



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 274

Product design and distribution obligations

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About this guide

This guide is for issuers and distributors of financial products that must comply with the design and distribution obligations in Pt 7.8A of the Corporations Act.

It explains our interpretation of the design and distribution obligations, our expectations for compliance, and our general approach to administering the obligations.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in September 2024 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Regulatory Guide 274 *Product design and distribution obligations*, issued December 2020

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Issuers and distributors of financial products must comply with the design and distribution obligations in Pt 7.8A of the *Corporations Act 2001* (Corporations Act) from 5 October 2021.

The design and distribution obligations are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to the design and distribution of products. In particular:

- issuers must design financial products that are likely to be consistent with the likely objectives, financial situation and needs of the consumers for whom they are intended;
- issuers and distributors must take ‘reasonable steps’ that are reasonably likely to result in financial products reaching consumers in the target market defined by the issuer; and
- issuers must monitor consumer outcomes and review products to ensure that consumers are receiving products that are likely to be consistent with their likely objectives, financial situation and needs.

The design and distribution obligations require issuers and distributors to develop and maintain effective product governance arrangements across the life cycle of financial products. This will result in improved outcomes for consumers of these products.

Purpose of the design and distribution obligations

RG 274.1 *The Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* introduced design and distribution obligations to Ch 7 of the Corporations Act. Issuers and distributors of financial products must comply with the obligations from 5 October 2021. A new objects clause has also been added to Ch 7—that is, the ‘provision of suitable financial products to consumers of products’: see s760A(aa) of the Corporations Act.

Note 1: The design and distribution obligations were originally scheduled to commence on 5 April 2021. Due to the COVID-19 pandemic, ASIC provided a temporary exemption from the obligations for six months: see [ASIC Corporations \(Deferral of Design and Distribution Obligations\) Instrument 2020/486](#).

Note 2: In this guide, references to sections (s), chapters (Ch), divisions (Div) and parts (Pt) are to the Corporations Act, unless otherwise specified. References to regulations (reg) are to the *Corporations Regulations 2001* (Corporations Regulations), unless otherwise specified.

Improving product design and distribution

- RG 274.2 The Financial System Inquiry’s (FSI) recommendation for the introduction of the design and distribution obligations in 2014 was based on an acknowledgement of the limitations of a framework for consumer protection in financial services that relies heavily on disclosure, financial advice and financial literacy.
- RG 274.3 In particular, the FSI concluded that ‘disclosure can be ineffective for a number of reasons’ and that ‘disclosure alone is unlikely to correct the effect of broader market structures and conflicts that drive product development or distribution practices’ that result in poor consumer outcomes.

Note 1: See FSI, [Financial System Inquiry: Interim report](#), July 2014, pp 3–57.

Note 2: ASIC has also, over a number of years, identified limitations to disclosure in retail financial services markets—see Report 632 *Disclosure: Why it shouldn’t be the default* ([REP 632](#)); [Financial System Inquiry interim report: Submission by the Australian Securities and Investments Commission](#), August 2014, pp 15–17; [Financial System Inquiry: Submission by the Australian Securities and Investments Commission](#), April 2014, pp 12, 80–1; [Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Submission of the Australian Securities and Investments Commission—Round 6: Insurance](#), October 2018; and Peter Kell, then ASIC Deputy Chairman, [ASIC and behavioural economics: Regulating for real people](#), speech, Queensland University Behavioural Economics Group symposium, 18 October 2016.

- RG 274.4 The FSI concluded that poor design and distribution practices played a significant role in contributing to consumer detriment. It is in this context that the FSI recognised the variable quality of design and distribution controls and recommended the introduction of the design and distribution obligations as a supply-side intervention that places additional responsibility for consumer outcomes on issuers and distributors.

Note: See [Financial System Inquiry: Final report](#) (FSI final report), pp 199–201.

Taking a consumer-centric approach

- RG 274.5 The design and distribution obligations are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to designing and distributing products.

Note 1: See paragraphs 1.5, 1.7 and 1.12 of the [Revised Explanatory Memorandum for the Treasury Laws Amendment \(Design and Distribution Obligations and Product Intervention Powers\) Bill 2019](#) (Revised Explanatory Memorandum).

Note 2: In this guide, the term ‘consumer’ means a ‘retail client’ for a financial product.

- RG 274.6 The design and distribution obligations do not equate to an individualised product suitability test that requires assessment of each individual’s personal circumstances at point-of-sale. Instead the obligations require issuers and distributors to develop and maintain effective product governance

arrangements across the life cycle of financial products to ensure that consumers are receiving products that are likely to be consistent with their likely objectives, financial situation and needs.

- RG 274.7 For firms that already have effective product governance arrangements, this is unlikely to require a significant change to operations. As noted in the [FSI final report](#) (p 194):
- ... firms that already invest in customer-focused business practices and procedures would not be required to change their operations significantly ... [and] costs involved in changing practices should be low ... firms would be likely to benefit from long-term savings through increased customer retention and avoid further regulatory costs.
- RG 274.8 The design and distribution obligations require an issuer of financial products to consider the design of its product (including its key attributes) and to determine an appropriate target market for the product, including whether one exists—that is, whether there is a class of consumers for whom the product, including its key attributes, would likely be consistent with their likely objectives, financial situation and needs. If an appropriate target market cannot be identified for a product, an issuer will not be able to offer the product.
- Note 1: In this guide, the term ‘key attributes’ is used to describe features and attributes of a product that affect whether it is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market. See also RG 274.77–RG 274.79.
- Note 2: See paragraph 1.48 of the [Revised Explanatory Memorandum](#).
- RG 274.9 To ensure that distribution of the financial product is directed towards its target market, an issuer must specify distribution conditions and restrictions (distribution conditions) that make it likely that the consumers who acquire the product are in the target market. An issuer must, at the outset, plan how the product and its distribution will be monitored and reviewed, including by setting out the circumstances in which a review will be required.
- RG 274.10 The target market, distribution conditions, and information related to review and monitoring must be set out in a document called a ‘target market determination’ (TMD). The TMD is a written document prepared and made available before engaging in ‘retail product distribution conduct’.
- Note: For the meaning of ‘retail product distribution conduct’, see RG 274.29–RG 274.31.
- RG 274.11 Issuers and distributors must take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the TMD (reasonable steps obligation). They must adopt a risk management approach and take steps that are reasonably likely to reduce the risk of the product being distributed in a way that is inconsistent with the product’s TMD.

- RG 274.12 Issuers and distributors also need to consider their distribution methods and factors that could affect whether consumers receive a financial product that is likely to be consistent with their likely objectives, financial situation and needs. This could include factors such as how the product, including its key attributes, is marketed and the sales practices that are adopted.
- RG 274.13 Further, an issuer must monitor and review the outcomes produced by the design and distribution of its financial products and consider whether changes are required to the product, to the way it is sold or to whom it is being sold. In particular, an issuer will need to consider:
- (a) whether the product reached the consumers in its target market or was sold to consumers outside the target market;
 - (b) how the product performed in the hands of the consumers in the target market;
 - (c) whether the product delivered what was promised; and
 - (d) whether the product resulted in poor outcomes for consumers in the target market.
- RG 274.14 In this way, the design and distribution obligations require issuers and distributors to take a consumer-centric approach—placing consumer outcomes front and centre at the product design, product distribution, and monitoring and review stages of the product life cycle.

Note: See paragraphs 1.5, 1.7 and 1.12 of the [Revised Explanatory Memorandum](#).

What this guide is about

- RG 274.15 This guide explains our interpretation of the design and distribution obligations, our expectations for compliance, and our general approach to administering the obligations.
- RG 274.16 In particular, it explains:
- (a) the coverage of the design and distribution obligations, including the financial products that are subject to the obligations (see Section B);
 - (b) the product governance arrangements required by issuers and distributors to ensure that they comply with the obligations (see Section C);
 - (c) the specific obligations for issuers (see Section D);
 - (d) the specific obligations for distributors (see Section E); and
 - (e) the range of administrative powers we have in relation to the design and distribution obligations, as well as our approach to the granting of relief from the obligations (see Section F).

Who this guide is for

RG 274.17 This guide is for issuers and distributors of financial products that are available for acquisition by issue or by regulated sale in Australia. For a detailed explanation of the coverage of the design and distribution obligations, including who the obligations apply to, see Section B.

Note: 'Regulated sale' has the meaning given in s994A(1).

Summary of the obligations for issuers and distributors

RG 274.18 Table 1 summarises the design and distribution obligations for issuers described in Section D of this guide. Table 2 summarises the obligations for distributors described in Section E of this guide.

Table 1: Design and distribution obligations relevant to issuers

Obligation	Brief description	Guidance
Prepare a TMD: see s994B	<p>An issuer must prepare a TMD for its financial product. A TMD must meet the content requirements in s994B(5). These are to:</p> <ul style="list-style-type: none"> describe the class of consumers that comprises the target market for the product (see s994B(5)(b)); specify any distribution conditions and restrictions on distribution (see s994B(5)(c)); specify review triggers (events that reasonably suggest the TMD is no longer appropriate (see s994B(5)(d)); specify when the first review of the TMD must occur (see s994B(5)(e), (6) and (7)); specify when subsequent reviews of the TMD must occur (see s994B(5)(f), (6) and (7)); specify reporting periods for when distributors should provide information about the number of complaints about the product to the issuer (see s994B(5)(g), (6) and (7)); and specify the kinds of information the distributors must report to the issuer (and how frequently) to enable the issuer to identify whether the TMD needs to be reviewed (see s994B(5)(h), (6) and (7)). <p>The TMD must also meet the appropriateness requirements in s994B(8)—that is, the TMD must be such that it would be reasonable to conclude that, if the product were to be issued, or sold in a regulated sale:</p> <ul style="list-style-type: none"> to a consumer in accordance with the distribution conditions—it would be likely that the consumer is in the target market (see s994B(8)(a)); and to a consumer in the target market—it would likely be consistent with the likely objectives, financial situation and needs of the consumer (see s994B(8)(b)). 	See RG 274.59–RG 274.136.

Obligation	Brief description	Guidance
Make the TMD publicly available: see s994B(9)	An issuer must ensure that the TMD is available to the public free of charge before it distributes a financial product.	See RG 274.137–RG 274.139.
Take reasonable steps in relation to distribution: see s994E(1)	An issuer must take reasonable steps that will, or are reasonably likely to, result in a distribution being consistent with the product's TMD.	See RG 274.140–RG 274.148.
Review the TMD to ensure that it remains appropriate: see s994C	An issuer must review a TMD within 10 business days if it knows, or ought reasonably to know, that a review trigger, or an event or circumstance that reasonably suggests that the TMD is no longer appropriate, has occurred. An issuer must also review the TMD periodically as set out in the TMD to ensure that it remains appropriate.	See RG 274.149–RG 274.157.
Notify ASIC of 'significant dealings': see s994G	If an issuer becomes aware of a significant dealing in the product that is not consistent with the TMD, it must notify ASIC as soon as practicable (within 10 business days).	See RG 274.158–RG 274.163.
Keep records: see s994F(1) and (3)	An issuer must keep complete and accurate records of: <ul style="list-style-type: none"> the decisions made in relation to its TMDs, and associated reviews, including the reasons for those decisions (including the data underlying those decisions); and distribution information (to the extent that the issuer engages in distribution: see s994F(2)). 	See RG 274.165–RG 274.166.

