

Mr Andrew Fawcett
Senior Executive Leader, Strategic Policy
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

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By email: product.regulation@asic.gov.au

Dear Mr Fawcett

Consultation Paper 325 – Product design and distribution obligations

The Australian Finance Industry Association (AFIA) welcomes the opportunity to provide a response to ASIC's Consultation Paper 325 (CP 325) on its draft regulatory guidance for the design and distribution obligations (DDO) set out in Pt 7.8A of the *Corporations Act 2001*.

AFIA is committed to ensuring that all Australians have continued access to finance and is also committed to enhancing consumer protection and this commitment informs our responses on the draft regulatory guide.

AFIA Background

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia, including banks, finance companies, credit card issuers, and fintechs.

AFIA's role as an industry body is to drive industry leadership and represent members' views, facilitate self-regulation through industry codes, and to work with the Federal Government, financial regulators and other stakeholders to promote a supportive environment for industry.

Our guiding principles seek to build the settings to:

- Promote simple, convenient, innovative and affordable credit to finance Australia's future, including maximising access to credit for customers able and willing to service their commitments and minimising the likelihood or incidence of customers entering into unsuitable credit contracts

- Foster competition and innovation in Australia’s financial services industry, which enables our members to grow, expand and thrive as key participants in lending and other markets, and
- Generate greater financial and economic participation by consumers and small businesses in Australia’s financial system and economy and improve social participation as a means to create financial wellbeing.

To do so, we focus on the key drivers that provide positive customer outcomes, foster competition and innovation within industry, and facilitate financial, economic and social engagement by both customers and industry.

Our Submission

We appreciate you holding a meeting with us on 3 March and the industry roundtable discussion on 5 March, where we could explain some of the initial feedback we had received from our members.

We note that while members have contributed to our submission, the position being put by AFIA may not reflect a particular member’s organisationally-specific position on all of the issues. These will get captured through any separate submission from that organisation, that they may choose to make.

In principle, we support the implementation of the DDO in Pt 7.8A of the *Corporations Act 2001* (Corporations Act). The regime introduces targeted and principles-based design and distribution obligations in relation to financial products, and will require issuers and distributors to have an adequate product governance framework to ensure products are targeted at the right people.

Because the implementation of DDO is new and complex for lenders and lenders are becoming increasingly risk averse in how they make lending decisions, navigate market volatility and community expectations, and interpret ASIC’s guidance, it will be very important to ensure implementation of these obligations are done in a manner that does not negatively impact on the broader economy, limit access to credit, or reduce competition and innovation.

The Financial System Inquiry (FSI) recommended in its final report the introduction of principles-based design and distribution obligations. We support this approach as consistent with other legal obligations and ASIC’s regulatory guidance, taking into account the nature, scale and complexity of financial institutions and lenders, however, this is a new and complex obligation.

Therefore, we believe further guidance by way of examples or a workshop (which we are more than happy to facilitate) on how members execute their obligations, in particular when defining and determining Target Market Determinations (TMD’s) for simple, large volume products would be welcome as this would provide clarity and ensure consistency across the industry.

Our key recommendations in response to CP 325 are based on the principles of ensuring:

1. Regulation is fit for purpose and not a barrier to entry or growth.
2. Access to credit continues for consumers and small businesses, and is supported through the growth and expansion of the financial services industry and the fintech sector, and

3. Customer choice is enhanced through facilitation of competition and innovation in the lending market in Australia.

Key recommendations

All our key recommendations are built off the guiding principle that a 'one size fits all' approach to DDO is not going to be appropriate as it would adversely impact competition and innovation, reduce customer choice, and potentially impact access to, and cost of, finance.

We recommend that ASIC:

- 1. Confirm that DDO for simple products and / or limited distribution channels is scalable and include further examples and guidance on TMD's for simple products, such as basic deposit products, credit cards, motor loans, personal loans and Buy Now Pay Later products.**

CP 325 is good in providing examples of complex products but does not provide enough examples on simple products. It is pleasing to note, as confirmed by ASIC in our discussions, that scalability of DDO for simple products and / or limited distribution channels is possible, but further clarity and examples in the regulatory guide would help our members understand some of the minimum elements that ASIC would expect to see in this regard.

We are happy to:

- Facilitate a roundtable to discuss potential examples, and/or
- Provide some draft TMD examples for generic feedback (not any formal approval).

AFIA will consider engaging COBA and the ABA on whether joint workshops should be undertaken.

Getting clarity on these issues will be important for product manufacturers as well as distributors, such as brokers who will have a multitude of TMD's from various issuers to familiarise themselves with.

- 2. Clarify how DDO will intersect with other legislation, such as responsible lending, the proposed reforms to mortgage brokers best interest duties and how they will engage with AFCA.**

It is important that ASIC provides further guidance on instances where a consumer may fall outside of the TMD but meets other compliance obligations.

For example, a consumer applying for a motor vehicle loan of \$60,000 is over 65 and therefore may be outside of a positive TMD but within tolerance of a negative TMD. However, due to the amount of rental income the consumer receives, the consumer will be able to meet credit assessment criteria and the lender will be able to meet their responsible lending obligations.

To ensure continued access to finance and increased competition, it would not make sense for this type of loan to be declined. Therefore, regulatory guidance as to the appropriate steps which will need to be taken in this instance to ensure no breach of DDO would be welcome.

