PRODUCT DESIGN AND DISTRIBUTION OBLIGATIONS

Version 1.0
Last updated 01.10.21

OVERVIEW

This document provides guidance to assist you to understand how to comply with Product Design and Distribution Obligations which includes the requirement to:

- Consider the Target Market Determination (TMD) when recommending a client acquire a product.
- Maintain records as required by the TMD including client complaints and significant dealings outside the TMD
- Report client complaints to your relevant Licensee on a quarterly basis
- Report any significant dealing outside the TMD to your relevant Licensee immediately and no later than 10 business days after becoming aware.

PURPOSE OF PRODUCT DESIGN AND DISTRIBUTION OBLIGATIONS?

The purpose of the design and distribution obligations (DDO) is to ensure financial products are only provided to consumers for whom they are suitable. It includes obligations for both Product Issuers and Product Distributors.

WHICH PRODUCTS DOES IT APPLY TO?

DDO applies to financial products as defined in s761A Corporations Act and Div. 2 of Pt 2 of the ASIC Act (credit) with some excluded products. Some common products that are included or excluded are listed below.

Included	Excluded
• Investor Direct Portfolio Services (IDPS) • Managed Investment Schemes (MIS) • Superannuation Funds • Exchange Traded Products and Listed Companies/Trusts • Life Insurance • Basic Deposit Products • Credit Products (credit cards, home loans, consumer leases) • General Insurance	• Margin Lending Facilities • Fully Paid Ordinary Shares • MySuper Products • Securities issued under an Employee Share Schemes • Defined benefit interests • Eligible rollover funds

WHEN DOES DDO APPLY TO LICENSEES AND ADVISERS?

DDO applies when a licensee or adviser engages in retail product distribution conduct (commencing on 5 October 2021). This means when you:

- Deal in a financial product in relation to a retail client such as making an application in relation to an included product.
- When giving a disclosure document such as a prospectus to a retail client
- When giving a Product Disclosure Statement to a retail client
- When providing product advice in relation to an included product to a retail client.

The obligations apply to new product acquisitions which includes advice to new and existing clients and includes changes such as switching underlying funds or increases to benefit amounts with existing insurance policies.

WHAT IS A TARGET MARKET DETERMINATION?

A Target Market Determination (TMD) is a document prepared by the product issuer, that describes the type of retail clients (the target market) the product is likely to suit based on their likely objectives, financial situation and needs. It assists distributors in understanding who the product is intended to be distributed to. This document is not a Product Disclosure Statement and does not provide a full summary of the product features or terms of the product. It must include the following:

- A description of the class of consumers that comprise the target market.
- Any conditions and restrictions on distribution.
- When the distributor must report complaints to the issuer.
- Information about the kinds or information that distributors must report and when.
- Information about the review triggers and maximum review period.

WHO ARE PRODUCT ISSUERS AND DISTRIBUTORS?

Distributors generally interact with the consumer. They may be an intermediary between the issuer of a financial product and the consumer acquiring the product. An issuer may also be a distributor when it deals directly with consumers or distributes the products of other issuers.

Product Issuer	Product Distributor
• Superannuation Fund Trustees • Life Insurers • General Insurers • Responsible Entities for MIS • Responsible Entities for IDPS • Banks • Credit Unions	• Australian Financial Services Licensees • Financial Advisers and Authorised Representatives • Australian Credit Licensee • Credit Representatives • General Insurance Advisers

Product Issuer	Product Distributor
	• Platform Operators (distribute on behalf of underlying investment managers) • Product issuers that distribute direct to consumers (e.g. banks, insurers and credit unions)

OBLIGATIONS ON PRODUCT ISSUERS AND DISTRIBUTORS

Obligations on product issuers	
Make a TMD	Product issuers must make a target market determination for most financial products that require disclosure.
Make TMDs available	Product issuers must make target market determinations available to the public free of charge.
Review TMDs	Product issuers must develop a plan for reviewing target market determinations and abide by that plan.
Determine reporting requirements	Product issuers must specify distribution information that distributors must collect, keep and provide back to the issuer.
Notify ASIC of significant dealings	Product issuers must notify ASIC of any significant dealings in a product that are not consistent with the product's target market determination.
Take reasonable steps	Product issuers must take reasonable steps so that distribution is consistent with the most recent target market determination.
Maintain records	Product issuers must maintain records and information relating to their obligations under the new regime. These records must be kept for seven years.

Obligations on product distributors	
Ensure there is a TMD	Distributors are prohibited from distributing a product unless a current target market determination is in place.
Do not distribute	Distributors must not distribute a product where a target market determination may no longer be appropriate.
Take reasonable steps	Distributors must take reasonable steps so that distribution is consistent with the most recent target market determination.
Notify product issuers of significant dealings	Distributors must notify a product's issuers of a significant dealing in a product that is not consistent with the product's target market determination.

Obligations on product distributors	
	Reports must be made within 10 business days of becoming aware of the significant dealing.
Report complaints to product issuers	Distributors must provide to issuers numbers of complaints about the product and distribution information relating to the product that issuers have specified. Reports must be made no later than 10 business days after the end of the specified reporting period (e.g. quarterly).
Maintain records	Distributors must maintain records and information relating to their obligations under the new regime. These records must be kept for seven years.

OBLIGATIONS THAT APPLY WHEN PROVIDING PERSONAL ADVICE

Advisers are exempt from meeting the reasonable steps obligation when providing personal advice (and implementing personal advice) because advice is tailored to the client's circumstances and advice is provided in accordance with the best interest duty obligations.