Table 2: Design and distribution obligations relevant to distributors

Obligation	Brief description	Guidance
Not to distribute unless a TMD has been made: see s994D	A distributor must not engage in retail product distribution conduct in relation to a financial product unless it is engaging in excluded conduct or reasonably believes (after making all reasonable inquiries) that a TMD has been made, or a TMD is not required.	See RG 274.169.
Take reasonable steps in relation to distribution: see s994E(3)	A distributor must take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the most recent TMD (unless the distribution is excluded conduct).	See RG 274.167–RG 274.211.
Notify the issuer of 'significant dealings': see s994F(6)	If a distributor becomes aware of a significant dealing in the product that is not consistent with the TMD, it must notify the issuer as soon as practicable (within 10 business days).	See RG 274.212–RG 274.216.
Keep records: see s994F(3)	A distributor must keep complete and accurate records of distribution information, including: <ul style="list-style-type: none"> the number of complaints received about a product; and information specified by the issuer in the TMD. 	See RG 274.217–RG 274.224.

B Coverage of the design and distribution obligations

Key points

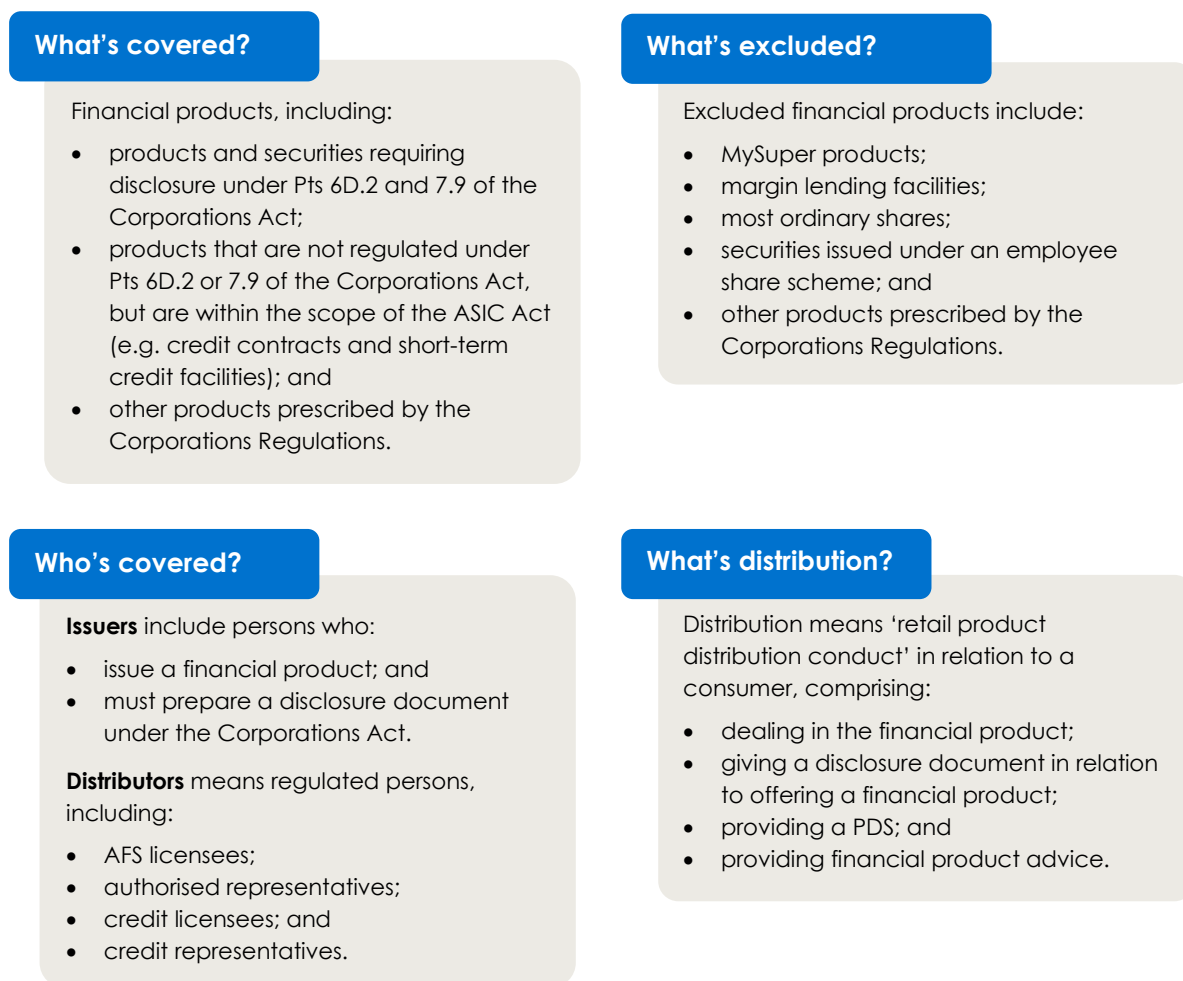
This section explains the coverage of the design and distribution obligations, including:

- the 'financial products' that are subject to the obligations (see RG 274.20–RG 274.24); and
- the meaning of 'issuer', 'distributor' and 'distribution' for the purposes of the obligations (see RG 274.25–RG 274.31).

Coverage at a glance

RG 274.19 Figure 1 summarises the coverage of the design and distribution obligations.

Figure 1: Coverage of the design and distribution obligations



Note: See RG 274.20–RG 274.30 for the information in this figure (accessible version).

Meaning of ‘financial product’

- RG 274.20 In this guide, ‘financial product’ refers to a product to which the design and distribution obligations apply: see s994AA and 994B(1). This includes:
- (a) products for which a Product Disclosure Statement (PDS) must be prepared under Pt 7.9 of the Corporations Act (e.g. interests in a managed investment scheme, general insurance, and interests in a superannuation fund);
 - (b) securities for which a disclosure document must be prepared under Pt 6D.2 of the Corporations Act (e.g. hybrid securities), except for ordinary shares (unless the company is an investment company or intends the shares to be converted to preference shares);
 - (c) products that are not regulated under Pts 6D.2 or 7.9, but that are ‘financial products’ under Div 2 of Pt 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) (see s994AA(1))—this includes credit facilities under the ASIC Act, such as credit contracts regulated under the *National Consumer Credit Protection Act 2009* (National Credit Act) (e.g. credit cards, home loans, funeral expenses policies), and short-term credit not regulated under the National Credit Act;
 - (d) products prescribed by the Corporations Regulations as requiring a TMD, including:
 - (i) depository interests in simple corporate bonds (see reg 7.8A.05);
 - (ii) debentures of a body that is an authorised deposit-taking institution (ADI) or registered under s21 of the *Life Insurance Act 1995* (see reg 7.8A.06);
 - (iii) basic banking products (as defined in the Corporations Act) (see reg 7.8A.07);
 - (iv) investor directed portfolio services (IDPSs) (see reg 7.8A.08);
 - (v) exchange traded products (ETPs) (see reg 7.8A.09); and
 - (vi) certain custodial arrangements (see reg 7.8A.10).

Note 1: We have provided information about how the design and distribution obligations apply to issuers and distributors of ETPs in the appendix: see RG 274.255–RG 274.264.

Note 2: ‘Basic banking products’ includes 31-day term deposits—see [Class Order \[CO 14/1262\]](#), or any instrument that amends or replaces that class order. This is in line with the Government’s intended operation of the legislation as set out in a public statement titled [Updated amendments to the design and distribution obligations](#).

Products that are not subject to the obligations

- RG 274.21 There are some financial products that are not subject to the design and distribution obligations: see s994B(3). These include:
- (a) MySuper products;

- (b) margin lending facilities;
- (c) generally, fully paid ordinary shares in a company (including a foreign company);
- (d) securities issued under an employee share scheme; and
- (e) products prescribed by the Corporations Regulations as not requiring a TMD, including:
 - (i) interests in eligible rollover funds, as defined in the *Superannuation Industry (Supervision) Act 1993* (SIS Act);
 - (ii) superannuation interests that are defined benefit interests (as defined in the SIS Act);
 - (iii) medical indemnity insurance;
 - (iv) depository interests in foreign fully paid ordinary shares;
 - (v) bank drafts and Australia Post money orders;
 - (vi) credit facilities that are not issued in the course of a business that is wholly or partly a business of providing credit;
 - (vii) credit provided for business purposes;
 - (viii) credit facilities set out in reg 2B(3)(b) of the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations) that do not involve the incurring of a deferred debt or payment of a deferred debt. This means, currently, the design and distribution obligations do not apply to consumer leases because they do not involve the incurring of a deferred debt;
 - (ix) the provision of a mortgage (as distinct from the credit contract secured by the mortgage, to which the obligations apply), noting the mortgage is generally provided by the person taking out the credit (as opposed to the credit provider); and
 - (x) the provision of credit by a pawnbroker in the ordinary course of a pawnbroker's business (see reg 7.8A.20).

Note 1: For further guidance on the MySuper exemption, see RG 274.133–RG 274.135.

Note 2: 'Ordinary share' is not defined in the Corporations Act. According to the [Revised Explanatory Memorandum](#) at paragraph 1.29, consistent with existing practice, 'ordinary share' is to take its ordinary meaning having regard to the legislative context in which it is used and the purpose of the design and distribution obligations. However, the use of the term 'ordinary share' is intended to distinguish such shares from other types of shares, particularly preference shares.

Note 3: See the definition of 'employee share scheme' in s9.

Note 4: If a superannuation fund issues both defined benefit interests and other interests, the exemption in reg 7.8A.20(3) only applies to the defined benefit interest.

Note 5: [ASIC Corporations \(Design and Distribution Obligations Interim Measures\) Instrument 2021/784](#) provides modifications, clarifications and exemptions to the regime for certain products and in certain circumstances. The measures in these instruments provide certainty on the application of the design and distribution

obligations in line with the Government's intended operation of the legislation as set out in a public statement titled '[Updated amendments to the design and distribution obligations](#)'.

New, continuing and legacy products

- RG 274.22 Issuers and distributors must comply with the design and distribution obligations for financial products that are to be issued to a consumer: see s994B(1)–(2) and 994E(3). This means the obligations apply to:
- (a) products launched after commencement of the regime (new products); and
 - (b) existing products that continue to be issued to consumers after commencement of the regime (continuing products).
- RG 274.23 Closed products for which no further offers or issues are being made after commencement (legacy products) are not affected by the design and distribution obligations: see s994B(1) and (2).

Note: Some products are automatically reissued by the issuer after initial acquisition by consumers. For example, many general insurance policies renew on an annual basis and consumers enter into new contracts at each renewal. Similarly, many term deposit products automatically roll over at the end of their term, resulting in a new term deposit product for the same term. Each renewal or rollover involves the issue of a financial product. Renewals are discussed further in Section E.

