

CONSULTATION PAPER 325: PRODUCT DESIGN AND
DISTRIBUTION OBLIGATIONS – DRAFT REGULATORY GUIDE
SUBMISSION TO THE AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

11 March 2020

INTRODUCTION

1. ANZ thanks the Australian Securities and Investments Commission (**ASIC**) for the opportunity to comment on Consultation Paper 325 and ASIC's draft regulatory guide 000 (**Draft RG**) in relation to the design and distribution obligations (**DDO**).
2. ANZ believes the DDO will help improve product governance through the financial system to the benefit of retail consumers. We welcome guidance from ASIC to assist the DDO's implementation by industry. ANZ would also support an industry roundtable discussion with ASIC regarding the application of the DDO to bank hybrid securities.
3. Set out below are some of the thematic comments that we would like to offer ASIC on Consultation Paper 325 and the Draft RG. Supporting these thematic comments are responses to ASIC's proposals and questions in the attached table (**Table**). While we have considered all of ASIC's questions, we only have responded where we have specific feedback. All references to statutory sections are to sections of the *Corporations Act 2001* (Cth) (**Corporations Act**), unless otherwise stated. We would be happy to answer any questions that ASIC has on our submission.

GENERAL COMMENTS

Reasonable steps for distributors

- **The Draft RG indicates that the 'reasonable steps' obligation in s994E(3) on distributors may require them to go beyond the distribution conditions to independently implement controls to see that products reach the target market**
 - **We would appreciate ASIC's consideration of whether there are alternative interpretations of s994E(3) that would focus the obligation primarily on taking reasonable steps to comply with the conditions**
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4. Section D of the Draft RG sets out ASIC's proposed understanding of what is expected of distributors. As set out in paragraph 000.157 of the Draft RG, the key obligation that the DDO places on distributors is to take reasonable steps that will, or are reasonably likely to, result in distribution of a product being consistent with the target market determination.
5. The Draft RG appears to interpret this obligation as including a requirement that the distributor has the systems and processes in place to allow it to form a reasonable view on whether a customer is reasonably likely to be in the target market (see paragraph 000.164). The Draft RG states, at paragraph 000.161, that '[i]n most circumstances, merely complying with the distribution conditions...will not be sufficient to satisfy the distributors reasonable steps obligation'.

6. From these statements, we understand that the Draft RG rests on the premise that distributors have an independent obligation to see that products are distributed to the target market. This premise appears to come from an interpretation that the requirement in s994E(3) that 'retail product distribution conduct' be 'consistent' with a 'target market determination' requires distributors not only to comply with the distribution conditions but to independently ensure the conduct results in products being distributed to the target market. This interpretation effectively requires distributors to develop their own distribution conditions (see Table 5 for some of the steps that distributors could take).
7. However, we would note that alternative interpretations of s994E(3) may be available for consideration. To this end, we observe that:
 - As a preliminary matter, s994E(3) is drafted in deliberate terms to focus on retail product distribution conduct being 'consistent' with the 'target market determination'.
 - It was not drafted to say, as it could have been, that retail product distribution conduct must be such that when a product is issued to a retail client it is likely that the retail client is in the target market (that is, an obligation expressed in similar terms to the qualitative test in s994B(8)(a)).
 - Under s994B(5), the only parts of a target market determination that direct distributors towards specific conduct are the distribution conditions under s994B(5)(c) and the information requirements under s994B(5)(h).
 - Under s994B(5)(b), the class of retail clients that comprises the target market must merely be *described*; the determination is not required to direct distributors towards specific conduct connected with the description (other than the distribution conditions).
 - As such, it may be that adherence to the prescriptions in s994B(5)(c) and (h) is sufficient to ensure retail product distribution conduct is 'consistent' with the 'target market determination'.
 - Under s994B(8)(a), issuers must articulate distribution conditions that are sufficient to ensure that, if adhered to and when a product is issued to a retail client, it would be likely that the retail client is in the target market.
 - The Draft RG appears to be based on a situation where the distribution conditions are insufficient to result in this outcome so that distributors must take additional steps to see that it happens.

- However, it would appear that, if the distribution conditions are insufficient, recourse would be against the issuer under s994B(2).
 - If distributors are under an independent obligation to take reasonable steps beyond the distribution conditions, an issue may arise when attempting to discern if s994B(8)(a) had not been complied with. This is because the distribution conditions prescribed by the issuer would not be the sole determinant of whether products are only issued to retail clients within the target market. That is, would the adequacy of the distribution conditions need to be interpreted on a stand-alone basis, or in light of the independent steps taken by distributors?
 - Together with s994E(3), the nexus between distributors and the distribution conditions set out by issuers is supplied by s994E(1) which requires issuers to take reasonable steps that will result in retail product distribution conduct in relation to the product being consistent with the determination.
 - This indicates that the issuer has a role in overseeing distributors' adherence to the determination.
 - It is not clear how or why an issuer would do this if the distributor is under an obligation to not just comply with the distribution conditions but also independently take reasonable steps to see that the product reaches the target market.
 - Instead, it may be that s994B and s994E effectively establish a chain between the distribution conditions set by the issuer within the target market determination, the issuer's oversight of the implementation of those conditions and the distributor's obligation to adhere to the conditions (by acting consistently with the determination) that is exhaustive of the steps that must be taken to see that products reach the right target market.
8. These points suggest that there is an important interpretation point for resolution on whether s994E(3) requires (a) a distributor to take independent steps, beyond the distribution conditions, to result in products being distributed to the target market or (b) a distributor to adhere to the distribution conditions only. These different interpretations have significant implications for the steps that distributors take to implement the DDO and we would greatly appreciate ASIC's consideration of their respective merits.