It will also be important for ASIC's intended approach to engaging with AFCA to be better understood.

For example, AFCA determining a complaint relating to not meeting DDO obligations (but meeting responsible lending obligations) would warrant a review of the underwriting process with potential compensation being payable.

3. Clarify how disclosing potentially some of the content included in credit risk frameworks could not be seen to be potential discriminatory and how DDO will intersect with Australian discrimination laws at both state and federal level.

When undertaking an assessment of a customer's ability to meet their loan commitments, many factors are taken into account with some forming the basis of determining the negative TMD.

These factors, such as age, minimum income, postcode, servicing surplus etc are used because either they are necessary to meet legal and compliance obligations and / or members have seen losses (outside of risk appetite) or poor customer account conduct occurring if they are not taken into account.

Our members are concerned that disclosing to customers such factors as part of a TMD or negative TMD for potentially the first time may lead to them being accused of being anti-competitive and / or discriminatory.

It is important that ASIC provides further guidance and clarification – even if it is acceptable for members to disclose that their 'TMD is based on many factors which may or may not include age, income, residential address, servicing surplus etc'.

4. Linked to the above point, include further guidance on how proprietary information can be potentially not included in TMD's.

We note ASIC's confirmation that the TMD is not a disclosure document, but rather a tool to ensure that distributors are providing financial products to consumers for which the product was appropriately designed and is within a defined tolerance determined by the product manufacturer.

Further, in our discussions with ASIC we spoke about the 'input' and 'output' that needed to be considered when defining a target market. The input (reasons behind a decision) needs to be recorded in an internal document that say gets approved by a Product Governance Committee and that ASIC can use to determine compliance with DDO, but does not necessarily go into the output or external TMD document that say would be given to a customer or AFCA, if requested.

Confirmation of our understanding on this would be welcome as well as further regulatory guidance on how 'output' information, which is proprietary in nature, need not be included.

For example, a motor vehicle financier determines that it will not offer finance to consumers residing on Hamilton Island because the cost of repossession is too high. Here, the input (reason) would be that the cost of repossession is too high and sits outside of the risk appetite. To date, customers have been 'declined for finance', with no reason provided.

However, disclosing in a TMD, as an output, the reason why finance would not be offered is proprietary information so we believe that a financier should not have to disclose this.

5. Include further guidance for single product or single distribution channel members where, in life, a consumer no longer meets the TMD and sits within tolerance in the negative TMD but an alternate / potentially better suited product or channel is not available.

Not all of our members are multi product, multi distribution channel providers. Therefore, it will be important not to discourage innovation, but continue to increase competition, customer choice and not restrict access to credit. We believe clearer regulatory guidance on how these scenarios should be handled would be appreciated as members want to continue to deliver good customer outcomes, but may be constrained in how this can be achieved due to their business model, product and service offering, technologies, etc.

We note our discussions with ASIC and the confirmation that if the consumer was in the TMD when the product was provided, then there would be no breach (it is important that AFCA also recognises this circumstance).

However, if the aggregate data collected showed an emerging issue and/or if the member becomes aware of a problem with how TMD was set in the first place, then that would constitute a trigger for a review – it could also mean the consumer would need to be re-assessed from a responsible lending perspective as well.

We recommend that further regulatory guidance and examples are provided on review triggers and confirmation that review triggers only apply at a portfolio level and can be independent of in life responsible lending obligations.

6. Clarify their expectations in relation to the giving of potential personal advice – in particular 'in life', where a consumer who may no longer meet a TMD is offered an alternative product that better meets their 'in life' needs

Building on from the above, our members can foresee situations where, in life, a change in a customer's personal circumstances sees them fall outside of a TMD into a negative TMD and still be within tolerance but are better suited for an alternate product.

If this alternate product say has a lower interest rate / there is no 'new money' involved then there would be no need for any additional responsible lending checks to occur, however, our

members are concerned that offering the customer this more suitable product could be perceived as personal advice.

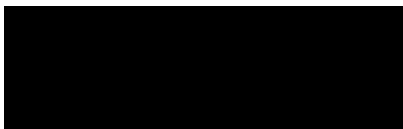
It is important that ASIC provides further guidance and clarification on what is expected – especially as in many instances of small dollar, large volume products, it could be third party or white label distribution partners having the conversation with the customer.

7. Include guidance on the enforcement approach for DDO with the final regulatory guide for Product Intervention Powers (PIP)

When ASIC publishes its regulatory guidance on how it will use its PIP, we recommend further guidance is given on their enforcement approach to breaches of DDO and the actions ASIC will take to notify an entity that there has been a breach of their DDO and the timeframe required for an entity to rectify the breach before taking further action.

Should you wish to discuss our feedback further, or require additional information, please contact Karl Turner, Executive Director, Policy & Chief Operating Officer at [REDACTED]

Kind regards



Diane Tate
Chief Executive Officer

Annexure A

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance sector. AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia which includes:

- major, regional and mutual/community owned banks
- providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers
- providers of land finance, including residential and commercial mortgages and bridging finance;
- equipment financiers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing
- motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance
- fleet leasing and car rental providers, and
- providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services;
- commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see [here](#).