- RG 274.24 Issuers and distributors do not have to comply with the design and distribution obligations for secondary sales of products, unless such sales are made in circumstances that could otherwise be used to avoid the obligations (regulated sale).

Note 1: The term 'secondary sale' is not defined for the purposes of the design and distribution obligations. Instead, the legislative intent is to exclude the sale of products on secondary markets (unless such sales are made in ways that could otherwise be used to avoid the obligations) by applying the regime to primary or initial offerings and regulated sales: see also the [Revised Explanatory Memorandum](#) at paragraph 1.45. For the definition of 'regulated sale', see s994A(1).

Note 2: The appendix explains how the design and distribution obligations apply to issuers and distributors of ETPs, which have an open-ended structure that allows the issuer of an ETP to issue and redeem units on a daily basis resulting in the number of units on issue fluctuating depending on investor demand.

Meaning of 'issuer' and 'distributor'

- RG 274.25 The design and distribution obligations apply to issuers and distributors of financial products that are available for acquisition by issue or by regulated sale in Australia.

Note 1: The geographical coverage of the design and distribution obligations is limited to financial products that are available for acquisition by issue or by regulated sale in

Australia as a result of the jurisdictional limitations that apply to the obligations to prepare a disclosure document (see s700(4) and 1011A); the jurisdictional limitation that applies to ‘extended operation financial products’ (see reg 7.8A.20(8)); and the jurisdictional limitation that applies to persons required by the regulations to make a TMD (see regs 7.8.03 and 7.8A.04(1)(a) and s994B(1)(c)). Issuers that make a recognised offer of securities under mutual recognition in Australia are not required to make a TMD: see reg 7.8A.04.

Note 2: Exempt bodies and exempt public authorities are excluded: see s994B(3).

Issuers

- RG 274.26 For issuers, the design and distribution obligations apply to persons who:
- (a) must prepare a disclosure document under the Corporations Act (e.g. a responsible entity of a managed investment scheme, an insurer, a superannuation trustee, and an issuer of hybrid securities) (see s994B(1)(a) and (b));
 - (b) if they are not covered by (a)—issue or sell under a regulated sale a financial product within the meaning of Div 2 of Pt 2 of the ASIC Act (e.g. an issuer of a funeral expenses policy or a credit provider that issues a credit card (see s994B(1)(ba)); and
 - (c) are required by the Corporations Regulations to make a TMD (e.g. persons who issue a simple corporate bonds depository interest under a two-part simple corporate bonds prospectus (see reg 7.8A.05)) or who issue or offer to issue basic banking products (see reg 7.8A.07) (see s994B(1)(c)).

Distributors

- RG 274.27 For distributors, the design and distribution obligations apply to regulated persons, as defined in s994A(1), including Australian financial services (AFS) licensees and authorised representatives, as well as persons who are exempt from holding an AFS licence.
- RG 274.28 The Corporations Regulations extend the meaning of regulated persons to include:
- (a) credit licensees and credit representatives within the meaning of the National Credit Act (see reg 7.8A.02(4)), including persons who are exempt from holding a credit licence;
 - (b) issuers and sellers of extended operation financial products (see reg 7.8A.02(5)); and
 - (c) a distributor within the meaning of s910A of the Corporations Act (as modified by [ASIC Corporations \(Basic Deposit and General Insurance Product Distribution\) Instrument 2015/682](#)) for the following products:
 - (i) a basic deposit product;
 - (ii) a general insurance product; and

- (iii) a bundled consumer credit insurance product (within the meaning of the ASIC instrument) (see reg 7.8A.02(3)).

Note: Persons who refer consumers to another person who engages in financial services or credit activities ('referrers') are regulated persons if they fall under one or more of the categories listed above, such as persons exempt from holding an AFS licence or a credit licence: see reg 7.6.01(1)(e) and (ea) of the Corporations Regulations and reg 25(2), (2A) and (5) of the *National Consumer Credit Protection Regulations 2010* (National Credit Regulations). Referrers who are regulated persons are subject to the reasonable steps obligation if their conduct amounts to retail product distribution conduct: see RG 274.208–RG 274.210.

Meaning of 'distribution'

RG 274.29 For the purposes of this guidance, distribution means 'retail product distribution conduct' as defined in s994A(1) to include:

- (a) dealing in the financial product;
- (b) giving a disclosure document in relation to offering a financial product;
- (c) providing a PDS; and
- (d) providing financial product advice.

RG 274.30 The meaning of 'retail product distribution conduct' is based on terms defined in the Corporations Act (for example, dealing in the financial product has the meaning given by s766C, as amended by s994A(1)). The extended operation of the design and distribution obligations means that those terms (as incorporated) also apply to financial products that are not regulated by the Corporations Act, but are regulated under the ASIC Act: see paragraph 1.4 of the [Supplementary Explanatory Memorandum for the Treasury Laws Amendment \(Design and Distribution Obligations and Product Intervention Powers\) Bill 2019](#) and s994AA. For example, arranging for a consumer to apply for a home loan would constitute retail product distribution conduct.

Note: Guidance on conduct that constitutes 'dealing' as defined by s766C is set out in Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36). These terms are relevant to all products covered by the design and distribution obligations. For the purposes of the obligations, 'dealing' has the meaning given by s766C, subject to some modifications: see s994A(1).

RG 274.31 The provision of personal advice falls under the definition of 'excluded conduct': see s994A(1). Accordingly, certain obligations do not apply when personal advice is provided: see, for example, s994D (prohibition on distribution unless TMD made) and 994E(3) (reasonable steps). As a result of s994AA(2), the definition of personal advice conduct in s766B(3) applies to products beyond Ch 7 of the Corporations Act for the purposes of the design and distribution obligations. This means excluded conduct currently covers conduct in the nature of personal advice that is provided in relation to

products that are regulated under the ASIC Act, as well as those regulated under the Corporations Act: see s994AA(2), 994A(1) and 766B(3). RG 274.201–RG 274.207 discuss how the design and distribution obligations interact with the personal advice obligations.

Note: ‘Excluded conduct’ also includes the giving of a disclosure document or PDS in the course of providing personal advice about a financial product: see [ASIC Corporations \(Design and Distribution Obligations Interim Measures\) Instrument 2021/784](#). This is in line with the Government’s intended operation of the legislation as set out in a public statement titled [‘Updated amendments to the design and distribution obligations’](#).

C Product governance arrangements

Key points

This section explains:

- the requirement for issuers and distributors to implement effective product governance arrangements to ensure that they comply with the design and distribution obligations (see RG 274.32–RG 274.34);
- the scope of the product governance arrangements that should be implemented, including at the product design stage, at the distribution stage, and at the monitoring and review stage of the product life cycle (see RG 274.35–RG 274.51); and
- how to implement and maintain effective product governance arrangements (see RG 274.52–RG 274.58).

The need for effective product governance arrangements

RG 274.32 Issuers and distributors must implement and maintain robust and effective product governance arrangements to ensure that they comply with the design and distribution obligations.

Note: The need for robust and effective arrangements to deliver products to consumers and comply with legal obligations relating to the provision of financial products was highlighted in the judgment of Justice Beach in *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790. Justice Beach found that the Commonwealth Bank of Australia (CBA) had, for example, contravened s912A(1)(a) and (c) of the Corporations Act. This was due to CBA's failure to establish and maintain systems and processes to ensure that it could provide the benefits of CBA's product in accordance with its terms and conditions. In particular, Justice Beach noted (at [9]) that:

- there was a poor control environment with no adequate system for reporting issues with the product;
- complaints handling processes were inadequate;
- there was no system to identify complaints about the product, or an appropriate IT system to administer the product; and
- there was a failure to establish any business unit or team ultimately responsible for ensuring that the product benefits were being applied to the relevant products.

RG 274.33 Robust product governance arrangements will help issuers and distributors avoid similar outcomes to those identified by the FSI and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) and assist in the management of non-financial risk. The FSI highlighted that weaknesses in processes for, and controls on, product distribution to consumers have led to significant consumer losses.

Note: See [FSI final report](#), pp 199–201, and the [Revised Explanatory Memorandum](#), paragraphs 3.1–3.25.

RG 274.34 The [*Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Final report*](#) (Royal Commission final report) noted that the ‘number and complexity of products, and absence of “end-to-end” accountability ... are issues wholly within the control of every financial services entity’.

Note: See [Royal Commission final report](#), vol. 1, p 115.

Scope of product governance arrangements

RG 274.35 The design and distribution obligations impose requirements at each stage of developing and distributing a financial product. These stages are:

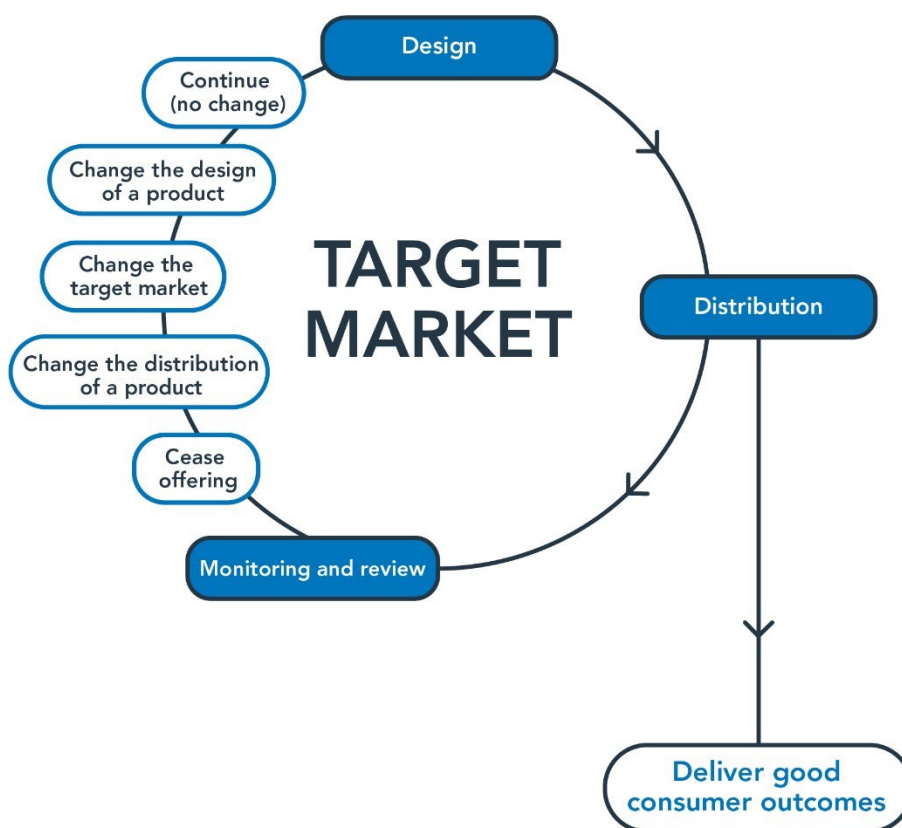
- (a) product design (see, for example, s994B);
- (b) product distribution (see, for example, s994E(3)); and
- (c) monitoring and review (see, for example, s994C).

