likely objectives, financial situation and needs of different groups of members, the TMD for the product should:
 - **describe multiple sub-markets** in relation to investment options or groups of investment options offered, as well as describing the target market for the product taken as a whole; and
 - **specify distribution conditions** in relation to the investment options or groups of investment options offered, as well as describing distribution conditions for the product as a whole.



Making assumptions

- The TMD must **describe** the class of consumers that comprise the target market for the product: see s994B(5)(b)
- Issuers need to **implement effective arrangements** that are likely to direct distribution of the product to the target market.
- Provided they are **reasonable** in the circumstances, issuers may rely upon assumptions:
 - about likely objectives, financial situation and needs of a consumer when determining if they are in the target market; and
 - in their assessment of factors relevant to whether a significant dealing has occurred.



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Review of the TMD





Review of the TMD

- The DDOs include an **obligation to review** the TMD: see s994C
- Periodic review of a TMD represents an opportunity to **assess** whether the class of consumers that hold the product is consistent with the target market.
- Trustees should **satisfy** their review obligations as part of the DDOs and their Member Outcomes obligations **in tandem** to ensure that both sets of obligations are implemented efficiently and draw insights.
 - For more information, see the [joint ASIC-APRA letter](#)