Personal circumstances

- **Further consideration of the extent to which personal circumstances of retail clients need to be assessed and responded to would be useful, particularly in light of the boundaries of s766(3A)**
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9. A further key issue with the DDO that we believe would benefit from additional discussion and elaboration by ASIC in its regulatory guidance is the degree to which issuers and distributors must understand, and respond to, the personal circumstances of customers. We understand that the policy intent of the DDO is to ensure issuers identify the appropriate target market for each financial product. Target markets are to be developed at a 'class' level.
10. The Revised Explanatory Memorandum indicates that, in setting target markets and distribution conditions, issuers do not need to consider the personal circumstances of the retail clients who constitute the target market. In particular, paragraph 1.54 makes clear that s994B(8) '[does] not require an issuer to have knowledge about individual consumers'. Similarly, paragraph 1.58 in describing the operation of s994B(8)(b) notes that '[t]he use of this language [in the section] does not reflect a requirement to take into account the personal circumstances of any particular person or to provide personal advice'. We read these explanations as meaning that issuers, in setting the target market and prescribing the distribution conditions, do not need to turn their mind to whether any particular individual falls within the target market.
11. This said, we note that elements of the Draft RG contemplate that issuers and distributors could be expected to make inquiries of individuals in order to match them with target markets. For example:
 - Example 9 of Draft RG indicates that distributors may use information they hold and/or ask for further information from a customer and, based on that information, tailor the product choices available to that customer; and
 - Paragraphs RG 000.164 – RG 000.168 suggest that distributors could ask customers direct or specific questions to determine whether they are reasonably likely to be in the target market.
12. To help understand these expectations (and subject to our comments above concerning the interpretation of s994E(3)), we would appreciate ASIC's further consideration of how much information is needed about individuals. The steps indicated by the Draft RG suggest that to comply with the DDO, distributors will need to use existing information about customers, make inquiries for further information and tailor product options accordingly.

We note that these types of steps could give the DDO a similar 'transactional' focus as the responsible lending regime. If this is the intended operation of the DDO, we would note that:

- It will be very important that distributors are able to stay within the personal advice safe harbour provided by the new s766B(3A). We note that the safe harbour only extends to 'asking for information' and does not appear to cover using information about a customer that the distributor already holds.
- When the options presented to customers are dynamically adjusted based on their responses to questions, or information, about their personal circumstances, this will inevitably leave customers with the impression that the options are suitable to their personal circumstances, rather than the reflection of the class of customers in which they sit. It may be helpful if ASIC were to give its view of whether the act of adjusting options constitutes '...informing the person of the result of that determination' as exempted by s766B(3A).
- It may be difficult to avoid leaving customers with the impression that their personal circumstances have been considered (as discussed at paragraph RG 000.169). Indeed, we understand that s766B(3A) was enacted to ensure that, even though this is a possible outcome of the DDO, it does not mean issuers and distributors are providing personal advice.
 - We do not think it would be practical, as RG000.169(b) suggests, to only inform the customer of their alignment with a product's target market after they have made a decision to acquire the product.
 - We would note that the responsible lending regime will mean that borrowers will always have the impression that their personal circumstances have been taken into account in respect of 'credit' that falls within the *National Consumer Credit Protection Act 2009 (Cth) (Credit Act)*.
- The Revised Explanatory Memorandum makes clear that the DDO requires a risk management approach (see paragraph 1.97) and it is unclear how this characterisation of the regime interacts with expectations to take individual customer circumstances into account.
- As issuers and distributors take more personal circumstances into account, and potentially adjust the product options that are available, we wondered how much autonomy customers will have to select products that they believe they would benefit from.

We would ask ASIC to consider these issues to arrive at the appropriate balance of the information and steps required in order to match customers with target markets.

Renewals of products

- **The application of the DDO to the renewals of products, particularly insurance, needs careful calibration to ensure customer harm does not occur**
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13. We note the discussion in Example 14 about the steps insurers need to take with respect to insurance policy renewals. We wondered whether similar advice would apply to the renewal of other products like term deposits. Where an existing customer who holds a product falls out of a target market, we would also ask ASIC to consider whether there would be any potentially adverse customer outcomes if the reasonable steps requirement on issuers and distributors means that the customer can never be allowed to renew their existing product. While ANZ is not an insurer, we note that this issue could have significant implications for customers who rely on their ability to renew insurance contracts from year to year.

Alignment with the DDO legislative regime

- **While the Draft RG recognises that the DDO primarily applies while a product is available for acquisition by issuance, there are certain statements in it that could be read, in isolation, as imposing obligations that persist through a product's lifecycle, regardless of whether it is still available for acquisition by issuance**
 - **Distinguishing between what the law requires and what is good practice may assist stakeholders in understanding ASIC's expectations**
 - **Because of the legal requirements with respect to TMDs, we anticipate that customers will inevitably come into contact with them**
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14. The guidance offers important assistance to industry about the role and content of product governance and the paths to implementing the DDO. We have noted below some areas where we think it could be useful to draw a distinction between what Part 7.8A of the Corporations Act requires and facilitates and what is good practice.
15. For instance, some of the paragraphs under section B of the Draft RG could be interpreted as imposing obligations on issuers even if the product is no longer available for acquisition by issue (see our response to B1Q1 in the Table). We acknowledge that RG 000.15 makes clear that the DDO only applies while the product is available for acquisition by issue. However, it may be possible that some paragraphs, read in isolation, do not fully convey this to the reader.