RG 274.36 These stages are depicted in Figure 2. All of these must be considered when implementing and maintaining product governance arrangements.

RG 274.37 At the centre of Figure 2 is the target market, which reflects the centrality of the target market to the design and distribution obligations—specifically, that at all stages of product design, product distribution, and monitoring and review, the focus is on consumers in the identified target market receiving products that are likely to be consistent with the consumers’ likely objectives, financial situation and needs.

RG 274.38 Figure 2 also depicts possible outcomes from monitoring and review, which include:

- (a) no change to the product or the way it is distributed;
- (b) changing the product’s design, target market or distribution; or
- (c) ceasing to offer the product.

Figure 2: Consumer-centric approach to design and distribution

Note: See RG 274.35–RG 274.38 for the information in this figure (accessible version).

Product design stage

RG 274.39 At the product design stage, product governance arrangements must include a product design and approval system. This system should include an initial assessment of whether a financial product has been designed in a way that is likely to be consistent with the likely objectives, financial situation and needs of the class of consumers for whom the product is intended. As part of this assessment, issuers should consider information reasonably available to them on consumer outcomes for past or similar products. The design and distribution obligations mean that a product development process that does not consider consumer outcomes will not be feasible.

Note 1: The term ‘product design stage’ is used here to refer to the stage of designing a new product, as well as reviewing the design of a continuing product.

Note 2: This approach is consistent with paragraph 1.48 of the [Revised Explanatory Memorandum](#), which sets out that one purpose of the TMD is to ensure that issuers design products for which an appropriate target market can be defined.

RG 274.40 In carrying out this assessment, it is possible that some issuers will conclude that a financial product (including its key attributes) is unlikely to be consistent with the objectives, financial situation and needs of any class of consumers. This may be due, for example, to risk, or low value.

RG 274.41 At the product design stage, an issuer should also determine how its financial product will be distributed, to enable it to meet its obligations to:

- (a) specify distribution conditions to ensure that the product is directed towards the intended target market (see RG 274.96–RG 274.100); and
- (b) take reasonable steps to ensure that distribution is consistent with the TMD (see RG 274.140–RG 274.148).

Note: For an example of a distribution approach that is likely to result in distribution to consumers for whom the product is not appropriate, and consequently to poor consumer outcomes, see Report 470 *Buying add-on insurance in car yards: Why it can be hard to say no* ([REP 470](#)).

New products

RG 274.42 For new financial products, the product design stage will involve:

- (a) identifying a class of consumers that are likely to have objectives, financial situations and needs in common that might be met by a financial product. The likely objectives, financial situation and needs of the class of consumers (i.e. the target market) will then drive the design of the product, including its key attributes. The issuer will ultimately ensure that the product (including its key attributes) is likely to be consistent with the likely objectives, financial situation and needs of the consumers in the target market;
- (b) analysing expected distribution methods for the product to determine whether it is reasonable to conclude that the product will likely be distributed to its target market and not outside its target market;
- (c) robust testing of the product; and
- (d) determining how consumer outcomes will be measured and monitored when the product is being distributed, given the obligation to carry out reviews (see s994B and 994C, and RG 274.149).

Continuing products

RG 274.43 For existing products that continue to be issued to consumers, the product design stage will involve:

- (a) establishing a target market by assessing the product (including its key attributes) and the consumer objectives, financial situation and needs for which the product (including its key attributes) is likely to be appropriate;
- (b) reviewing existing distribution arrangements for the product to determine whether it is reasonable to conclude that the product is likely being distributed to its target market;
- (c) where the product (including its key attributes) is not likely to be consistent with the objectives, financial situation and needs of a

definable target market, or where its method of distribution is likely to result in sales of the product outside its target market, redesigning the product and/or the distribution arrangements, or ceasing distribution of the product; and

- (d) determining how consumer outcomes will be measured and monitored over time, given the obligation to carry out reviews (see s994B and 994C, and RG 274.149).

RG 274.44 Issuers may already have a concept of a ‘target market’ for the product (e.g. in a marketing or commercial sense). In these cases, issuers must still critically assess the product (including its key attributes) and identify the target market by reference to consumers for whom the product is likely to be consistent with their likely objectives, financial situation and needs. If the identified target market for the continuing product does not match the class of consumers who have historically been sold the product, the issuer must:

- (a) set distribution conditions and restrictions in line with the identified narrower target market;
- (b) consider modifying the design of the product; or
- (c) cease offering the product.

Choice architecture of the product

RG 274.45 The ‘choice architecture’ of a financial product, including choices within the product itself, as well as the context of the sales process and the presentation of the product within that context, will be relevant to the issuer in considering:

- (a) the design of its product (e.g. the impact of bundling); and
- (b) whether (and how) the product is likely to reach its target market (e.g. the impact of complexity and frictions in choices, processes and information).

Note: ‘Choice architecture’ refers to features in an environment that influence consumer decisions and actions. These features are present at every stage of product design and distribution. Examples include product bundling, default settings, sales process and website design.

RG 274.46 For example, the choice architecture of both the design of add-on insurance products (e.g. bundling with finance) and their distribution (e.g. the timing of the sale and the use of pressure tactics) in car yards has been shown to exploit decision fatigue, as well as weakening consumers’ defences to ‘persuasion tactics’. This has led to sales to consumers of products that are not consistent with the objectives, financial situation and needs of those consumers, and consequently to poor outcomes: see [REP 470](#).

Taking a consumer-centric approach in product design

RG 274.47 Taking a consumer-centric approach involves placing consumer outcomes front and centre: see RG 274.5–RG 274.14. When considering the design of its financial product and how it will reach consumers in the target market, in order to take a consumer-centric approach an issuer should:

- (a) apply its existing knowledge and experience about how consumers are influenced in order to achieve the objectives of the design and distribution obligations—for example, many firms are already adept at capturing consumers’ attention and influencing their behaviour through shaping product design, marketing and sales tactics. Issuers should avoid engaging in conduct that is likely to impede consumers from obtaining products that are consistent with their likely objectives, financial situation and needs or that will result in consumers receiving unsuitable products; and
- (b) consider consumer vulnerabilities, and how those vulnerabilities may increase the risk that consumers are sold products that do not meet their objectives, financial situation and needs, and will lead to poor consumer outcomes.

Note 1: Consumers can experience vulnerability as a result of any number of factors, including:

- personal or social characteristics that can affect a person’s ability to manage financial interactions (e.g. speaking a language other than English, having different cultural assumptions or attitudes about money, or experiencing cognitive or behavioural impairments due to intellectual disability, mental illness, chronic health problems or age);
- the actions of the market or individual providers (e.g. vulnerabilities created by a product’s choice architecture); and
- experiencing specific life events or temporary difficulties (e.g. an accident or sudden illness, family violence, job loss, having a baby, or the death of a family member).

Note 2: See [Productivity Commission Inquiry into competition in the Australian financial system: Submission by the Australian Securities and Investments Commission](#), September 2017.

Product distribution stage

RG 274.48 In order for issuers and distributors to meet their obligation to take reasonable steps, product governance arrangements must include appropriate processes and controls at the product distribution stage. These processes and controls must be designed to reduce the risk that financial products will not be consistent with the likely objectives, financial situation and needs of the consumers who acquire them.

RG 274.49 Product governance arrangements must also include a process for effective communication between those responsible for designing the financial product and those responsible for marketing and distributing the product,

particularly in relation to the intended consumer outcomes associated with the product. This will help issuers and distributors meet their obligations to:

- (a) take reasonable steps in relation to distribution;
- (b) report distribution information, such as complaints information and information the issuer may need to promptly determine that a TMD may no longer be appropriate; and
- (c) notify issuers of significant dealings outside the target market (see RG 274.212–RG 274.216).

Note: Issuers and distributors are not taken to have failed their obligations to take reasonable steps in relation to distribution merely because a consumer outside the target market acquires the product (see s994E(2)(b) and 994E(4)). Also see RG 274.140.

Monitoring and review stage

RG 274.50 Product governance arrangements must provide for an ongoing, iterative and responsive design and distribution process. This must allow for regular monitoring and review of product performance through which issuers address problems when they arise. This includes carrying out reviews when circumstances indicate that a TMD may no longer be appropriate, and taking steps as necessary to redesign products and/or their distribution: see s994C and s994(8)(b).

RG 274.51 After a financial product has been launched, an issuer should draw on information reasonably available to it about how consumers in the target market are using its product or similar products on the market and the actual consumer outcomes from these products: see RG 274.152–RG 274.154. This will involve collecting and analysing relevant and reliable consumer, product performance, value and transaction data. This information should feed back into the product design and ongoing review processes. In particular, this information is likely to be useful for the critical assessment and testing of a product and similar types of products for the purposes of meeting the appropriateness requirement in s994B(8)(b): see RG 274.88–RG 274.95.

Implementing and maintaining effective product governance arrangements

RG 274.52 For product governance arrangements to be effective, issuers and distributors must:

- (a) document their product governance arrangements in some form (see RG 274.53);
- (b) fully implement these arrangements, and monitor and report on their use (see RG 274.54–RG 274.56); and
- (c) regularly review the effectiveness of these arrangements and ensure that they are up to date (see RG 274.57–RG 274.58).

Documenting product governance arrangements

- RG 274.53 Documentation of product governance arrangements is required for issuers and distributors to demonstrate compliance with the design and distribution obligations. Documentation should include details of who is responsible, the timeframes involved, and associated record keeping and reporting.

Note: Issuers and distributors must keep records of their compliance with the design and distribution obligations: see s994F(1) and (3), RG 274.165–RG 274.166 and RG 274.217–RG 274.224.

Implementing, monitoring and reporting on product governance arrangements

- RG 274.54 Issuers and distributors must fully implement product governance arrangements they have documented. This means the arrangements must be put into practice and integrated into the day-to-day conduct of the business.
- RG 274.55 For product governance arrangements to work effectively, issuers and distributors need staff at all levels, including senior management, to understand these arrangements and be committed to the success of the arrangements. Integrating the arrangements into the operation of the business, and ensuring that they are well resourced and supported, is necessary to making them effective on an ongoing basis.
- RG 274.56 AFS licensees and credit licensees need to monitor their compliance (including with the design and distribution obligations), and certain breaches must be reported to ASIC, including under s912D. They must be able to show ASIC how they are able to monitor compliance with the design and distribution obligations and appropriately address any compliance breaches.

Note: For guidance on meeting the general AFS licensing obligations, see Regulatory Guide 104 *AFS licensing: Meeting the general obligations* ([RG 104](#)). For guidance on meeting the general credit licensing obligations, see Regulatory Guide 205 *Credit licensing: General conduct obligations* ([RG 205](#)).