Annexure B

<p>B1 We propose to give guidance that a robust product governance framework that fulfils the objectives of the design and distribution regime should: (a) focus on the identified target market across the lifecycle of the financial product; (b) be designed to reduce the risk of products being sold to consumers that are not consistent with their likely objectives, financial situation and needs; and (c) be documented, fully implemented, monitored and reported on, and regularly reviewed to ensure that it is up to date. See draft RG 000 at RG 000.30–RG 000.43.</p>	<p>B1Q1 Is our guidance on a robust product governance framework useful? What additional matters, if any, do you think are important in ensuring that a product governance framework will be effective and support compliance with the design and distribution obligations?</p>	<p>Overall yes, but it currently reads as though intended for more complex products.</p> <p>AFIA would appreciate more guidance on simpler credit products – for example, basic deposit products, credit cards, personal loans, motor loans, BNPL products.</p> <p>Specifically, clarity on whether:</p> <ul style="list-style-type: none"> • all the proposed requirements are needed for simpler products • scalability as outlined in updated RG209 would be possible for simpler products, and • scalability would be possible for more mono-line, mass market products. <p>We recommend a workshop. AFIA proposes to invite ASIC, ABA, COBA and some of our associate members, such as legal firms, to a workshop where we could derive some potential minimum inputs for a TMD for simple products.</p> <p>The benefit of this approach includes:</p> <ul style="list-style-type: none"> • improve consistency of customer outcome, especially when asked to produce a TMD document • assist members with a new legislative concept • help create right size and fit for purpose documentation • regulators would see commonality and consistency of approach as and when reviews are undertaken in the future. <p>Feedback from ASIC on this proposal would be appreciated.</p> <p>We also recommend that consideration is given of overseas examples (UK and EU) in relation to how the governance frameworks would look. Additionally, the ability to monitor and supervise distributors could be implemented through variations to existing Distribution Agreements. In order to assess how this could be operationalised, we should look to overseas examples.</p>
<p>B2 We propose to give guidance that issuers and distributors should not take advantage of behavioural biases or factors that can impede consumer outcomes. In addition, issuers and distributors should consider consumer vulnerabilities and how these vulnerabilities may increase the risk that products sold to consumers do not meet their needs and lead to poor consumer outcomes. See draft RG 000 at RG 000.52–RG 000.56.</p>	<p>B2Q1 Is our guidance on the consumer-centric approach issuers and distributors should take to deliver good consumer outcomes useful?</p>	<p>Regulatory guidance on how distributors should not take advantage of behavioural biases would be welcomed.</p> <p>Our members thought the example around ‘shoulder rates’ for term deposits was insightful. Further illustrations of bias around lending products would assist.</p> <p>As outlined above, additional regulatory guidance on how behavioural bias could look across a range of products would be useful – e.g. from simple vs complex, mass market vs boutique.</p> <p>This would assist:</p> <ul style="list-style-type: none"> • improve consistent understanding across manufacturers and distributors, and • regulators when assessing future compliance. <p>As members start to build their knowledge on how to design and implement TMD, ASIC’s view on building positive intervention or good customer outcomes into TMDs would be appreciated.</p> <p>For example:</p> <ul style="list-style-type: none"> • a member sees a customer not using a feature or say paying just the minimum amount for a certain period of time; the member reaches out and gets agreement to move the customer to a more favourable product –

		<p>would ASIC see this as behavioural bias or a good customer outcome? would ASIC see this as potentially personal advice? what would happen say if a member only has a limited or single product offering and has no more suitable products?</p> <ul style="list-style-type: none"> a lending product is approaching maturity; as part of the agreed in life communication plan, the member corresponds (probably electronically) that unless the customer contacts them, the facility will be matured which could mean any residual balance is due and payable or the facility continues to roll beyond the maturity date with the customer continuing to pay the same amount until the contract is renegotiated. After 2 items of correspondence to the customer, the member hears nothing so continues to charge the customer the same monthly contractual amount – how would ASIC view the inertia by the customer and the approach taken by the member to get a better customer outcome? <p>ASIC’s understanding and feedback on this intersection between potential personal advice, good customer outcomes, and a bad behavioural bias would be welcome, as this is an unclear and complicated area.</p> <p>Alignment to examples of vulnerability as outlined in various codes of practice, such as the ABA’s Banking Code of Practice would also improve consistency of approach.</p> <p>It would be useful to have further examples in relation to the choice architecture for more simplified products.</p>
	B2Q2 What additional matters, if any, do you consider to be relevant?	Covered above
C1 We propose to provide guidance that what amounts to an appropriate target market determination can differ, depending on the type and particular characteristics of the financial product to be issued, the intended distribution approach and the issuer’s product governance framework. See draft RG 000 at RG 000.64–RG 000.65.	C1Q1 Do you agree with our approach to guidance on the form and content of a target market determination? If not, why not?	<p>Yes – as mentioned above, AFIA proposes a joint AFIA, ABA, COBA and ASIC workshop to look at minimum inputs and a template for a TMD for a simple:</p> <ul style="list-style-type: none"> credit card personal loan bnpl product motor loan home loan basic deposit product <p>As part of the workshops, we propose to help members and associate members better understand how to define the negative target market.</p> <p>As part of this, a useful starting point would be to use knock out or ‘eligible but not suitable’ questions that form part of credit risk decisioning engines – for example, a customer is eligible for the product but is not suitable as say, their age or their income is too low, they live in a postcode where the member has historically suffered losses outside of risk appetite.</p> <p>ASIC’s views on how proprietary member information is retained when providing a TMD would also be welcome.</p> <p>In addition, ensuring any approach is not seen as discriminatory / leading to restrictions on access to credit will be important.</p>
C2 We propose to provide guidance that, generally speaking: (a) for new products—issuers should identify the target market and design financial products that are likely to be consistent with the likely	C2Q1 Is our guidance on the approach to identifying the target market for new products and continuing products useful?	<p>Yes, if it can be referenced to existing documentation that many members would have – for example:</p> <ul style="list-style-type: none"> an annual strategic marketing document product financial metrics / reports risk appetite statements compliance / operational risk reports