16. Similarly, we consider there is a tension in the current Draft RG between ASIC's view that a TMD is not a customer-facing document and the requirement under s994B(9) that TMDs must be made publicly available and, under s1018A, referenced in marketing materials. We would expect that these requirements will likely lead to customers accessing and relying on TMDs, with the end result that they form part of the customer's 'choice architecture'.

Role of behavioural economics

- **Behavioural economics offers important insights into how customers make decisions but its use within the DDO would need to be predicated upon the biases and heuristics being shared by the class**
 - **It would also be useful to understand ASIC's expectations around how the existence of those biases and heuristics could best be discovered and proved**
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17. We agree that implementation of the DDO could usefully take into account vulnerabilities or biases that can impede customers from obtaining the right products. The use of behavioural economics will likely be an important component in the compliance with the DDO.
18. However, we note that any analysis of such vulnerabilities and biases must occur at the class level, not at the individual level. The biases and 'short-cut' decision making that issuers/distributors take into account will need to be shared by the class of customers that constitute the target market. If the expectation is that issuers need an understanding of biases and heuristics at the level of the individual, then it is not clear that this would be feasible. We note that paragraphs 1.54 and 1.58 of the Revised Explanatory Memorandum make clear that s994B(8) does not require individual circumstances to be taken into account.
19. It would also be useful if ASIC could provide guidance on what level of research issuers and distributors need to engage in to comprehend the biases and heuristics that affect a class's decision making. Understanding the form and degree of empirical testing that is required will be important to designing compliance regimes for the DDO. Included within this would be the documentation that issuers and distributors need to demonstrate compliance with the expectation that they have taken into account behavioural economics.

Record keeping

- **The record keeping requirements of the DDO will require significant changes to systems and we appreciate ASIC's indicated approach to working with industry as the regime is implemented**
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20. We note the central role that record keeping will play through a number of limbs of the DDO. We anticipate that implementing the monitoring, alert and record keeping systems that could be required to implement the DDO as set out in both Part 7.8A and the Draft RG will require significant changes to our information technology assets. We would ask that ASIC recognise the scale of the change that the DDO involves in this regard and that it allow sufficient time for implementation. We note and appreciate ASIC's indicated approach to working with industry as the DDO is implemented.

Scope for further clarification and examples

- **The Draft RG deals with a broad range of topics and is very welcome in that regard. We think further guidance could be provided on:**
 - **How the DDO applies to banking products, in particular those issued to two or more customers**
 - **The form and content of target market determinations**
 - **Appropriate review triggers**
 - **How the DDO interacts with the new mortgage broker best interest duty, given its parallel with the personal advice best interest duty**
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21. We welcome ASIC's additional guidance on how the TMD applies to certain products when the application of the obligation is not straightforward (contained in RG 000.98 – RG 000.106). We consider joint accounts (or other products that are issued to two or more retail clients) could benefit from a similar treatment in the Draft RG, using an example to show how the TMD applies in such circumstances.

22. As the Draft RG relates to a new regime, we believe it is important it strikes a balance between allowing scope for innovation and evolution in how its elements are applied (by not being overly prescriptive), while providing sufficiently specific guidance to support the efficient and effective implementation of the DDO by issuers and distributors of financial products. We consider ASIC has largely achieved this balance. However, we have identified some opportunities for standardisation that we consider could help generate efficiencies for the regulated entities and achieve a level of consistency that will ultimately benefit customers. For instance, ASIC could consider providing more specific guidance around the form, content and granularity of the TMD including by releasing indicative examples of TMDs or contributing to industry-based initiatives on TMD development.

23. We also think the Draft RG could be enhanced by additional detail and clarification to illustrate what may be appropriate review triggers and how to describe the review triggers in the TMD. This is explored further in our response to C9 in the Table.
24. Another area in which ASIC's consideration would be appreciated is the interaction of the DDO and the new best interests duty for mortgage brokers. As this regime imposes cognate obligations on mortgage brokers as are imposed on those providing personal advice, ASIC's guidance on the application of the DDO to credit products that are distributed through a mortgage broker would be greatly appreciated.
25. Finally, we support the approach taken in the Draft RG of providing examples to elucidate the largely principles-based guidance and would welcome the inclusion of additional examples, especially focussed on banking products, including:
 - Basic banking products that are suitable for broad classes of customers; and
 - Credit facilities that are covered by the Credit Act's responsible lending regime.