Reviewing product governance arrangements

- RG 274.57 Regularly reviewing product governance arrangements is necessary for these arrangements to remain effective. In some cases, such as when compliance issues have arisen (e.g. major breaches or repeated compliance failures), issuers and distributors may need to procure an independent external review.
- RG 274.58 Issuers and distributors must review their product governance arrangements when there are material changes to their obligations, their business or the environment in which they operate. To facilitate this, issuers and distributors also need a process for identifying changes that may impact on the effectiveness of their product governance arrangements.

D Obligations for issuers

Key points

The design and distribution obligations for issuers are to:

- prepare a TMD for the financial product that meets the requirements in s994B(5) and (8) (the ‘content and appropriateness requirements’) (see RG 274.59–RG 274.136);
- make the TMD publicly available—this applies to both new and continuing products (see RG 274.137–RG 274.139);
- take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the TMD (see RG 274.140–RG 274.143);
- review the TMD to ensure that it remains appropriate (see RG 274.149–RG 274.157);
- notify ASIC of significant dealings that are not consistent with the TMD (see RG 274.158–RG 274.164); and
- keep records of the decisions made (including the data and analysis underlying those decisions) in relation to compliance with the design and distribution obligations (see RG 274.165–RG 274.166).

The law requires a TMD to contain certain information: see s994B(5) and RG 274.63. The information in the TMD must be specified in sufficient detail to conclude that the product is appropriate for the target market and that the distribution conditions appropriately direct distribution of the product to that market: see s994B(8) and RG 274.64–RG 274.66.

Preparing a TMD that meets the requirements

- RG 274.59 A TMD is a written document that describes the class of consumers that comprises the target market for a financial product and matters relevant to the product’s distribution and review.
- RG 274.60 The purpose of the TMD is to drive discipline in the design of financial products, to ensure that issuers design products for which an appropriate target market can be defined, or, conversely, to consider whether the planned target market for products under development is appropriate: see the [Revised Explanatory Memorandum](#), paragraph 1.48.
- RG 274.61 The TMD also requires issuers to consider and plan how the product will be distributed so that it reaches consumers in the target market and is unlikely to be acquired by consumers outside the target market. It also serves as a reference point for distributors to comply with their distribution obligations.

- RG 274.62 A TMD must meet:
- (a) the requirements in s994B(5)—we refer to these requirements as the ‘content requirements’ (see RG 274.63); and
 - (b) the requirements in s994B(8)—we refer to these requirements as the ‘appropriateness requirements’ (see RG 274.64–RG 274.66).

Content requirements

- RG 274.63 To meet the content requirements, a TMD must:
- (a) be in writing (see s994B(5)(a));
 - (b) describe the class of consumers that comprises the target market for the product (target market) (see s994B(5)(b) and RG 274.67–RG 274.95);
 - (c) specify any conditions and restrictions on distribution (distribution conditions) (see s994B(5)(c) and RG 274.96–RG 274.100);
 - (d) specify events and circumstances that would reasonably suggest the TMD is no longer appropriate (review triggers) (see s994B(5)(d) and RG 274.103–RG 274.108);
 - (e) specify reasonable maximum review periods (review periods) (see s994B(5)(e)–(f) and RG 274.109–RG 274.112);
 - (f) specify when the distributor should provide the issuer with information about the number of complaints about the product (see s994B(5)(g) and RG 274.117–RG 274.119); and
 - (g) specify the kinds of information the issuer will need to promptly identify that a TMD may no longer be appropriate, along with:
 - (i) which distributors should provide those kinds of information; and
 - (ii) reporting periods for when that information should be provided to the issuer (see s994B(5)(h) and RG 274.113–RG 274.116).

Appropriateness requirements

- RG 274.64 A TMD must be such that it would also meet the appropriateness requirements—that is, it must be reasonable to conclude that, if the product were to be issued or sold in a regulated sale:
- (a) to a consumer in accordance with the distribution conditions—it would be likely that the consumer is in the target market (see s994B(8)(a)); and
 - (b) to a consumer in the target market—it would likely be consistent with the likely objectives, financial situation and needs of the consumer (see s994B(8)(b)).
- RG 274.65 The appropriateness requirements are objective requirements. They do not require an issuer to have knowledge about individual consumers. In contrast,

personal advice involves consideration of an individual consumer’s objectives, financial situation and needs (i.e. a consumer’s personal circumstances).

Note 1: See Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* ([RG 175](#)) for further guidance on providing financial product advice.

Note 2: See [Revised Explanatory Memorandum](#), paragraph 1.54.

- RG 274.66 To satisfy the appropriateness requirements, it must be reasonable to conclude that:
- (a) the product, including its key attributes, is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market; and
 - (b) the distribution conditions make it likely that the consumers who acquire the product will be in the target market.

Note: An issuer must keep records of its decisions and reasons for its decisions in relation to the appropriateness requirements—see s994F(1) and RG 274.165.

Requirement to describe the class of consumers that comprises the target market

- RG 274.67 Central to the design and distribution obligations is the requirement to describe in the TMD a ‘class’ of consumers that comprises the target market for the product: see s994B(5)(b).
- RG 274.68 To meet the appropriateness requirement in s994B(8)(b), in setting the target market, an issuer will need to consider how the product, including its key attributes, is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market. This will require the issuer to have critically assessed and tested its product.
- RG 274.69 Issuers are encouraged to explain in the TMD why the product, including its key attributes, is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market.

Objectives, financial situation and needs

- RG 274.70 An issuer will generally need to describe the class of retail clients that comprise the target market by referring to their likely objectives, financial situation and needs.
- RG 274.71 The language of ‘objectives, financial situation and needs’ is also used in s766B(3) in the context of personal advice. The [Revised Explanatory Memorandum](#), at paragraph 1.58, states that ‘this reflects that the factors that are important to providing good personal advice are also important to good product design, particularly when determining the hypothetical consumers in a product’s target market’.

- RG 274.72 Unlike personal advice, the design and distribution obligations do not require an issuer to assess the suitability of products for the circumstances of individual consumers. Instead, the obligations require issuers to develop products, such that those products (including their key attributes) are likely to be consistent with the likely objectives, financial situation and needs of the class of consumers to whom the products will be distributed.
- RG 274.73 Issuers will need to consider each of the likely objectives, financial situation and needs of consumers in the target market. A product that might be consistent with the likely objectives of consumers in the target market might not be consistent with the likely financial situation of the target market, and vice versa. For example, while common objectives for consumers seeking to acquire an investment product are likely to include capital growth and/or income generation, these objectives must be considered with other relevant circumstances of consumers in the target market. For consumers who have a low risk tolerance, who are seeking to preserve capital or who are likely to need access to funds in the next few years, a high-risk investment product intended to be held for five to ten years that puts a consumer's invested capital at moderate or significant risk in the short-term is unlikely to be suitable.
- RG 274.74 Similarly, common objectives for consumers seeking to acquire a credit product are likely to include smoothing spending and/or financing the purchase of an asset. However, other relevant circumstances are likely to inform the question of whether a particular product is also likely to be consistent with the likely financial situation and needs of a class of consumers: see Example 1.

Example 1: Credit cards

In Report 580 *Credit card lending in Australia* ([REP 580](#)), we found that 1.8 million consumers with a credit card were carrying a balance and being charged interest on a high-interest-rate credit card, representing 43.2% of consumers who held a high-interest-rate credit card during 2016–17. These consumers were over-represented in our problematic debt indicators: see REP 580, pp 27 and 34.

High-interest-rate credit cards may often include features such as complimentary insurance coverage and rewards programs. Although these features might be consistent with the *objectives* of many consumers, the high interest rates—which often exceed 20%—are likely to be inconsistent with the *financial situation and needs* of a class of consumers who are likely to carry a substantial balance on their card over a prolonged period, or consumers whose objective is to reduce their credit card debt over a period of time.

An issuer needs to ensure that the *objectives and financial situation and needs* of a class of consumers are consistent with the product. Failure to do so can result in consumers obtaining unsuitable products, as was the case in REP 580.

- RG 274.75 When identifying common objectives, financial situations and needs of consumers, issuers could usefully consider characteristics such as likely common income levels, savings levels or employment status. For example, employment status will be particularly relevant for some products, such as life insurance products, where eligibility criteria may apply. Income level may also be a relevant factor, including for products where taxation considerations are relevant or for products that may be more suitable for consumers on low incomes: see Example 3.
- RG 274.76 Considering consumers' life stage may assist the issuer in defining the target market for the product (including its key attributes). For example, where products are intended for consumers in certain life stages (e.g. retirement products such as superannuation pensions) the issuer should consider how the product (including its key attributes) will likely be consistent with the likely objectives, financial situation and needs of the consumers in the target market over time. The issuer should consider both the likely short-term and long-term objectives, financial situation and needs: see Example 2.

Example 2: Reverse mortgages

Reverse mortgages allow older Australians to borrow against the equity in their homes through loans that do not require repayment until a later time.

Report 586 *Review of reverse mortgage lending in Australia* ([REP 586](#)) sets out our findings that reverse mortgages help older Australians with few other assets (such as superannuation) achieve their immediate financial objectives, such as enabling borrowers to:

- maintain their current living arrangements with less financial stress;
- obtain short-term finance;
- have a general safety net for living expenses; and
- afford a better quality of life.

However, depending on when borrowers obtain their loans, how much they borrow, and economic conditions (property prices and interest rates), they may not have enough equity remaining in their homes at the time of repayment for longer-term needs (e.g. aged care).

Both short-term and long-term financial situations and needs are likely to be relevant to identifying the target market for products such as reverse mortgage products. If a product is not likely to be consistent with the long-term financial situation and needs of some consumers in the planned target market, the issuer may need to consider narrowing the target market.

Note: See [REP 586](#), pp 30–32 and 39–46.

Key attributes

- RG 274.77 Key attributes are product terms, features and attributes that affect whether the product is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market. For example, an insurance product may contain eligibility criteria, meaning certain

consumers are unable to claim under it making the product unsuitable for them. The eligibility criteria, therefore, are one of the insurance product's key attributes.

- RG 274.78 Similarly, a credit product may include a significant balloon payment that a consumer is required to pay. This may not be suitable for consumers who can afford higher repayments and have the objective to pay lower amounts in interest overall; or for consumers whose financial situation means they are unlikely to be able to afford the balloon payment at the end. Because the balloon payment affects whether the product might be suitable for some consumers, the balloon payment is a key attribute.
- RG 274.79 Data and outcomes (including data and outcomes from previously issued products of a similar nature) should drive an issuer's determination of whether a product feature or attribute affects the product's appropriateness for a target market and thus whether it is a key attribute.

Product variation

- RG 274.80 Different products in an issuer's product line are likely to vary in their key attributes, and issuers must carefully consider each product (including its key attributes), taking into account that not all product variations are likely to be consistent with the likely objectives, financial situations and needs of consumers in an identified target market. This is the case even when a product has relatively fewer key attributes, such as a basic banking product: see Example 3.

Example 3: Basic banking products

Transaction accounts

Banks may offer transaction accounts with differing fee levels according to the types of features provided, with some basic products offered at a lower cost. The [Royal Commission final report](#) noted that 'those who are on a low income, especially those in receipt of certain government benefits or holding government concession cards, may find that a basic account suits their needs better than other forms of account' (vol. 1, p 91).

