FE fundinfo feedback to ASIC Consultation Paper 325
Product Design and Distribution Obligations

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Our Money Management Investment Centre disseminates free and transparent data to over 50,000 monthly users in the Australian market.

We helped to shape the implementation of Europe's MiFID II implementation, advising on and executing a data collection strategy. Our systems are used to publish over 200,0000 (UCITs and PRIIPs KIID) regulatory documents annually.

Globally, we provide the data, tools, infrastructure and expertise required to research, distribute, market and invest in funds and model portfolios – maximising efficiencies for fund managers and fund distributors through our unique cloud platform.

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?

We find the framework guidance useful, as it covers the obligations on both issuers and distributors and includes the review process. We do not believe the high-level framework needs to cover anything else.

B2Q1 Is our guidance on the consumer-centric approach issuers and distributors should take to deliver good consumer outcomes useful?

B2Q2 What additional matters, if any, do you consider to be relevant?

We agree that the consumer-centric guidance is useful, as it is important for products to be designed to meet the needs and personal circumstances of consumers. We believe that this focus should also help to reduce the complexity of some products.

C1Q1 Do you agree with our approach to guidance on the form and content of a target market determination? If not, why not?

We believe that some standardisation of the target market determination, at least at the level of product families (eg investment products, mortgages, credit cards), would help both distributors and consumers to compare products for their suitability, and distributors could also identify the appropriate distribution channels. This is particularly important as the determination must be publicly available. We disagree that it should not be considered a consumer-facing document, particularly as one of the purposes is to allow "consumers to refer to the target market determination should they wish to" (RG 000 63).

We also believe that it is important to show clearly the negative target market, where applicable, so consumers can easily see if the issuer has determined that the product is unsuitable for them.

We also believe that, as well as it being important that the TMD is understandable by retail consumers, it should be published as a standalone document and not part of the PDS.

- Our understanding is that the target market determination is not intended to be a point of sale disclosure, and any declaration from the end investor that they have read and understood the TMD is not suitable evidence that they are within the target market – instead, the distributor must take reasonable steps to ensure the investor matches the target market of the product. Including the TMD within the PDS confuses this issue.
- According to RG 168.37, a PDS is required to be 'clear, concise and effective' – additional target market information makes this harder to achieve.
- This is especially true for managed accounts, for which there might be one PDS at the range level, but different target market determinations for different risk profiles, which would result in a very lengthy single document if the two document types were combined.
- TMD documents are likely to have different republication timescales and triggers to a PDS, so combining them is likely to make maintaining a PDS more onerous.

C2Q1 Is our guidance on the approach to identifying the target market for new products and continuing products useful?

C2Q2 What additional matters, if any, do you consider to be relevant?

C3Q1 Do you have any comments on our approach to guidance on identifying and describing the target market?

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?

We believe that, even if it is left to the industry to agree the details, some standardisation of the target market determination would greatly assist consumers. We also believe that identifying and clearly showing any negative target market would significantly reduce the likelihood of consumers buying inappropriate products. For example, consumers are likely to be better able to understand a statement along the lines of "this product is unlikely to be right for you if you …"

FE fundinfo does not offer solutions for any of the products listed in C3Q2, so we do not have any feedback on that question.

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?

We agree that, in this case, issuers should consider the risk of it being sold as a standalone product, but this risk can be mitigated by including reference to diversification in the TMD and to being used as a standalone product in the negative target market statement.

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?

Yes.

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?

Yes

C6Q2 Is our guidance on the role of describing a negative target market adequate and useful? If not, please explain why, giving examples.

We believe it is important for any negative target market, where it exists, to be identified and described, especially as the target market determination is to be made publicly available. It is generally easier for consumers to understand a statement that a product is clearly unsuitable for them than to decide if they fit into the positive target market. We agree that including any negative target market in the determination would also help define the positive target market with sufficient granularity.

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?

C7Q2 Do you agree with our guidance on the application of the target market determination obligation to IDPS?