RESPONSES TO CONSULTATION QUESTIONS

QUESTION	ANZ RESPONSE
<p>B1 We propose to give guidance that a robust product governance framework that fulfils the objectives of the design and distribution regime should:</p> <p>(a) focus on the identified target market across the lifecycle of the financial product;</p> <p>(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</p> <p>(c) be documented, fully implemented, monitored and reported on, and regularly reviewed to ensure that it is up to date.</p> <p>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>Yes, the proposed guidance on the product governance framework is useful.</p> <p>In framing this guidance, it may be helpful if ASIC was to make clear what is required by the new Part 7.8A of the <i>Corporations Act Cth</i> (2001) (Corporations Act) and what is otherwise good practice for issuers and distributors. Our understanding of Part 7.8A is that it is a regime that seeks to ensure that, at the point of issuance, financial products are suitable for identified classes of consumers. The ongoing target market determination (TMD) review obligations in section 994C only apply when a product is available for acquisition by issuance or regulated sale. Some paragraphs under section B of the Draft RG could, in isolation, be interpreted as imposing obligations on issuers even if the product is no longer available for issue.</p> <p>For example:</p> <ul style="list-style-type: none">• RG 000.32 indicates that the product governance framework needs to focus on the target market across the 'lifecycle' of the product. It may be useful to clarify that, in this context, the lifecycle of the product is that which occurs while it is available for acquisition by issuance or regulated sale.

QUESTION

ANZ RESPONSE

- Similarly, RG 000.50 indicates that products should be improved to respond to any problems that are identified. This is sound advice but the requirements to review a TMD in section 994C only apply to the extent that a product is available for acquisition by issuance. Further, Part 7.8A does not, itself, require iterative product design but the maintenance of a TMD that meets the standard in s994B(8).

In making these observations, of course, we do not disagree that the proposed product governance framework is prudent. It is merely that a useful distinction could be drawn between the legal requirements of Part 7.8A and good practice.

An example of where this is relevant is in the context of offers of quoted securities, including debentures offered under a prospectus with a limited offer period. Once the offer period ends the security will cease to be available for acquisition by issue. The securities are by virtue of quotation freely tradable and neither issuer nor distributor has any control over who acquires them. The “lifecycle” of the product, incorporating the payment of distributions and repayment of principal, occurs largely after the product has ceased to be available for acquisition by issuance.

However, it is also relevant for many bank products such as home loans, credit cards and transaction accounts, which can have a long (in the case of home loans) or ongoing lifecycle (in the case of transaction and credit card accounts), many of which will continue some years after the product has been withdrawn from sale.

QUESTION

ANZ RESPONSE

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.

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

Given ASIC's position that an issuer that fails to take a consumer-centric approach will risk being in breach of the DDO (RG 000.156), this section of the Draft RG may benefit from further elucidation of how the guidance ties back to the legislation and of some of the underlying concepts. While the Draft RG provides an indication of what ASIC means by 'consumer vulnerabilities' in a sales situation (RG 000.55), further guidance by way of a definition and/or example would be useful.

In terms of the application of behavioural economics to the regime, we repeat our comments from our introduction:

1. We agree that issuers and distributors could usefully take into account vulnerabilities or biases that can impede consumers from obtaining the right products. The use of behavioural economics will likely be an important component in the compliance with the DDO by issuers and distributors.
2. However, we note that any analysis of such vulnerabilities and biases must occur at the class level, not at the individual level. The biases and 'short-cut' decision making that issuers/distributors take into account will need to be shared by the class of consumers that constitute the target market. If the expectation is that issuers need an understanding of biases and heuristics at the level of the individual, then it is not clear that this would be feasible. We note that paragraphs 1.54 and 1.58 of

QUESTION	ANZ RESPONSE
	<p>the Revised Explanatory Memorandum make clear that s994B(8) of the Corporations Act does not require individual circumstances to be taken into account.</p> <p>3. It would also be useful if ASIC could provide guidance on what level of research issuers and distributors need to engage in to comprehend the biases and heuristics that affect a class' decision making. Understanding the form and degree of empirical testing that is required will be important to designing compliance regimes for the DDO. Included within this would be the documentation that issuers and distributors need to demonstrate compliance with the expectation that they have taken into account behavioural economics.</p>
<p>B2Q2 What additional matters, if any, do you consider to be relevant?</p>	
<p>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.</p>	
<p>C1Q1 Do you agree with our approach to guidance on the form and content of a target market determination? If not, why not?</p>	<p>We agree that the form, content and formulation of TMDs could vary from product to product. It would be a significant task for ASIC to set parameters from theoretical deduction, rather than from observation or experience. However, we think some standardisation could help achieve a level of consistency that will benefit consumers.</p> <p>While the Draft RG proposes that TMDs are not consumer-facing documents, consumers will inevitably come into contact with them. Section 994B(9) requires that TMDs be made publicly available and</p>

QUESTION

ANZ RESPONSE

s1018A requires that issuers include references to them in marketing materials. Because of this, TMDs will form part of the 'choice architecture' for consumers when they are making comparisons of the products of different issuers. Where TMDs are significantly inconsistent across issuers or not presented in a readable, 'consumer friendly' style, this may make the 'choice architecture' faced by consumers less clear.

This may also have implications for distributors: for instance, a broker may have many different providers on its panel, each with different ways of presenting a TMD. This variation in approaches could introduce significant complexity into the distributor's compliance with its DDO obligations.

As such, while not essential, there would be value in ASIC playing a role in establishing some consistency in TMDs for product classes across the industry. ASIC could consider providing more specific guidance around the form, content and granularity of the TMD including by releasing indicative examples of TMDs or contributing to industry-based initiatives on TMD development.

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 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.