Conversely, if sold a fully featured transaction account, consumers may be required to pay ongoing fees to retain features that may not meet their objectives, financial situation and needs.

We note that the Australian Banking Association's [Banking Code of Practice](#) (Banking Code) now contains provisions that address the design and distribution of basic accounts or other low or no fee transaction accounts for particular customer segments, such as concession card holders and low-income earners (eligible customers). The Banking Code also commits members to raising awareness of basic, low or no fee accounts. These provisions will assist issuers of these products in identifying the target market, as well as in meeting their reasonable steps

obligation. For example, the target market for these products could include 'eligible customers under the Banking Code' as a class of consumers.

Informal overdrafts

The Royal Commission also examined informal overdrafts. They found that the fees associated with overdrawing can be significant when there is repeated overdrawing, and that these features were being provided to consumers on an opt-out basis, including to low-income earners.

Commissioner Hayne noted that this conduct was 'attributable to a culture that was insufficiently concerned with providing customers with an appropriate product' and explained that while these overdrafts may be a useful tool for some consumers, in undertaking this conduct the bank prioritised its own position over that of some of its consumers.

The Banking Code now contains provisions that address the design of basic, low or no fee accounts for particular customer segments, by ensuring no informal overdraft feature is included except in limited circumstances and that there are no dishonour or overdrawn fees.

Note: See [Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Interim report](#), September 2018, vol. 1, pp 259–61 and vol. 2, p 470 ('ANZ basic accounts') and pp 479–87 ('ANZ (Groote Eylandt)'); and [Royal Commission final report](#), vol. 1, p 91.

Describing the target market with objective parameters

RG 274.81 The class or classes of consumers that comprise the target market for a product should be defined by an issuer with objective, tangible parameters so that it is clear which consumers form part of the target market. This will assist the issuer in meeting its appropriateness requirements: see RG 274.64–RG 274.66. It will also assist distributors in meeting their distribution obligations.

RG 274.82 Issuers may be assisted in defining the target market by considering eligibility criteria developed for defined products in industry codes, as noted above in Example 3.

Note: Issuers may also be assisted by principles in industry codes and guides when defining target markets for particular products. See, for example, the [Guide for the design and distribution of add-on insurance through motor dealer intermediaries](#) on the Insurance Council of Australia website.

Consumer understanding

RG 274.83 A target market should not be based on consumer understanding of a product (i.e. a target market should not be all consumers who understand how a product works). The design and distribution obligations are a deliberate rebalancing of past over-reliance on the assumption that disclosure produces informed consumer decision making. The obligations require an issuer to consider objectively whether a financial product is likely to be consistent with the likely objectives, financial situation and needs of a class of consumers.

Describing the target market with sufficient granularity

- RG 274.84 An issuer would be in breach of its obligations if it described the target market too broadly (with insufficient granularity) such that the product (including its key attributes) would not likely be consistent with the likely objectives, financial situation and needs of an identifiable class of consumers included in the target market. That would be the case even if the issuer attempted to limit distribution to a narrower set of consumers by use of distribution conditions.
- RG 274.85 For example, a broad consumer objective or preference alone is unlikely to be sufficient to define the target market for a financial product. This is because a TMD based only on a broad objective or preference is unlikely to contain sufficient information to reasonably conclude that the product (including its key attributes) would likely be consistent with the likely objectives, financial situation and needs of consumers in the target market (see discussion of appropriateness requirements above).
- RG 274.86 In some cases, it will be simpler or even necessary to define the target market as including some classes of consumers and excluding other classes of consumers. For example, an issuer may exclude classes of consumers for whom the product is clearly unsuitable—such as those who are unable to claim under an insurance product. Similarly, an issuer of a high-risk investment product might exclude a class of consumers that are likely to have a low risk tolerance or who do not have the ability to bear loss.
- RG 274.87 Specifying classes of consumers that are excluded from the target market could be useful in setting the distribution conditions and restrictions for the product. It will also likely be useful for distributors as they implement their obligations to take reasonable steps.

Critically assessing the product (including its key attributes)

- RG 274.88 An issuer will need to critically assess that the product, including its key attributes, is likely to be consistent with the likely objectives, financial situation and needs of consumers in the identified target market, to ensure it meets the appropriateness requirements.

Note: See s994B(8)(b) and the information on the appropriateness requirements at RG 274.64–RG 274.66 and RG 274.68.

- RG 274.89 Questions that issuers could usefully consider as part of this process are outlined below in Table 3. An issuer may also find it helpful to consider these questions when developing a product or in reviewing a continuing product (noting that some questions may be more relevant than others depending on the circumstances of a product being developed or sold).

Table 3: Critical assessment questions

Purpose	<ul style="list-style-type: none"> • What is the purpose of the product? • Is it fit for purpose? • Does the product (including its key attributes) fulfil a well-founded need for consumers in the target market? • Does the product include features or attributes that are inconsistent with the objectives, financial situation or needs of consumers in the target market? • Does the product (including its key attributes) benefit the consumers in the target market?
Past outcomes	<ul style="list-style-type: none"> • Has the product (including its key attributes) resulted in good outcomes for consumers in the target market in the past? • Did it deliver what was promised? • Who has benefited from this product or this type of product in the past? • Did the product meet the needs of those to whom it was distributed? • What does the data show were the ongoing benefits, risks and outcomes for consumers?
Likely future outcomes	<ul style="list-style-type: none"> • How is the product likely to perform in the hands of the consumers in the target market? • Is the product likely to deliver what is promised?
Refinement of target market and/or product	<ul style="list-style-type: none"> • Does the product need to be redesigned or changed to be suitable for consumers in the target market? • Does the target market need to be narrowed?

Note: This list of questions is intended to be a starting point for issuers when critically assessing a product; it is not an exhaustive list of all the questions that an issuer may need to consider.

Testing how the product will perform

- RG 274.90 In carrying out the critical assessment mentioned in paragraph RG 274.88, an issuer will need to consider the way that the financial product (including its key attributes) is likely to perform, or has performed, in practice in the hands of consumers of the product, and the likely outcomes for consumers.
- RG 274.91 For an investment product, for example, the issuer will need to consider how the financial product is expected to perform under average market conditions as well as under market stress, taking into account the impact of costs and fees. This will involve quantitative and qualitative considerations, such as how the features or terms and conditions of the product are likely to operate in practice and how these may influence consumer outcomes. For example, issuers should consider the expected net investment return that the product ultimately offers consumers. If fees and costs effectively deplete the return that consumers receive, this should be taken into account when critically assessing if the product is likely to be consistent with the likely objectives, financial situation and needs of this target market. If the product is not likely to be appropriate for the target market, the issuer should consider modifying the target market or the product's design: see Example 4.

Example 4: Cash options in superannuation

A superannuation trustee plans to introduce a new option as part of its accumulation choice product. The option seeks to provide capital security and its return is based on interest on bank deposits. Nonetheless, the fees are such that even a minor fall in interest rates will lead to erosion of any member's capital allocated to this option.

The target market for the choice product may include members who will access this option for a portion of their investment with a view to ensuring that all of their capital invested in the option remains intact and not subject to potential negative investment returns.

In preparing the TMD for its choice product, the superannuation trustee needs to consider how this investment option is likely to operate in practice. This would include understanding the impact of a potential fall in interest rates.

As a result of the initial design and testing, the issuer observes that there is a significant likelihood that the option will produce negative net returns (i.e. after the impact of fees) in the first year of operation. The superannuation trustee should alter its fee structure, elect not to offer the option, or adjust the TMD or distribution arrangements.

Note: See [Royal Commission final report](#), vol. 2, pp 116–24.

Products to be held over an extended period

- RG 274.92 Particular considerations arise when a product is intended to be held by consumers over an extended period of time and the cost to the consumer of retaining that product is likely to rise significantly over that period (for example due to particular options or features).
- RG 274.93 In determining the target market for such products, issuers should avoid targeting the product towards classes of consumers whose likely financial situation at the time of obtaining the product is such that it is unlikely they will be able to meet the increased cost over time and therefore would not likely be able to retain the product for the period of time it is intended to be held. When a particular feature or option adds to the cost of the product significantly over time, the class of consumers who comprise the target market for the product with those particular features or options is likely to be narrower than the class of consumers in the target market for a product with fewer options and a lower increase in cost over time.

Note: For example, in Report 587 *The sale of direct life insurance* ([REP 587](#)), we found that medium-term lapse rates indicated that some life insurance products became unsustainable for consumers as premiums increased. When premiums become unsustainable for consumers, they may be exposed to the potential for harm where the significant increase in cost prompts them to discontinue cover or seek replacement cover, as consumers may be unable to obtain replacement cover or develop a medical condition that results in replacement cover being offered on altered terms.

Taking into account how the product is likely to perform in practice

- RG 274.94 Similarly, it will be important for issuers to consider how their products (including their key attributes) are likely to perform in practice and the likely outcomes for consumers in the target market, having regard to these consumers' circumstances in totality. For example, an insurance product that offers lower upfront costs in the form of more affordable premiums will be inconsistent with the likely objectives and financial situation of the intended target market, if the excess level is set so high that consumers in the target market are unlikely to be able to pay the excess necessary to make a claim on the product, or may be discouraged from making a claim.
- RG 274.95 Issuers should not include in the target market consumers who would not benefit from the product: see Example 5.

Example 5: Low-value products

We agree with the observations of Commissioner Hayne, in the [Royal Commission final report](#) (vol. 1, pp 293–4), that the design and distribution obligations will alter 'the kinds of, and characteristics of, products that may be sold, including low-value products'.

Funeral insurance is sold to consumers to cover the cost of funerals. It is a form of life insurance, which has ongoing premiums that are often stepped, increasing as the consumer ages.

Commissioner Hayne observed, in the 2014 financial year, the amount paid out in claims was about one-third of the value of premiums collected over the same period. In the preceding year, the proportion was one-fifth. Commissioner Hayne also observed that many funeral insurance products 'carry the potential for consumers to pay more in premiums over the life of the policy than they will receive as a benefit when they die'.

The final report noted that these statistics indicate that these products are of little value to consumers. A product with these features is therefore unlikely to have an identifiable target market of consumers for whom the product would be consistent with their likely objectives, financial situation and needs.

Note: See [Royal Commission final report](#), vol.1, pp 285–6; Report 454 *Funeral insurance: A snapshot* ([REP 454](#)) and the [Revised Explanatory Memorandum](#), paragraph 1.12.

Distribution, review and reporting under the TMD**Requirement to specify distribution conditions**

- RG 274.96 The design and distribution obligations recognise that designing a product to be appropriate for a target market is insufficient without appropriate conditions and restrictions on distribution, such as limiting distribution to

channels that are likely to result in distribution to consumers in the target market.