<p>objectives, financial situation and needs of consumers in that target market; and (b) for continuing products—issuers should still critically assess the product (and its features) and identify the target market under the design and distribution obligations by reference to the likely objectives, financial situation and needs of consumers for whom the product would likely be consistent. If issuers already have processes directed towards these purposes, they should check that the processes meet the detailed requirements of the legislation. See draft RG 000 at RG 000.62–RG 000.65.</p>		<ul style="list-style-type: none"> • credit risk reports • product reports around say flat cancellations, first payment defaults, hot spots of over / under budget activity by geography, distribution channel, sales team member etc <p>As part of this guidance, and given the fact that a customer can ask for a TMD, ASIC’s views on how members keep proprietary or commercially sensitive information confidential would be appreciated.</p>
	<p>C2Q2 What additional matters, if any, do you consider to be relevant?</p>	<p>Members would welcome ASIC’s views on how members manage the issue of the tolerance or outside target market appetite – within the first 12 months say of DDO becoming operational in April 2021.</p> <p>Members genuinely want to define a tolerance that works, but the intersection between DDO and significant breach reporting is now causing practical challenges.</p> <p>For example, as part of a risk appetite statement, a member sets a tolerance of outside target market of 10%. This is approved by the board with monthly reporting to say a Risk and Compliance Committee from 5.1% to 9.9% agreed as an early warning mechanism.</p> <p>Because this is the first time a tolerance of this nature has been set on this product, regular risk reporting occurs but the members finds strong demand from different customer segments than originally thought – these new / outside target market customers have a strong capacity to repay, with no / little arrears + there are no signs of hardship or stress. The term of the product is fairly short which means month on month the exposure outside of target market above 5% is dynamic and fluid.</p> <p>Can ASIC please confirm if members’ products that are deemed outside of target market tolerance, would be classified as a ‘significant dealing’ resulting in with reporting to ASIC within 30 days?</p> <p>However, if the product falls back within target market within say a short time after the initial report or before the report is finalised (as mentioned above, because the portfolio is dynamic) how would ASIC want members to manage this?</p>
<p>C3 While we do not propose to give any definitive formulation of how a target market should be described in a target market determination, we propose to give guidance that explains the process and key considerations for identifying and describing the target market by reference to examples across different product sectors. See draft RG 000 at RG 000.66–RG 000.89.</p>	<p>C3Q1 Do you have any comments on our approach to guidance on identifying and describing the target market?</p>	<p>Yes, this would be welcome – as mentioned above, especially if minimum criteria / requirements for a simple, basic deposit product, personal loan, car loan, home loan, BNPL product TMD were provided and expected proforma documents are also suggested.</p> <p>ASIC’s confirmation that members can phase the finalisation of TMDs from April 2021, so long as their approach addresses the highest risk products first (as defined by each member but using financial and non-financial metrics such as performance to budget, complaint data, first payment defaults, flat cancellations, arrears / other credit risk hotspots etc) – these products would naturally be reviewed more frequently too.</p>

		ASIC's views on how members collect and automate information flow from external data sets (say as provided by Morningstar) at scale would be welcome.
	C3Q2 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.66–RG 000.89: (a) Example 1: Credit cards; (b) Example 2: Reverse mortgages; (c) Example 3: Cash options in superannuation; (d) Example 4: Consumer credit insurance; (e) Example 5: Low-value products; and (f) Example 6: Basic banking products? C3Q3 What additional matters, if any, do you consider to be relevant?	These are useful examples, but the products mentioned tend to fall into the 'highest risk' category. As mentioned above, examples for simpler products would be welcomed.
C4 We propose to give guidance that when an issuer considers it appropriate to contemplate consumers in the target market acquiring the financial product as part of a diversified portfolio, the reasonable steps obligation will require the issuer to manage the risk of the product being sold to consumers who do not have a diversified portfolio. See draft RG 000 at RG 000.78–RG 000.79.	C4Q1 Do you have any comments on our proposed guidance for issuers considering the role of diversification as it relates to their identification of the target market?	<p>AFIA believes having a consistent definition of a diversified portfolio will be important to help customer understanding, limit arbitrage and ensure consistency from a member and regulator reporting perspective.</p> <p>Additionally, having a diversified portfolio not being perceived as potentially discriminatory because it sets a maximum exposure say by geography, state, product, risk band, will be important.</p> <p>As part of this, ASIC may want to engage their financial advice team to define the process and steps to go through.</p> <p>Once an agreed definition of diversified is known, it should accommodate:</p> <ul style="list-style-type: none"> • monoline vs multi product manufactures, and • distribution channels that range from proprietary to fully third party to white label. <p>Examples of 'good' diversification in each of these scenarios will be important along with ensuring:</p> <ul style="list-style-type: none"> • any proposal is not seen as: <ul style="list-style-type: none"> ○ anti-competitive ○ looking to limit innovation ○ discriminatory ○ limiting access to credit <p>Members do not inadvertently move into the area of potential personal advice will also be important.</p>
	D4Q2 Are there any specific methods that you consider our guidance should identify for distributors seeking to meet the reasonable steps obligation in the context of interacting with consumers who are outside the target market for a financial product?	<p>What is the situation where it is appropriate – for a number of different reasons for a client to acquire a product where they are outside the TMD?</p> <p>How does that then fit in with the distributor obligation to report “significant dealings” to an issuer?</p> <p>How do you ensure that there is a differentiation between the types of situations where a client may be outside of a TMD?</p> <p>Does this go to seeking clarity from ASIC as what is meant by “significant dealings”? Same concerns apply to tolerances and a TMD. If it is “excluded conduct” – does this mean that the requirement to report “significant dealings” would no longer apply?</p>