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

The guidance at RG 000.74 – RG 000.75 is useful in highlighting that common objectives are only one element of the analysis required to arrive at a target market. We agree that objectives need to be

QUESTION	ANZ RESPONSE
	<p>considered in combination with the likely financial situation and needs of the target market.</p>
<p>C2Q2 What additional matters, if any, do you consider to be relevant?</p>	<p>We think there could be more guidance on how issuers are expected to consider a common 'financial situation' of a target market. For example, will 'financial situation' take on a different scope of meaning for different products?</p> <p>We consider from Example 1 that 'financial situation' could refer to the way a target market is likely to use the product given their underlying financial position. For example, the relevant financial situation for some consumers may be that they are not likely to pay the closing balance of their credit card month to month.</p> <p>It should also be borne in mind that there may be financial products that are perfectly suited to a range of persons with very different 'financial situations' (in the sense of their individual income or wealth). For example, a term deposit can be suitable for each of: a young person saving a deposit for a home; a middle-aged investor using a term deposit to hold part of their broader investment portfolio; or an aged pensioner. While their individual financial situations are quite different, there is an element of financial position that they have in common: they have cash to which they do not need access for the term of the deposit. It would be helpful if the guidance indicated that it is reasonable to consider financial situation through the lens of the product.</p> <p>In framing what a 'financial situation' means for the purposes of the DDO, we are also mindful that there is an issue that the more granular the situation is, the more heterogeneous it will be. This will make it less likely that it is shared by a group of consumers.</p>

QUESTION

ANZ RESPONSE

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.

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

ASIC's guidance is useful. However, it is not clear how much empirical work is required to comprehend a class's objectives/financial situation/needs (**OFSN**).

More specifically:

- RG 000.71 could state more clearly that the requirement to draw on an issuer's own data about how a product is being used and consumer outcomes, and that this should 'feed back into the product design as part of ongoing review processes', only applies under section 994C where the product is still being issued. Further, the guidance could be clearer that a review and/or change to product design or distribution processes is not required just because the product ceases to meet an individual consumer's OFSN. Section 994B(8) only requires that, when issued, it is likely that the product will likely be consistent with the likely OFSN of the target market. If the consumer's OFSN change after they have acquired the product, this is not itself conclusive that the TMD needs to change.
- RG 000.78 could give examples of what ASIC envisages as steps an issuer might take to 'manage the risk' of the product being sold to investors who do not have a diversified portfolio. Is it sufficient to state in the marketing materials that the product should only be held as part of a diversified portfolio? It is, of

QUESTION

ANZ RESPONSE

course, impossible to verify whether products are in fact so held without conducting individual customer assessments.

- RG 000.89 states that while product variation allows for greater tailoring to different consumer circumstances, 'product variation often presents trade-offs for consumers in selecting one product to acquire over another.' We take this to mean product choices often involve consumers prioritising some objectives and needs that are met by one product over those which may be satisfied by another. If our understanding is correct, we agree with this view, and further, we think this means that one consumer will often likely fall into the target market of multiple products within the same product group. For example, a consumer considering a home loan may genuinely have conflicting preferences in relation to product features. If the consumer has both an objective to make extra repayments when possible, but has a need for the security of a fixed interest rate, they may fall into two target markets for two separate home loan products (a variable home loan that permits early repayments or a fixed rate loan that locks in an interest rate over a period of time and applies costs for early repayments to the loan). This would require the consumer to make a 'trade off' in selecting one home loan product over another.

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;

Example 3: RG 000.82–RG 000.83 and Example 3 provide guidance on how an issuer is to consider the way the product is likely to perform in practice. We consider it would be beneficial if ASIC provided further guidance on what "performance" is and whether performance of the product includes how the consumer chooses to use it.

QUESTION

- (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?

ANZ RESPONSE

Example 6: In our view, a consumer who falls within the relatively narrow target market for a basic banking product which offers low fees for those on a low income, could also fall within the target market for a standard transaction account that offers more features and comes at a higher cost. We would not expect the target market for the standard transaction account to have to exclude low income consumers who are eligible for the basic account, just because those consumers may qualify for a more 'tailored' account. However, it will be important for issuers in this scenario to ensure the distribution of the standard transaction account identifies consumers that are in the target market for the more tailored basic product, and ensures the relevant 'choice architecture' facilitates an informed choice between the standard product or the low cost product for that consumer.

Consumers of a common financial situation may have differing objectives and needs and those objectives and needs may change over time. We do not believe the DDO regime should operate to exclude choice between product options for such consumers by requiring general conditions based on consumer type (for example, low income customers). We would be interested to understand if ASIC has a different view.

Example 6 also deals with informal overdrafts. The example states that in identifying a target market for transaction products, issuers should take into account that the needs of some consumers will not be met by informal overdrafts.

We understand the test in section 994B(8) to be that the financial product (as a whole) would likely be consistent with the likely OFSN of consumers in the target market. We think in setting a target market, the test is whether the product as a whole meets the target market – we do not believe the legislation requires this analysis to be conducted

QUESTION	ANZ RESPONSE
	on each individual feature. In light of this, we would welcome further clarifying guidance in example 6 about how to conduct this analysis.
<p>C3Q3 What additional matters, if any, do you consider to be relevant?</p>	
<p>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.</p> <p>See draft RG 000 at RG 000.78–RG 000.79.</p>	
<p>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>	<p>To aid comprehension of the proposed guidance, we think it would be helpful for ASIC to provide some examples of the circumstances in which an issuer should consider a target market acquiring the product as a part of a diversified portfolio. Are there particular product types that warrant this type of consideration? For example, is this limited to investment products that are inherently of limited benefit unless used in conjunction with another product or to investment products with an unusual risk of loss, for instance subordinated or other complex securities?</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.</p> <p>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>ANZ agrees that consumer understanding of a product does not necessarily equate to the product being likely to be consistent with the likely OFSNs of consumers in the target market.</p> <p>On the other hand, it is not irrelevant; for instance, a legitimate consideration in offering securities of a company to existing security</p>