RG 274.97 To ensure that distribution of the product is directed towards consumers in the target market, the issuer must specify in its TMD appropriate conditions and restrictions on distribution of the financial product (distribution conditions). Issuers need to consider why these distribution conditions and restrictions will make it more likely that the consumers who acquire the product are in the target market. Issuers are encouraged to explain in the TMD why these distribution conditions and restrictions will make it more likely that the consumers who acquire the product are in the target market.

Note: See s994B(8)(a) and discussion on appropriateness requirements at RG 274.64.

RG 274.98 The issuer's distribution conditions are one component of the controls that it will need to implement to comply with its obligation to take reasonable steps in the distribution of its product. Distribution conditions should be specified in the TMD with tangible parameters so that these conditions are objectively clear (e.g. restricted to branch sales or through a dedicated customer contact centre). This clarity will assist distributors in complying with those conditions as part of distributors' reasonable steps obligation.

RG 274.99 The appropriateness of an issuer's distribution conditions will depend on the circumstances. For a financial product with a narrow target market, the distribution conditions will likely be specific and detailed to reflect the intended distribution method. The strategy could include selectivity regarding distributors used, targeted advertising, providing specific content about the product on the entity's website, use of call centre and advice line scripts specific to the product, and guidance for distributors. For a financial product with a comparatively wide target market, fewer distribution conditions may be needed to ensure that the products are sold in accordance with the TMD: see s994B(5)(c) and 994B(8)(a).

Note: The [Revised Explanatory Memorandum](#), paragraph 1.56, states:

An issuer must consider a wide range of factors in determining whether its selected distribution conditions are appropriate. Factors may include known diligence, capabilities and the integrity of existing and prospective distribution methods. For example, an issuer may consider previous instances where a product was issued through a specific distribution method as part of its assessment to determine the appropriateness of that distribution method.

RG 274.100 If an issuer becomes aware that the distribution conditions for a product are inadequate (e.g. significant distribution is occurring outside the target market), the issuer must:

- (a) amend its TMD to set out additional distribution conditions to ensure that such distribution does not occur; or
- (b) cease distribution.

Note 1: If a substantial amount of distribution is occurring outside the target market or if distribution outside the target market is causing significant consumer harm, it must be reported to ASIC as a significant dealing: see RG 274.158–RG 274.164. A significant dealing may also represent a review trigger with consequences for whether the financial product can continue to be distributed: see RG 274.104–RG 274.106.

Note 2: See the [Revised Explanatory Memorandum](#), paragraphs 1.79–1.81, for further information on when a dealing may be significant.

Ensuring the distribution conditions are appropriate

RG 274.101 As part of meeting the appropriateness requirements in s994B(8)(a), the distribution conditions in a TMD must make it likely that the consumers who acquire the product are in the target market.

RG 274.102 Therefore, an issuer will need to meaningfully consider how its distribution conditions affect which consumers the product will reach.

Requirement to specify review triggers

RG 274.103 A TMD must specify review triggers: see s994B(5)(d). Review triggers are events and circumstances that would reasonably suggest that the TMD is no longer appropriate. They are a prompt to stop distributing the financial product (and direct the issuer’s distributors to stop distributing) until the TMD is reviewed.

Note: See s994C(3)–(5) for circumstances when a review trigger requires an issuer to cease distribution.

RG 274.104 We expect that review triggers are likely to differ based on the nature of the financial product and its intended target market, including the way in which it is distributed. In any case, issuers should include events and circumstances that would reasonably suggest that:

- (a) the product, including its key attributes, is no longer consistent with the likely objectives, financial situation and needs of consumers in the target market; and
- (b) the distribution conditions do not make it likely that the consumers who acquire the product are in the target market: see RG 274.64–RG 274.66.

RG 274.105 The [Revised Explanatory Memorandum](#) gives the following non-exhaustive examples of the broad range of possible review triggers (paragraph 1.62):

- (a) an event or circumstance that would materially change a factor taken into account in making the TMD for the product;
- (b) whether the product is being distributed and purchased as envisaged by its TMD; and
- (c) the nature and extent of any feedback received from those who distribute or acquire the product.

- RG 274.106 We would expect an issuer's TMD to include a review trigger relating to the occurrence of a significant dealing: see RG 274.158–RG 274.161.
- RG 274.107 An issuer should consider what information is likely to be required to promptly identify if a review trigger has occurred and, when necessary, require distributors to provide such data under s994B(5)(h): see RG 274.113–RG 274.116.
- RG 274.108 An issuer should use its own data along with the data provided by distributors to review a TMD for appropriateness, or to redesign products when required: see RG 274.149–RG 274.157.

Example 6: Insurance

Issuers of insurance products could consider the following data when identifying review triggers that may indicate that the target market is no longer appropriate or that the product should be redesigned:

- product claim ratios;
- the number, nature and magnitude of paid, denied and withdrawn claims;
- the number of policies sold, including penetration rates;
- policy lapse or cancellation rates;
- average claim duration; and
- the nature and number of complaints and complaint trends.

To fully understand the implications of the data reviewed, distributors may need to segment the data by distribution channel and underwritten risk type.

Example 7: Managed fund

An issuer of interests in a managed investment scheme could consider the following factors when identifying review triggers that may indicate that the target market is no longer appropriate or that the product should be redesigned:

- any losses suffered by holders and whether the product is still likely to achieve its investment objective over time;
- whether the liquidity of the product has changed and whether the product is able to continue to offer regular withdrawals;
- the fees of the product compared to similar types of products;
- the taxation implications of the product compared to similar products;
- whether the product remains on approved product lists and menus for key distributors;
- the performance of the product relative to its investment objective, appropriate benchmarks (if any) and similar products (e.g. a change in expected performance in light of significant changes in market conditions such as an economic downturn);
- a significant increase in fund outflows; and
- the nature, number and outcomes of complaints.

Requirement to specify reasonable review periods

- RG 274.109 In addition to carrying out a review in response to a review trigger or when other events or circumstances reasonably suggest that the TMD is no longer appropriate, an issuer must also carry out periodic reviews of its TMD: see s994C(2) and RG 274.149–RG 274.157. A TMD must specify the frequency of periodic reviews and the review period must be reasonable in the circumstances: see s994B(5)(e)–(f) and (6).
- RG 274.110 Determining a reasonable review period will require an issuer to consider the risk of detriment to consumers if the TMD is not promptly reviewed: see s994B(7). In making this decision, the issuer should consider the nature of its product and the market in which it is sold, including the way in which the product is distributed.
- RG 274.111 Reasonable review periods are likely to be shorter when a product is complex and higher risk, or when an issuer has limited experience issuing similar products or is yet to establish a proven distribution network. For example, a complex and high-risk investment product with a narrow target market that has the potential to cause consumer harm if it is sold to consumers outside the target market, would likely be reviewed more frequently.

Note: See paragraph 1.65 of the [Revised Explanatory Memorandum](#).

- RG 274.112 An issuer could change its review period for a product over time, for example when there has been a change in the risk of detriment to consumers or information demonstrates that the issuer's controls are adequate.

Requirement to specify the information that must be reported by distributors

- RG 274.113 The issuer must specify in the TMD the kinds of information from distributors needed to enable the issuer to identify promptly when a TMD may no longer be appropriate, whether due to the occurrence of a review trigger or another event or circumstance that would reasonably suggest this is the case: see s994B(5)(h). The information collected from distributors must be information that is relevant and necessary for this purpose.
- RG 274.114 The TMD must specify:
- (a) which distributors must provide that information; and
 - (b) reporting periods for when that information must be provided to the issuer.

Note: The reporting period must be reasonable in the circumstances (see s994B(6) and (7)). In determining what is reasonable issuers will likely need to take into account factors such as the risk of consumer harm occurring over the specified reporting period and the administrative demand placed upon the distributor.

RG 274.115 As with other aspects of the design and distribution obligations, the information the issuer requires from its distributors and the frequency of the reporting periods will be product and context specific and may need to be reviewed over time. The issuer will need to determine what information, in addition to complaints and significant dealing information (see s994E(4) and (5) and RG 274.212–RG 274.220), will best assist it in meeting its review obligations.

Note: See s994F(3)(a) and (4) and the [Revised Explanatory Memorandum](#), paragraph 1.66.

RG 274.116 In deciding what information is necessary and reasonable to require distributors to provide, issuers should consider the information they already hold or can obtain from other sources. For example, an issuer might seek further information about complaints and product feedback that a distributor receives: see RG 274.119.

Requirement to specify when the distributor should provide the issuer with information about complaints

RG 274.117 The issuer must also specify in the TMD the reporting period in relation to information the distributor must provide to the issuer about the number of complaints about the financial product.

Note: See s994B(5)(g) and s994F(4).

RG 274.118 The law recognises that the number of complaints about a financial product is likely to be a useful indicator that the TMD may no longer be appropriate. The reporting period must be reasonable in the circumstances to allow the issuer to identify promptly when this has occurred, having regard to the risk of detriment to consumers if the TMD is not promptly reviewed: see s994B(7). A reporting period of a year or greater is unlikely to be appropriate. In setting reporting periods, issuers should also have regard to the timeframes within which they are required to respond to complaints.

Note: Regulatory Guide 271 *Internal dispute resolution* ([RG 271](#)) specifies maximum timeframes for responding to complaints. For example, a financial firm must provide an internal dispute resolution response to a complainant no later than 30 calendar days after receiving the complaint: see Section C of RG 271.

RG 274.119 In setting the information requirements under s994B(5)(h) (see RG 274.113–RG 274.116) we expect that issuers will find it necessary to require that distributors provide not only the number, but also the substance of complaints and general feedback relating to the product and its performance. [RG 271](#) sets out the data that must be collected, analysed and reported to senior management for every complaint (see Section E of RG 271 under ‘Data collection, analysis and internal reporting’). Issuers could usefully rely on the fact that this data is available.

Product-specific issues and the TMD

- RG 274.120 In RG 274.122–RG 274.136 we explain how the TMD obligation applies for certain products.
- RG 274.121 What constitutes a ‘product’ for the purposes of the design and distribution obligations will be for issuers to determine based on the law relevant to their product. In some cases, multiple product attributes will constitute separate products, even if they are sold to consumers as a bundle or package. For example, as a result of s764A(1A) and (1B), home cover and contents cover provided by an insurer will be two separate products. In other cases, multiple product attributes will constitute one product (e.g. an investment facility that provides exposure to both shares and debentures).

Bundled products

- RG 274.122 When an issuer sells multiple products together as a bundle, the issuer can decide whether they will comply with the TMD content and appropriateness requirements for each product in the bundle in a single TMD or, alternatively, prepare separate TMDs for each product within the bundle. Preparing a single TMD for multiple products does not change the substance of the design and distribution obligations, which apply to each product (including its key attributes) in the bundle. For example, the issuer must still comply with the content and appropriateness requirements for each product, including by describing in the document the target market for each individual product (including its key attributes). Similarly, issuers and distributors will still be required to meet their reasonable steps obligation in relation to each product.
- RG 274.123 In complying with the content and appropriateness requirements in relation to the bundled product, issuers must take into account that products within the bundle will be sold together rather than separately. This means that in addition to considering the target market for each product within the bundle as set out above, issuers must also describe the target market and any distribution conditions or restrictions for the bundled product.
- RG 274.124 In most cases we expect a target market for a bundled product will be narrower than the target market for products sold separately. For example, in relation to home and contents cover sold as a bundle, there may be identifiable classes of consumers who do not need home cover (e.g. because they are renting a house that is insured by the landlord or because their property is part of a strata complex that has strata insurance). Accordingly, in some cases it will likely be simpler for issuers to meet the appropriateness requirements by first considering the target market of each individual product, before defining the target market for the bundled product: see Example 8.