<p>C5 We propose to give guidance that we do not consider a target market for a product should be predominantly based on consumer understanding of a product. See draft RG 000 at RG 000.80.</p>	<p>C5Q1 Do you agree that consumer understanding of a product does not necessarily equate to the product being likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market? If not, why not?</p>	<p>ASIC's clarification of this question would be welcome, say using examples.</p> <p>Also ensuring there is an element of customer accountability in entering into the contracts and their understanding of these contracts will be important – in particular if AFCA reviews TMDs as part of its complaint assessment methodology.</p>
<p>C6 We propose to provide guidance that in making a target market determination, it will also be useful for the issuer to consider, in addition to the target market, those for whom the financial product is clearly unsuitable (the 'negative target market'). See draft RG 000 at RG 000.90–RG 000.92.</p>	<p>C6Q1 Do you agree that it may also be useful for an issuer to describe the negative target market for its financial product. If not, why not? C6Q2 Is our guidance on the role of describing a negative target market adequate and useful? If not, please explain why, giving examples.</p>	<p>As mentioned earlier, practically speaking, defining the negative target market and what goes into this is very beneficial.</p> <p>This differentiates between a customer who is eligible but may not be suitable – for insurance products, a third arm of eligible, suitable but not eligible to claim would also need to be built into a TMD.</p> <p>We believe ensuring 'knock out' questions do not unnecessarily expose members' proprietary and confidential information and ensuring the approach is not seen as discriminatory / leading to restrictions on access to credit will be important.</p> <p>If ASIC would be willing to work with AFIA and others on this, it would be appreciated</p>
<p>C7 We propose to give guidance on how the target market determination applies for certain products when the application of the obligation is not straightforward, including: (a) to superannuation and investor directed portfolio services (also known as 'platforms' or 'IDPS'); (b) when products are offered and acquired as a 'package' or 'bundle'; and (c) when products are customisable by the consumer at point-of-sale, including through choices or options (e.g. selecting a waiting period for an income protection insurance product). See draft RG 000 at RG 000.98–RG 000.106 and Examples 7–8.</p>	<p>C7Q1 In relation to our guidance on how a target market determination should be approached for superannuation products, as set out in Example 7: (a) Do you agree with our proposed guidance that if investment options are suitable for different groups of members, then the trustee should account for this in undertaking its target market determination for the Choice superannuation product? If not, why not? (b) What factors do you consider relevant to the grouping of investment options in making a target market determination? Why? (c) Do you agree with our proposed guidance to consider insurance as part of the target market determination for a Choice product? If not, why not? (d) How should a trustee take into account insurance in making a target market determination for a Choice product?</p>	<p>N/A to our members</p>
	<p>C7Q2 Do you agree with our guidance on the application of the target market determination obligation to IDPS?</p>	<p>N/A to our members</p>
	<p>C7Q3 Do you agree with our guidance on how a target market determination should be approached for a bundled product? If not, why not?</p>	<p>N/A to our members</p>

	C7Q4 Do you agree with our proposed approach to the application of the design and distribution obligations to products that can be customised at point-of-sale? If not, why not?	N/A to our members
	C7Q5 Are there any particular options or choices, or types of options or choices, that you consider would affect the product's suitability for a consumer if selected? Please give examples	N/A to our members
C8 We propose to give guidance on the reasonable steps obligation for issuers and set out our view on the factors that may be relevant to the obligation. These factors include: (a) the distribution conditions that are specified in the target market determination; (b) the issuer's marketing and promotional materials; (c) the selection of distributors; (d) the supervision and monitoring of distributors; (e) the issuer's ability to eliminate or appropriately manage conflicts of interest; and (f) whether issuers have provided distributors with sufficient information to help them ensure that distribution is consistent with the target market determination. See draft RG 000 at RG 000.107–RG 000.120, Examples 9–11 and Table 3.	C8Q1 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.107–RG 000.120: (a) Example 7: Superannuation products; (b) Example 8: Investor directed portfolio services; (c) Example 9: Superannuation; (d) Example 10: Mortgage fund; and (e) Example 11: Listed investment companies? C8Q2 Do you agree with the factors listed in Table 3 of draft RG 000 that we expect will be relevant when considering whether an issuer has met the reasonable steps obligation? If not, why not? C8Q3 What additional factors, if any, do you consider should be included in Table 3 of draft RG 000?	N/A to our members
C9 We do not propose to set out in guidance standard review triggers and maximum review periods for issuers to adopt. Instead, our draft guidance sets out examples to illustrate what review triggers may be appropriate for certain types of financial products. See draft RG 000 at RG 000.127–RG 000.134 and Examples 12–13.	C9Q1 Do you have any comments on our guidance on setting appropriate review triggers and maximum review periods?	N/A to our members
	C9Q2 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.127–RG 000.130: (a) Example 12: Insurance; and (b) Example 13: Managed fund?	N/A to our members
C10 We propose to give guidance on the issuer's obligation to specify in the target market determination: (a) any information that it considers is necessary to require from its distributors in order to promptly decide that a target market	C10Q1 Do you have any comments on our guidance on the issuer's obligation to specify information it requires from its distributors?	As mentioned before, regulatory guidance on how to manage an issuer's obligation in relation to the information it requires from distributors would be welcome. As highlighted under C4Q1, how guidance looks for proprietary vs third party vs white label would be welcome.