QUESTION	ANZ RESPONSE
	<p>holders in the issuer is that their holding is evidence of acceptance of the risks of investment in the issuer.</p> <p>Further, we note that if ASIC considers that behavioural biases and heuristics should be taken into account as part of the DDO regime, then it may be that the level of experience and comprehension of consumers should also be considered when identifying a target market. Experience and financial literacy are part of the psychological factors that inform the OFSNs of consumers.</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').</p> <p>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?</p>	<p>ANZ agrees that this may be a useful means to help issuers to articulate the target market for a product and we support the flexibility provided by the regime to allow the issuer discretion to determine whether to describe the negative target market in the TMD.</p>
<p>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>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:</p> <ul style="list-style-type: none"> (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). <p>See draft RG 000 at RG 000.98–RG 000.106 and Examples 7–8.</p>	

QUESTION

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?

ANZ RESPONSE

While ANZ no longer performs trustee duties for superannuation customers:

- (a) We agree with ASIC's 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.
- (b) We consider the following factors are relevant to the grouping of investment options in making a target market determination:
- Minimum time horizon – Each investment option has a time horizon representing the amount of time we expect it will take to reach the investment return objective. The minimum time horizon is important for customers nearing retirement or customers in pension/drawdown phase.
 - Standard risk measure – Each investment option has a risk level attached to it. The risk profile should match the TMD.
- (c) We agree with ASIC's proposed guidance to consider insurance as part of the TMD for a Choice product.
- (d) We consider a trustee should take into account insurance in making a TMD for a Choice product in the follows ways:
- Age – A customer's age should align to insurance eligibility.
 - Residency Status – A customer's residency status should align to insurance eligibility.

QUESTION	ANZ RESPONSE
	<ul style="list-style-type: none"> • Working hours – To be eligible for some cover types, a customer is required to work a minimum number of hours. • Income – A customer’s income should be within limits that are covered by the associated insurance policy.
<p>C7Q2 Do you agree with our guidance on the application of the target market determination obligation to IDPS?</p>	<p>We think the guidance in Example 8 is useful in that it clarifies that the issuer (or operator) of the platform needs to concentrate on the features and cost of the platform together with the range of products available on the platform, whereas the issuer of products available on the platform needs to concentrate on its underlying product (but should have regard as to whether platform appropriate distribution channel for its target market).</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>We agree with this guidance that products that form part of a product bundle must each have their own target market determination. However, it may be useful if ASIC were to provide an example demonstrating how this applies in practice; for instance, when multiple products are bundled and a waiver of a fee on one or more products applies by virtue of the bundling.</p>
<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?</p>	<p>We understand ASIC’s guidance to be an acknowledgement that customisation of a product through choice or options may, or may not, lead to bifurcation of the target market.</p> <p>We agree with the statement in RG 000.105 that not every choice or option will change the class of consumers for whom a product is likely to be consistent with their OFSN.</p> <p>We read this section as saying that where a product has optional features (which are not distinct financial products) that may be directed</p>

QUESTION	ANZ RESPONSE
	at different classes of consumers, the product will essentially have more than one target market and that this needs to be explained in the TMD.
<p>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.</p>	<p>The option of access to informal overdrafts on a transaction account may be an example of a form of a product that has a distinct target market as opposed to a transaction account that has the informal overdraft option turned off.</p>
<p>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:</p> <ul style="list-style-type: none"> (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. <p>See draft RG 000 at RG 000.107–RG 000.120, Examples 9–11 and Table 3.</p>	
<p>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:</p> <ul style="list-style-type: none"> (a) Example 7: Superannuation products; (b) Example 8: Investor directed portfolio services; (c) Example 9: Superannuation; 	<p>We consider it would be useful if some banking product examples were provided.</p> <p>Example 9 suggests that for direct-to-public offerings, the trustee might customise investment options presented to members based on ‘member characteristics’ information the trustee holds.</p> <p>We agree that issuers and distributors are likely required to make certain inquiries with consumers as part of the reasonable steps</p>

QUESTION	ANZ RESPONSE
<p>(d) Example 10: Mortgage fund; and</p> <p>(e) Example 11: Listed investment companies?</p>	<p>obligation. The Revised Explanatory Memorandum at paragraph 1.103 states that the reasonable steps obligation may require a regulated person to ask a retail client for information to determine whether they are in the target market and inform the client of the result. The acts of asking for this information have been excluded from the definition of personal advice. However, we would question whether customising product acquisition processes – and effectively blocking product choices – in response to information about a particular consumer, could be seen as going beyond merely asking the customer for information to determine whether or not they are in the relevant target market. Arguably, conduct that goes beyond requesting relevant information could fall outside the personal advice exclusion contained in the DDO.</p>
<p>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?</p>	<p>The Draft RG could contain more detailed guidance (with examples) on what constitutes distribution conditions as opposed to other parts of the reasonable steps obligation. This is an important distinction as it is the distribution conditions which need to be disclosed in the TMD.</p> <p>While we agree that an issuer’s marketing and promotional materials should be a relevant factor to ASIC’s administration of the issuer’s reasonable steps obligation, we note that there will be practical challenges associated with directing distribution towards the target market to the exclusion of all consumers who are not in the target market, particularly using channels such as television, websites and branches.</p>
<p>C8Q3 What additional factors, if any, do you consider should be included in Table 3 of draft RG 000?</p>	

QUESTION

ANZ RESPONSE

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?