However, ASIC expects advisers to consider the TMD as part of meeting your best interest's duty[1] in the same way you consider other product research, as it contains information about the consumers the product is likely to be appropriate for.

Advisers should collect information to assist then to consider the TMD. This may include information such as the client's need for growth vs income, their risk profile, their investment timeframe etc.

It may be appropriate to advise a consumer outside of the target market to acquire a financial product, when acquisition would be in the best interests of the consumer. For example, it may be appropriate in the broader context of the consumer's portfolio, taking into account their relevant circumstances, for an adviser to recommend a product that would ordinarily be too high-risk for the consumer if it were a concentrated holding.

All other obligations continue to apply.

OBLIGATIONS THAT APPLY WHEN PROVIDING EXECUTION ONLY SERVICES

If you provide general advice or execution only services, you must meet the reasonable steps obligation. Advisers should consider the likelihood of the consumer being outside the target market and the potential for harm if they were to acquire the product.

An adviser should determine whether a consumer is reasonably likely to be in the target market for a product by:

[1] Safe harbour step s961B2(e) relating to conducting a reasonable investigation in the financial product and assessing the information gathered in the investigation

- Considering data held about the consumer, for example if they are an existing client. Advisers will need to consider if the information should be relied upon and whether that information may have changed.
- Asking the consumer direct questions to determine if they likely to be in the target market (but not asking a consumer to self-certify that they are in the target market).

Advisers should avoid influencing a consumer to decide about a product, by asking these questions after the consume has made the decision to acquire the product. If you advise a client that they are in the target market, you must not suggest or imply that you have considered their objectives or needs and that the product is suitable for them.

If consumers are outside the target market

If you know or should know that a product is unsuitable for the consumer, you must take reasonable steps to avoid distributing the product to that consumer. Advisers must decline to provide execution services.

WHAT ARE SIGNIFICANT DEALINGS?

Licensees must notify a product's issuer of a significant dealing in a product that is not consistent with the product's target market determination within 10 business days of becoming aware of the significant dealing.

Significant dealings are not defined. An issuer may define the kinds of dealings they consider significant in the TMD. Advisers should refer to each TMD to determine what the product issuer specifies to be significant, and those dealings should be reported to the licensee.

If the TMD does not specify what is deemed to be significant, we consider that the following are significant (as a minimum) and should be reported to the licensee:

- Where a fund is recommended as part of a portfolio to a client who is outside the target market for that fund, ***and*** more than 15% of the client's portfolio is invested in this fund.
- Any dealings outside the target market for an insurance product.

Where the TMD specifies that any dealing outside the TMD is significant, then all dealings outside the TMD should be reported immediately to the licensee.

When determining significant dealings we may also consider:

- the extent to which a consumer's circumstances differ from the target market.
- the volume of consumers acquiring a product that are outside the target market
- the potential harm or risk of loss to a consumer who is outside the target market
- when the acquisitions outside the target market occurred

WHAT ADVISERS NEED TO DO TO COMPLY

Requirements	
Ensure there is a current TMD	• Before recommending or distributing a product, Advisers must ensure that the product has a current and appropriate TMD. • The TMD should be located on the product issuers public website. • Advisers should ensure that all products have a TMD. This includes the super fund, platform, underlying investments and insurances. • Where a product does not have a TMD, the adviser may not recommend the product.
Comply with the TMD where execution only services or general advice is provided	• When facilitating execution only services (client directed with no advice), advisers must ensure the client is within the TMD of the product being acquired. • When providing general advice such as a public presentation or advertising, advisers must take reasonable steps to ensure marketing targets clients within the TMD.
Consider the TMD as part of your Best Interests Duty	• The TMD should be considered when conducting a reasonable investigation in the financial product and assessing the information gathered in the investigation. • Advisers may recommend products where the client's objectives are not within the TMD where it is assessed as being in the best interests of the client (e.g. as part of a diversified portfolio).
Assess whether any dealings outside the TMD are significant	• Advisers should refer to each TMD to determine whether recommendations outside the TMD are deemed significant.
Maintain records	• Advisers are expected to maintain records of their consideration of the TMD and their assessment of significant dealings outside the TMD.
Complete any additional questions on the product application form relating to the TMD	• Advisers must answer questions relating to the TMD on product application forms. There questions may include whether personal advice has been given and information about the client's objectives (e.g. need for growth vs income, risk profile etc).
Report significant dealings to your licensee	• Advisers are required to report any potential significant dealings to the Licensee as soon as practicable. A report of significant dealings should be emailed to the Responsible Manager.

Requirements	
Report any client complaints related to the product to your licensee	• Advisers are required to report any client complaints related to the product as soon as practicable.

FREQUENTLY ASKED QUESTIONS

Do Advisers need to provide the client with a copy of the TMD?

No, it is not a requirement to provide the TMD to a client.

Do Advisers need to reference the TMD within the SoA?

No, there is no specific requirement to reference the TMD or explain if a client is within the target market for the recommended product, within the SoA. Where recommendations are outside the TMD, advisers may consider adding in a paragraph explaining why. This may assist in defending any future client complaints.

Do Advisers have to report nil complaints?

Originally the legislation required distributors to report to issuers if there were nil complaints during the reporting period. Recent announcements from government have indicated this requirement will be repealed. Therefore, advisers and licensees will only be required to report where they have received a complaint related to the product.

QUERIES & FURTHER INFORMATION

Additional queries should be directed to the Responsible Manager.