<p>determination may no longer be appropriate; and (b) the reporting period for the information the distributor must provide to the issuer about the number of complaints about the financial product. See draft RG 000 at RG 000.135–RG 000.142.</p>		<p>AFIA would be happy to facilitate a workshop with ASIC, members and its peers where we discuss the types of data that feed into defining 'good' on a scalable basis.</p> <p>If this is not appropriately managed or addressed, our members fear that it could lead to restrictions on access to credit as 'good' distribution channels are misunderstood. Issues in relation to compatible data set exchange / information flows should also be discussed and further guidance provided.</p> <p>We would also wish to ensure consistency as regards to distributor reporting and information requirements as most distributors will distribute products on behalf of multiple product issuers.</p>
	<p>C10Q2 What existing information collected by distributors would be relevant to an issuer's consideration of the ongoing appropriateness of its target market determination?</p>	<p>The types of information that would be relevant could be:</p> <ul style="list-style-type: none"> • complaint data • geographical, portfolio data • financial metrics such as performance to budget • nature and quantum of sales and incentive programs including the impact of 'specials' say around year end, Christmas etc
	<p>C10Q3 In addition to the information set out at RG 000.139, are there other types of information an issuer should collect from distributors? If so, please describe the type of information you think would be relevant.</p>	<p>Covered above</p>
	<p>C10Q4 What potential effects on competition may occur as a result of the issuer's right to set the information the distributor must provide?</p>	<p>The effects of this need to be carefully balanced to ensure continued:</p> <ul style="list-style-type: none"> • access to finance for people who can show they can repay the product • innovation by existing and emerging manufacturers, and • customer choice. <p>Whether the product is lower value, more mass-market products vs higher value more boutique will also be important.</p>
	<p>C10Q5 Do you have any comments on our guidance on the issuer's obligation to specify the reporting period in relation to the number of complaints?</p>	<p>Comments already provided but ensuring alignment with RG165 as well as engagement with AFCA will be important.</p>
<p>C11 We propose to give guidance that, in reviewing a target market determination, we expect the issuer will take into account all available information on its financial product, using multiple data sources. See draft RG 000 at RG 000.143–RG 000.145.</p>	<p>C11Q1 Do you consider our guidance on the types of information issuers should have regard to (described at RG 000.143) to be useful? If not, why not?</p>	<p>Yes, as mentioned before, how members leverage and potentially re-purpose existing data – both financial and non-financial will be important.</p> <p>In relation to non-financial risks metrics, ASIC's views on whether these should include the control environment (with appropriate testing protocols) between a manufacturer and a distributor + the interaction with members' 3 lines of defence would be welcome.</p>
	<p>C11Q2 In addition to the data sources described in draft RG 000 at RG 000.143(a)–RG 000.143(d), are there other sources of information that you think an issuer should take into account in reviewing a target market determination?</p>	<p>As mentioned above, line 1, line 2, and line 3 reporting will give insights as to whether the target market is working as expected.</p>

	C11Q3 Do you have any other comments on our guidance on conducting a review of a target market determination?	Covered above
C12 We propose to provide guidance that the factors an issuer should consider when determining whether there has been a significant dealing in a financial product that is not consistent with the product's target market determination include: (a) the proportion of consumers who are not in the target market acquiring the financial product; (b) the actual or potential harm to consumers; and (c) the nature and extent of the inconsistency of distribution with the target market determination. See draft RG 000 at RG 000.147–RG 000.148.	C12Q1 Are there any additional factors that issuers should consider? If yes, please provide details	<p>In part, this was addressed with the significant breach example - C2Q2.</p> <p>In addition, ASIC's views on the intersection of 'outside of TMD' and 'in more financial harm' will be important.</p> <p>For example, how would ASIC want financial services providers to deal with a situation of outside of appetite due to strong credit risk of additional customers being now identified vs customers more at risk of harm being identified?</p> <p>We note that harm can be an emerging concept / construct so the product's maturity, lifecycle and term will be important to consider.</p>
D1 We propose to give high-level guidance on the reasonable steps obligation for distributors of financial products by setting out our view on factors that may be relevant to this obligation, including: (a) the distribution method(s) used; (b) compliance with distribution conditions; (c) the marketing and promotional materials circulated by the distributor; (d) the effectiveness of the distributor's product governance framework; (e) the steps taken to eliminate or appropriately manage the risk that incentives for staff or contractors may influence behaviours that could result in distribution being inconsistent with the target market determination; (f) whether reliance on existing information about the consumer is appropriate; (g) whether the distributor has given staff involved in distribution operations sufficient training; and (h) how the distributor forms a reasonable view that a consumer is reasonably likely to be in the target market. See draft RG 000 at RG 000.154–RG 000.163 and Table 5.	<p>D1Q1 Do you agree with the factors listed in Table 5 of draft RG 000 that we will take into account when considering whether a distributor has met the reasonable steps obligation? If not, why not?</p> <p>D1Q2 What additional factors, if any, do you consider should be included in Table 5 of draft</p>	<p>The examples are good but as outlined earlier, examples that relate to simpler products would be appreciated.</p> <p>ASIC's views as to whether members should include their third party accreditation processes, including initial assessment, onboarding, monitoring and consequence management would be welcome.</p>
D2 We propose to include an example to illustrate, at the time of renewal for general insurance policies, how insurers (in their role as distributor) can approach the reasonable steps obligation to ensure that the renewal process results in outcomes that are consistent with the target market determination. Our guidance suggests that, at the time of renewal, an insurer should: (a) analyse information it holds, such as: (i) information it gathered when the customer initially acquired the product; and (ii) updated details that have been provided, or through claims that have subsequently	D2Q1 Do you have any comments on our proposed guidance for distributors in Example 14 of draft RG 000? D2Q2 What other steps or controls, if any, do you consider would be appropriate for a distributor to consider what reasonable steps should be taken at renewal?	N/A to our members