The sale of products on an IDPS is a major reason for making the target market determination a consumer-friendly document; the platforms could then make the determination (together with their TMD for the platform itself) available for consumers to verify their suitability before proceeding.

C7Q3 Do you agree with our guidance on how a target market determination should be approached for a bundled product? If not, why not?

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?

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.

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?

The transmission of MiFID II data between issuers and distributors in Europe has indicated that a standard machine-readable template that is fed directly into distributors' systems is the most effective way to ensure that they are alerted to updates of the target market determination. It is also important to establish an effective feedback mechanism from distributors to issuers; this is more complex, as the feedback is specific to each distributor and issuer, whereas the target market determination from issuers may be generic to all distributors.

As issuers, unless they also control the distribution, have little sight of the end consumer, the onus for ensuring a distributor's customers are consistent with the target market must lie with the distributors themselves, based on the high-level distribution strategy and conditions of the issuers.

Choice architecture should have little impact on consumer behaviour if they can be encouraged to view the target market determination before making a decision to buy, whether that is via an IDPS or through an intermediated sale. This applies at both the issuer and distributor level.

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?

We agree that the more complex a product is, the more detailed the distribution conditions would need to be; a basic product with few additional features is likely to require few restrictions on its distribution.

C9Q1 Do you have any comments on our guidance on setting appropriate review triggers and maximum review periods?

Where circumstances of which the issuer will be aware have occurred – changes to performance, volatility, liquidity, fees, taxation, fund flows or complaints direct to the issuer – the issuer could automatically trigger a review. However, for evidence of sales outside the target market or complaints via the distributor, such feedback is necessary and an effective mechanism for feedback is imperative.

In respect of the review periods, we believe further guidance could be given to issuers, to ensure a degree of consistency between similar products. If the maximum review period is set too long, it would increase the likelihood that a review trigger would arise before then, making the review date irrelevant and requiring suspension of sales of the product in the meantime. We believe that if, over time, it is shown that review triggers arise more frequently than the normal review date, that should be regarded as an indication that the maximum review period has been set too long.

Issuers would prefer to conduct a review as part of their normal product governance process rather than as the result of a trigger, as it would not require a product to be removed from sale in the meantime. A review trigger could require withdrawal of a product if the existing TMD is no longer believed to be appropriate.

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?

We agree with the example triggers in RG 000.128 and note that, in that section and Example 13, some of the triggers depend on feedback from distributors to issuers. An economic downturn is likely to be a review trigger only if there is an absolute return target (for which the same trigger could occur regardless of economic conditions). If the objective is a return relative to a benchmark, temporary underperformance due to style rotation should not be deemed to be a review trigger. However, a material change to the actual and expected returns relative to the stated objective may be a valid trigger.

C10Q1 Do you have any comments on our guidance on the issuer's obligation to specify information it requires from its distributors?

For the process to work well, we believe that there needs to be a high degree of standardisation of the nature and form of feedback. This means the feedback reports could be easily populated and machine readable by issuers. As stated in RG.000.128, review triggers "are likely to differ based on the nature of the issuer's financial product and its intended target market"; if ASIC will not provide further prescription, we urge trade bodies to do so.

It should be clear that the nature of the feedback is limited to matters that are relevant to issuers, ie the product's design, not the distribution process (unless it fails to satisfy the issuers' distribution conditions).

C10Q2 What existing information collected by distributors would be relevant to an issuer's consideration of the ongoing appropriateness of its target market determination?

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.

We believe that the percentage of sales to consumers who are in the negative target market is the most important indicator, supported, where sales are distributor-driven or discretionary (ie not self-selected by the consumer) by an explanation or justification for this. Complaints and feedback on performance are lagging indicators, as they may take years to come to light, by which time further harm may have been done while the product was still available for sale. The minimum investment timeframe indicates how much of a lagging indicator this feedback could be.

While complaints and performance feedback may be a lagging indicator, where there are several instances of these arising sooner than the minimum investment timeframe, that should raise warning flags for issuers, so adding that condition to the feedback could make it more useful.