While we agree with the proposed approach not to set standard review triggers and maximum review periods for issuers to adopt, we consider issuers would benefit from some further guidance on the level of detail and specificity required when describing review triggers in the TMD.

It is currently unclear if the issuer would be required to describe the actual metrics associated with the review triggers or whether it would be sufficient to outline the type of event or circumstance. Using an insurance product as an example, we consider the preferable approach would be to describe the review trigger as ‘a significant increase in policy lapse rates or cancellation rates over a 12 month period’, rather than stipulating a percentage increase.

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 think Examples 12 and 13 are helpful in illustrating the data and factors that issuers should consider in identifying relevant review triggers, however, it would be helpful if ASIC included some further examples relating to basic banking products and if there were an example illustrating review triggers.

In Example 13:

- The first factor invites a review of the product simply because of changes in the market prices of securities. Does ASIC envisage that target markets be reviewed (and, if need be, a fund closed) merely because of adverse market movements?

QUESTION	ANZ RESPONSE
	<ul style="list-style-type: none"> Another factor for consideration by issuers when determining review triggers is 'the fees of the product compared to similarly performing products'. It would be helpful for ASIC to clarify in what way the level of fees relevant to similarly performing products goes to the appropriateness of the target market determination. We do not think relative competitiveness against competitors in itself should be a review trigger.
<p>C10 We propose to give guidance on the issuer's obligation to specify in the target market determination:</p> <p>(a) any information that it considers is necessary to require from its distributors in order to promptly decide that a target market determination may no longer be appropriate; and</p> <p>(b) the reporting period for the information the distributor must provide to the issuer about the number of complaints about the financial product.</p> <p>See draft RG 000 at RG 000.135–RG 000.142.</p>	
<p>C10Q1 Do you have any comments on our guidance on the issuer's obligation to specify information it requires from its distributors?</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>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>Regarding the reference to 'complaints data' in RG 000.139 (a), we assume this is broad and means an issuer can request the substance of complaints and not just the number of complaints. If this category of information is intended to be limited to the number of complaints then ASIC may wish to consider clarifying that the 'consumer feedback' category in (b) includes details of the substance of consumer complaints.</p> <p>We also think it may be relevant for an issuer to collect information about systemic issues identified by distributors.</p>

QUESTION

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

ANZ RESPONSE

Distributors may choose to align with issuers who request minimal ongoing data to identify whether a review trigger has occurred. We do not think this would be a good policy outcome. Similarly, the ability of smaller distributors to respond to, and comply with, issuers' requirements may be more limited when compared with larger distributors, which could lead to a preference among product issuers towards larger distributors which are more likely to have the capacity to provide information at the level of detail required by those issuers. This could create a barrier to effective competition for smaller distributors.

ANZ envisages that distributors of products for multiple issuers will be requesting issuers to determine an industry-consistent level of reporting required, so they do not have to tailor reporting based on the requirements of each issuer. A similar issue drove the development of an industry standard 'broker interview guide', developed by the four major credit providers, in an effort to standardise the level and nature of inquiries into a customer's requirements and objectives brokers were expected to make under responsible lending laws on behalf of credit providers. We would be interested in ASIC's thoughts on such an initiative.

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?

ANZ agrees with the statement in RG 000.141 that complaint numbers may be a useful indicator of the need to review the TMD, however it will not be conclusive. Issuers would require additional information about the nature of the complaints to make this judgment. We, therefore, do not consider that an increase in complaint numbers over a period of time would, in isolation, constitute a review trigger.

QUESTION	ANZ RESPONSE
<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.</p> <p>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>Please see above in response to C10Q5.</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>C11Q3 Do you have any other comments on our guidance on conducting a review of a target market determination?</p>	<p>Issuers may conduct a review into a target market determination either: periodically; in response to a review trigger; or in response to an event or circumstance that suggests the TMD may no longer be appropriate for the target market.</p> <p>We would be interested in ASIC’s view as to whether the scope and nature of a review needs to be the same in all cases. We would expect a ‘full’ review to be completed periodically, however where the review is triggered by a particular event or circumstance, it may be appropriate for the review to cover only aspects of the product and data that are relevant to that particular event or circumstance.</p>
<p>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:</p> <ul style="list-style-type: none"> (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. 	

QUESTION

ANZ RESPONSE

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.

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.

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?

Table 5 contains reference to existing consumer information that a distributor may consider as part of its reasonable steps.

As a general point, the use of existing information about a consumer will need to be permitted under the Privacy Act or the privacy safeguards of the consumer data right. The mere fact that an entity holds the information does not mean that they have a right to use it for the purposes of complying with the DDO. This should be added as a consideration for distributors in deciding whether it is necessary to consider or appropriate to rely on existing information.