<p>occurred; and (b) consider a number of factors, including the likelihood that a class of consumers is no longer in the target market for the policy. When an insurer assesses that it is likely that a consumer is no longer in the target market for an insurance policy, this should not result in an insurer declining to offer a renewal of the policy without contacting the consumer. See Example 14 of draft RG 000.</p>		
<p>D3 We propose to provide guidance: (a) that, in most cases, a distributor should have sufficient information about a consumer through its existing sales processes to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a financial product; (b) that the ways a distributor's processes could assist it to form a reasonable view that a consumer is reasonably likely to be in the target market for a financial product include: (i) the inclusion of 'knockout questions' within application processes; (ii) analysis of data held on the consumer or a class of consumers; and (iii) in some cases, asking the consumer direct questions to determine whether they are reasonably likely to be in the target market (see draft RG 000 at RG 000.168(a)–RG 000.168(c)); and (c) on the steps that a distributor can take to reduce the likelihood that a consumer will be left with the impression that their personal circumstances have been considered, including: (i) not having a relevant provider (i.e. an individual authorised to give personal advice to consumers on relevant financial products) involved in the distribution process to ask specific questions of a consumer and communicate the view that the consumer is in the target market to the consumer; and (ii) only asking specific questions of a consumer (when required) in the later stages of the sales process after the consumer has already made the decision to acquire the financial product (see draft RG 000 at RG 000.169(a)–RG 000.169(b)).</p>	<p>D3Q1 Do you agree that, in most cases, a distributor would have sufficient information about a consumer through its existing sales processes to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a financial product</p>	<p>It depends – the examples seem to be framed around a larger distributor.</p> <p>Many of our members deal with large but also smaller counterparties so the need for a proportionate solution that does not negatively impact on competition / innovation will be important.</p> <p>In addition, clarity as to how say a referrer model vs authorised credit representative would play out in practice would be welcome.</p>
	<p>D3Q2 What data do you consider would help distributors reasonably conclude that a consumer is reasonably likely to be in the target market for a financial product?</p>	<p>Again, this depends on the size of the distributor and their role – as outlined above, that data a referrer would need vs an authorised credit representative would need is very different.</p>
	<p>D3Q3 Do you consider our guidance should identify (in draft RG 000 at RG 000.168)</p>	<p>Yes, but again, ensuring 'knock out' questions do not unnecessarily expose members' proprietary and confidential information and ensuring the approach is not seen as</p>