While the actual volatility of a fund could change due to a change in the overall volatility of the market in which it invests, a significant change in relative volatility could be a review trigger; this is likely to be monitored by the issuer, rather than by distributors.

C10Q4 What potential effects on competition may occur as a result of the issuer's right to set the information the distributor must provide?

If the feedback requirements were to be standardised by product type, there would be no room for arbitrage by distributors selecting products or issuers with less onerous reporting requirements. While this could result in simpler products being sold, that may not equate to better consumer outcomes in all cases.

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?

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?

We agree that these factors should all be taken into account in any target market determination of an existing product. Modelling of most of the factors should form part of the standard product governance process that includes the target market determination for a new product. We also agree with the note that "Consumer satisfaction is not an appropriate source of data because it is an unreliable indicator of consumer outcomes" and point out that consumer satisfaction is closely linked to consumer complaints, making that an unreliable source of data, as noted in our answer to C10Q3.

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?

We believe that issuers should also take into account publicly-known information on the experiences of similar products from other issuers when conducting their reviews. For example, if problems have arisen around consumers encountering problems from investing in a fund of illiquid assets, all similar funds should take this into account.

C11Q3 Do you have any other comments on our guidance on conducting a review of a target market determination?

C12Q1 Are there any additional factors that issuers should consider? If yes, please provide details.

We believe that there should be no threshold for dealings in a product by consumers in the negative target market before they are considered "significant". However, reporting such a sale by distributors would not necessarily constitute a review trigger (and a need to suspend sales), as it may be a one-off and for a particular reason.

Even taking into account the exemption for personal advice, significant sales outside the target market as a result of personal advice may indicate to an issuer that the target market determination should be reviewed.

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?

We believe that issuers can only describe the target market in a generic fashion, while distributors will know how that applies to their own client base and should assess the issuer's target market in relation to each potential consumer of the product.

D1Q2 What additional factors, if any, do you consider should be included in Table 5 of draft RG 000?

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?

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?

Investment platforms may have little more than a consumer's date of birth, so will know little or nothing about their needs, objectives or risk appetite. We also believe that there may be products where the complexity or certain features may require additional, specific information.

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?

In respect of investment products, we believe that, as well as high correlation between the consumer's and the product's objectives (income, growth, capital preservation, retirement planning, decumulation, etc), the factors that should be included are the consumer's time horizon, capacity for loss (if there is any possibility of capital loss), attitude to risk/volatility of returns, and diversification of any existing investment portfolio. Changes to any of these on the consumer's side would highlight a possible move out of the target market, while a change on the product side (eg to recommended investment timeframe) would highlight a significant change to the product profile.

D3Q3 Do you consider our guidance should identify (in draft RG 000 at RG 000.168) 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?

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?

D4Q1 Do you have any comments on our proposed guidance on the content of the reasonable steps obligation in these circumstances?

We believe that the reasonable steps obligation should take effect "when a distributor becomes aware that it is speaking or interacting with a consumer who is seeking to acquire a financial product that they are *reasonably likely to be* outside of the target market for…". While it is possible to restrict an online consumer from progressing to the purchase of a product until they answer any questions, they should be made aware in any other interaction (telephone or in person) that a failure to answer any question will result in the distributor being unable to assess the suitability of a product.

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?

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.

Yes.

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?

D6Q2 Are there are any further issues you consider are raised by the interaction of the two regimes that should be dealt with in our guidance? Please explain.

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?

We believe that standardisation of the nature, format and transmission of the feedback from distributors to issuers would significantly reduce the burden of this obligation. The feedback should, as far as possible, be quantitative and the standardised fields should be machine-readable, without free text.

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?

We believe that all sales into any identified negative target market should be treated as significant for reporting purposes, even if personal advice has been given.

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?

E1Q2 Are there any additional factors that you consider we should take into account?

E2Q1 Do you agree with our proposed approach to providing relief from the design and distribution obligations when disclosure relief has been granted in relation to a financial product? If not, why not?