QUESTION	ANZ RESPONSE
	<p>Table 5 also refers to 'matters that can reasonably be implied or assumed (e.g. information inferred from the postcode of the consumer's residential address).' It is not immediately apparent to ANZ how such information could be used to shape distribution conduct for a DDO product. It may be helpful for ASIC to provide some examples.</p> <p>Finally, the Table also states that in addition to relying on existing information, a distributor should also consider seeking further information from the consumer. We suggest distributors need to exercise care in seeking further information, to ensure the relevant conduct is within the scope of the personal advice exemption in section 766B(3A) and does not give the consumer the impression that their personal circumstances are being considered. We consider this to be a difficult balance to achieve for distributors where any specific inquiries are made of the consumer.</p>
<p>D1Q2 What additional factors, if any, do you consider should be included in Table 5 of draft RG 000?</p>	
<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:</p> <ul style="list-style-type: none"> (a) analyse information it holds, such as: <ul style="list-style-type: none"> (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 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. <p>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.</p> <p>See Example 14 of draft RG 000.</p>	

QUESTION	ANZ RESPONSE
<p>D2Q1 Do you have any comments on our proposed guidance for distributors in Example 14 of draft RG 000?</p>	<p>Example 14 states that 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.</p> <p>We consider the guidance in Example 14 could be clearer on when in the process ASIC envisages the insurer should contact the customer (should the contact be primarily to inform the customer of the assessment once it has been made, or is it preferable for the customer to be contacted at an earlier stage and provided with options and/or an opportunity to provide further information?).</p> <p>Further, for the avoidance of doubt, we think it would be useful to confirm in the example that the distributor is not prevented from ultimately selling the consumer the insurance product, provided reasonable steps are taken.</p>
<p>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?</p>	
<p>D3 We propose to provide guidance:</p> <p>(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;</p> <p>(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:</p> <p>(i) the inclusion of ‘knockout questions’ within application processes;</p> <p>(ii) analysis of data held on the consumer or a class of consumers; and</p>	

QUESTION

ANZ RESPONSE

(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)).

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?

The stated expectation in RG 000.165 that, in most cases, a distributor should have sufficient information about a consumer through its sales processes to form a reasonable view seems inconsistent with other statements in the guide which suggest a distributor may also need to have regard to information already held about the consumer as part of its reasonable steps. Otherwise ANZ agrees with the statement, particularly as it relates to credit applications.

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?

Data that we consider would be of use includes needs-based conversations, responses to eligibility and 'knock out' questions, and the statement of position for credit applications.

In the case of a renewal, we consider responses to questions about changes to circumstances would be of assistance.

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?

We think the current draft guidance is sufficient.

QUESTION

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?

ANZ RESPONSE

We believe it will be extremely difficult for distributors to ask questions of consumers that are relevant to the question of whether they are in the target market, and not leave an impression that their personal circumstances have been taken into account.

If a consumer applying for a credit card product is asked about how they intend to use the card (e.g. whether they intend to pay the full balance off each month or whether they wish to pay their balance off quickly), that consumer is likely to be left with the impression that something about their personal circumstances (e.g. how they are able to manage credit) has been considered.

Applicants for a home loan will be the subject of detailed inquiries into their requirements and objectives and financial situation. Responses to these inquiries will be utilised by issuers and distributors to determine whether the consumer falls within the target market of the relevant home loan. We cannot see how a lender can frame those inquiries (which under DDO will have a dual purpose) in a way that does not leave the consumer with the impression that their personal circumstances have been considered.

Respectfully, we do not believe that the suggestion in RG 000.169 (b) is workable. Questions relevant to whether the consumer is in the target market will be questions that need to be answered before they make a decision to acquire the product – not least because they are questions that are also relevant to the unsuitability assessment being conducted in compliance with responsible lending obligations. We would encourage ASIC to provide some examples of how this suggestion would be implemented in practice.

QUESTION

ANZ RESPONSE

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.

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

We agree with this guidance. Where a consumer outside the target market wishes to acquire the product, we agree the regime does not prevent that issue going ahead and the only practical measure that can be taken in such circumstances is to ensure the consumer understands the product is unsuitable for them.

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?

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.

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.

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 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.

QUESTION	ANZ RESPONSE
<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>We agree with the guidance that the focus of responsible lending on the individual consumer and its transactional nature are quite different to the 'process and controls' focus of DDO.</p>
<p>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.</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:</p> <p>(a) whether there is a need for information requirements to be set out in an agreement between the issuer and the distributor;</p> <p>(b) the format of information exchange; and</p> <p>(c) the mode of delivery and communication of information?</p> <p>If so, what considerations are relevant to these factors?</p>	<p>ANZ supports ASIC's current approach not to provide specific guidance on these issues, which provides scope for issuers and distributors (at an individual or industry level) to determine the practical aspects of the relationship between the issuer and distributor regarding information exchange.</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>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:</p> <p>(a) whether the objects of Ch 7 are being promoted, including the provision of suitable financial products to consumers (see s760A(aa));</p>	

QUESTION

ANZ RESPONSE

(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.

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?

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 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.

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?

We understand ASIC's proposed approach, given relief from a disclosure regime does not necessarily justify exemption from the DDO regime.

However, we think the same principles that underpin relief from disclosure for some simple products (such as small non-cash payment facilities and gift cards) would apply in relation to the DDO regime.

ASIC could consider whether the proposed approach applies to all products currently the subject of disclosure relief – particularly those that are exempt from disclosure because they are simple products that pose minimal potential consumer detriment. Consideration should extend to products exempted under ASIC instruments, existing targeted relief and under regulations.