	<p>other ways that a distributor's sales processes can assist it to form a reasonable view that a consumer is reasonably likely to be in the target market for a financial product? What other approaches can be taken?</p>	<p>discriminatory / leading to restrictions on access to credit will be important.</p>
	<p>D3Q4 Do you have any comments on our proposed guidance (in draft RG 000 at RG 000.169) on how a distributor could reduce the likelihood of leaving a consumer with the impression that their personal circumstances have been considered?</p>	<p>The examples provided in RG000169 of the draft regulatory guide are useful, but members' distribution channels are very diverse – ranging from single store to nationwide footprints, to solely digital to solely white label.</p> <p>ASIC's views on what would go into a proportionate control environment framework that say as a minimum includes accreditation, onboarding, training, in life monitoring and consequence management would be important.</p> <p>As part of this, regulatory guidance on what is personal advice and how product manufacturers can practically monitor this at scale would be very welcome.</p> <p>Understanding ASIC's views on the intersection of new DDO laws with significant breach reporting requirements coming out of the Royal Commission would also be welcome.</p>
<p>D4 We propose to provide guidance that the reasonable steps a distributor should take when selling a financial product to consumers who are outside the target market for the product depends on the circumstances of the interaction, the nature and degree of harm that might result, and the steps that can be taken to mitigate the harm. See draft RG 000 at RG 000.170–RG 000.175.</p>	<p>D4Q1 Do you have any comments on our proposed guidance on the content of the reasonable steps obligation in these circumstances? D4Q2 Are there any specific methods that you consider our guidance should identify for distributors seeking to meet the reasonable steps obligation in the context of interacting with consumers who are outside the target market for a financial product?</p>	<p>The steps outlined in RG000171 of the draft regulatory guide are useful and, in addition, members would welcome ASIC outlining examples of reasonable steps for scale for distribution parties, where the skills and capability of sale staff can be mixed and that accommodates diverse underwriting which could be as simple as – 'refer' to the financier or 'underwrite in the channel under various delegated authorities' or a combination in between.</p> <p>This in part ties into many of our comments that members are trying to execute DDO obligations on a large scale with fairly simple products so in order to not limit access to finance, be seen as anti-competitive or discriminatory, ASIC clarification as to how scale-ability / proportionate regulation agnostic of product might work here would be welcome.</p>
<p>D5 We propose to provide guidance that a target market determination for a financial product should be considered by a financial adviser in providing the advice and meeting their best interests duty. See draft RG 000 at RG 000.180–RG 000.183.</p>	<p>D5Q1 Do you agree that a target market determination for a financial product should be considered by a financial adviser in providing the advice and meeting their best interests duty? If not, please explain.</p>	<p>N/a to our members</p>
<p>D6 We propose to provide additional guidance on aspects of the interaction between the responsible lending obligations and the design and distribution obligations, including that: (a) information gathered as part of the responsible lending obligations may help the distributor form a reasonable view on whether the consumer is reasonably likely to be in the target market for a product; and (b) the reasonable steps obligation does not require further steps to be taken by a distributor when assessing, for responsible</p>	<p>D6Q1 Do you have any comments on our proposed guidance on using information gathered for the purpose of meeting responsible lending obligations in order to assist a distributor to form a reasonable view on whether a consumer is reasonably likely to be in a target market for a financial product?</p> <p>D6Q2 Are there any further issues you consider are raised by the interaction</p>	<p>Conceptually members understand how responsible lending should interact with defining a TMD – including the negative target market.</p> <p>The challenge though is some of the traditional credit risk underwriting type questions focus on areas which our members believe, when they are provided to customers as part of a TMD determination, could be seen to discriminatory e.g. you may be eligible but not suitable for the product if you:</p> <ul style="list-style-type: none"> • are above or below a certain age • have minimum income of x • work for more than y hours • can demonstrate servicing capacity with or without a buffer of more than \$z • live in a certain postcode.

<p>lending purposes, whether the consumer can comply with their financial obligations under the contract. See draft RG 000 at RG 000.184–RG 000.189.</p>	<p>of the two regimes that should be dealt with in our guidance? Please explain.</p>	<p>ASIC’s clarity on how members provide a meaningful TMD, but do not unnecessarily expose confidential or proprietary information or expose them to risk of legal actions / reputational risk will be welcome.</p> <p>Also ensuring lending to small business remains out of scope as part of this assessment is going to be important so as to not impact on economic growth.</p> <p>We note the exemption provided for insurance products, in that they were provided with an exemption from discrimination laws to have differential pricing for insurance policies based on certain ‘target criteria’. We recommend that a similar exemption is provided for here.</p>
<p>D7 We do not propose to provide specific guidance on the practical aspects of the relationship between the issuer and the distributor regarding information exchange.</p>	<p>D7Q1 Do you think it would be useful to provide guidance on the following arrangements between the issuer and the distributor: (a) whether there is a need for information requirements to be set out in an agreement between the issuer and the distributor; (b) the format of information exchange; and (c) the mode of delivery and communication of information? If so, what considerations are relevant to these factors?</p>	<p>Yes – members see the information flow around distributor systems to product issuer as being challenging.</p> <p>ASIC’s views on how members retain proprietary / confidential / their own intellectual property in these exchanges is also very important.</p>
	<p>D7Q2 Are there other considerations that need to be taken into account in the collection and exchange of information between an issuer and a distributor?</p>	<p>No</p>
<p>E1 We propose to give guidance on the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations. These factors include: (a) whether the objects of Ch 7 are being promoted, including the provision of suitable financial products to consumers (see s760A(aa)); (b) the policy intention underlying the design and distribution obligations to: (i) improve consumer outcomes; and (ii) require financial services providers to have a consumer-centric approach to making initial offerings of products to consumers; and (c) Parliament’s intent (as reflected in the law) for these obligations to apply to a broad range of financial products. See draft RG 000 at RG 000.232.</p>	<p>E1Q1 Do you agree with the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations? If not, why not?</p>	<p>Yes, they are useful but some worked examples around how relief could look would assist.</p> <p>Also, examples of when it could be sought e.g. sale of business, closure of division, debt sale of invoices etc would be beneficial.</p> <p>We note that novated leases are specifically excluded from the definition of a consumer lease for the purposes of the National Consumer Credit Protection Act. We recommend that clarification is provided by ASIC in relation to the exclusion of novated leases from the DDO regime and the basis of that exclusion.</p>
	<p>E1Q2 Are there any additional factors that you consider we should take into account?</p>	<p>No</p>
<p>E2 We propose to give guidance that, if we grant disclosure relief for a financial product, relief from the design and distribution obligations will not automatically follow. If requested, we will consider whether</p>	<p>E2Q1 Do you agree with our proposed approach to providing relief from the design and distribution obligations when disclosure relief has been granted in</p>	<p>As above</p>

to grant relief from the design and distribution obligations as a separate matter to our consideration of the disclosure relief. See draft RG 000 at RG 000.233.	relation to a financial product? If not, why not?	
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