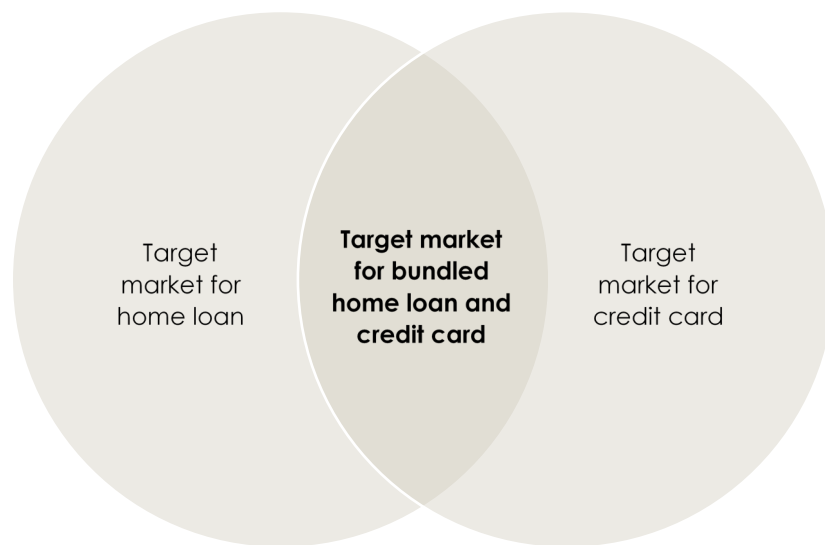
Example 8: Defining a target market for a bundled product

An issuer chooses to sell a home loan product bundled with a credit card.

In meeting its design and distribution obligations, the issuer chooses to prepare a single TMD that complies with the content and appropriateness requirements for each product in the bundle.

The issuer defines the target market for the sale of the home loan and credit card as a bundle by identifying and defining the target market for the home loan and the target market for the credit card, and then assessing the overlap of the target markets for each product.

Figure 3: Overlap of target markets for home loan and credit card



Note: See Example 8 for the information in this figure (accessible version).

Customisable products

RG 274.125 When a financial product is customisable by the consumer at point-of-sale, including through choices or options that add, remove or change key attributes of the product, the issuer must consider these choices and options in defining the target market for the product.

Note: As explained above at RG 274.8, 'key attributes' are the features and attributes of a product that affect whether it is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market.

RG 274.126 When there are different target markets for differing forms of the product (as a result of particular options or choices), this must be addressed in the TMD for the product. For example, an issuer could describe the target market for the relevant choice or describe the target market for different permutations of the product, including, for example, sub-markets where appropriate. An issuer does not need to prepare a separate TMD document for each choice or permutation of the product. Example 9 provides an illustration of this for a superannuation product.

RG 274.127 We would expect an issuer's consideration of whether a choice or option changes the product (including its key attributes) such that it changes the class of consumers for whom it is likely to be appropriate, to be data and outcomes driven. If consumers are making choices or selecting options that are leading to poor outcomes, then issuers should consider these choices or options as part of defining the target market.

RG 274.128 We do not expect that every choice or option will change the class of consumers for whom a product (including its key attributes) is likely to be appropriate (i.e. likely consistent with their likely objectives, financial situation and needs). When the choices and options do not affect the product's key attributes, each choice or option may not change the target market, but instead be available for consumers within a target market to tailor the product to their individual circumstances (e.g. making incremental changes to the excess level for an insurance product or choosing a personalised level of cover for certain contents items as part of acquiring home and contents insurance).

RG 274.129 Issuers should also consider their reasonable steps obligation in relation to distribution when developing the choice architecture for these choices and options (e.g. when an insurer asks the consumer to make a choice or select an option, the insurer should consider how the consumer could be assisted to make this decision): see RG 274.140–RG 274.147. An issuer will be able to determine whether choice architecture is appropriate over time, based on its review of consumer outcomes.

Investment products and diversification

- RG 274.130 In defining a target market for an investment product, an issuer should not assume that consumers will hold the product as part of a diversified portfolio.
- RG 274.131 If an issuer of an investment product chooses to target consumers who are likely to hold the product as part of a diversified portfolio, it will need to:
- (a) still consider if the product (including its key attributes) is likely to be consistent with the likely objectives, financial situation and needs of certain classes of consumers (e.g. a diversified portfolio does not mitigate the risks associated with a product that represents poor value to consumers); and
 - (b) comply with its reasonable steps obligation by managing the risk of the financial product being widely sold to investors who do not have a diversified portfolio.
- RG 274.132 Managing the risk of the financial product being widely sold to consumers who do not have a diversified portfolio does not require issuers to have knowledge of each individual consumer's financial situation. This is reflective of the risk-based approach of the reasonable steps obligation. The exact nature of the steps an issuer should take will ultimately depend on the nature of the product and the circumstances of its distribution, including any distribution conditions and restrictions, as well as any information or data the issuer or distributor may have access to. In determining the nature of the reasonable steps required, issuers and distributors should assess the risk of a consumer receiving the product on a standalone basis and the potential harm for consumers if that were to occur.

Note: See RG 274.140–RG 274.147 on the reasonable steps obligation.

Superannuation

- RG 274.133 A superannuation fund may offer a number of financial products (e.g. pension and accumulation products). Superannuation trustees, as issuers, must make a TMD for each financial product for which the trustee is required to prepare a PDS, other than MySuper products, defined benefit interests and interests in eligible rollover funds which are exempt: see s994B(1)(b) and s994B(3)(a) and reg 7.8A.20 (2) and (3). A superannuation product will commonly offer investment options and insurance. We expect investment options and insurance will likely be key attributes of the product that must be considered by the trustee in preparing the TMD: see Example 9.

Example 9: Superannuation products**Investment options**

Investment options, when offered, are likely to be key attributes of a superannuation product: see RG 274.77–RG 274.79. That is, we expect that investment options will likely affect whether a superannuation product (including its key attributes) is likely to be consistent with the likely objectives, financial situations and needs of consumers.

The trustee should take this into account in preparing the TMD for the choice product. In practice, this is likely to involve a single TMD for the choice product that describes multiple sub-markets for investment options or groups of investment options offered as part of the product.

The nature and extent of investment options available within the product may also affect the class of consumers for whom the product is appropriate.

Insurance component of a superannuation product

Insurance, when offered, is likely to be a key attribute of a superannuation product. That is, we expect that insurance offered will likely affect whether a superannuation product (including its key attributes) is likely to be consistent with the likely objectives, financial situations and needs of consumers.

Accordingly, the trustee will need to have regard to the insurance component when defining the target market for the superannuation product. In considering whether the insurance component changes the class of consumers for whom the superannuation product (including its key attributes) is likely to be appropriate, trustees could have regard to members for whom insurance is unlikely to be appropriate. For example, the trustee should consider whether occupational or other factors would result in the members being ineligible to claim under the cover.

The trustee may find it necessary or appropriate in some circumstances to use information provided by the insurer to consider the insurance component in making the TMD. There is no obligation on the insurer who issues the group policy to the trustee to prepare a TMD as they are not distributing directly to a consumer.

Interaction with member outcomes

RG 274.134 The member outcomes framework requires a trustee to assess whether the outcomes it seeks to provide beneficiaries have been, and will be, provided and whether and how those outcomes can be improved. Under the design and distribution obligations, trustees must consider whether the product (including its key attributes) is likely to be consistent with the likely objectives, financial situation and needs of members, focus on how the product is marketed and distributed, and review the ongoing appropriateness of these arrangements.

Note: The term ‘member outcomes framework’ is used to refer to obligations for APRA-regulated RSE licensees under s52(9)–(12) of the SIS Act and Prudential Standard [SPS 515 Strategic planning and member outcomes](#), as well as associated guidance in Prudential Practice Guide [SPG 515 Strategic and business planning](#) (486 KB) and Prudential Practice Guide [SPG 516 Business performance review](#).

RG 274.135 While the member outcomes framework and the design and distribution obligations are distinct regimes, they are complementary. Efficiencies may arise in developing compliance arrangements for each of the regimes. In particular, we expect these would arise in relation to:

- (a) preparing a TMD for a superannuation product; and
- (b) reviewing the TMD.

Note: The member outcomes framework also applies to MySuper products. The design and distribution obligations do not apply to MySuper products: see s994B(3)(a).

Investor directed portfolio services

RG 274.136 In the case of an investor directed portfolio service (also known as a ‘platform’) the design and distribution obligations apply to both the issuer (or operator) of the platform and issuers of the underlying products offered on the platform.

Example 10: Investor directed portfolio services (IDPS) and IDPS-like schemes

An investor directed portfolio service (IDPS) is an unregistered managed investment scheme for holding and dealing with investments selected by consumers.

An IDPS-like scheme is a registered managed investment scheme for holding and dealing with investments selected by consumers.

In broad terms, both IDPS and IDPS-like schemes provide custodial, transactional and reporting services for the consumer.

The operator of the IDPS must prepare a TMD in relation to the platform itself, as a separate financial product to the products offered or available on its platform: see reg 7.8A.08. The responsible entity of an IDPS-like scheme is also required to prepare a TMD for the platform itself: see s994B(1).

The operator of an IDPS or IDPS-like scheme will need to consider the costs and features of the platform, as well as the types of products available on the platform.

Each issuer of a financial product available on the platform must prepare a TMD in relation to the product. This is likely to include consideration of whether the selected platform is an appropriate distribution channel for the product.

Both the issuer of the financial products available on the platform and the platform operator will be required to take reasonable steps in relation to the distribution of products offered on the platform: see s994E(1) and 994E(3).

Making the TMD publicly available

RG 274.137 A TMD must be made publicly available before any person distributes a financial product that is subject to the design and distribution obligations: see s994B(2). This applies to new products the issuer offers, and existing products that continue to be offered after the design and distribution obligations commence.

Note: We explain the application of the TMD requirement for certain situations, including the bundling of products, at RG 274.120–RG 274.129.

RG 274.138 A person who makes a TMD must ensure that it is available to the public free of charge: see s994B(9). Promotional material in relation to products that require a PDS must describe the target market or specify where the TMD is available: see s1018A(1)(ca) and (2)(ca).

RG 274.139 The [Revised Explanatory Memorandum](#), paragraph 1.49, explains that the TMD must be made publicly available to mitigate evidential difficulties with substantiating non-compliance with the requirement to make a TMD. The [Revised Explanatory Memorandum](#) makes it clear that this also allows consumers to refer to the TMD should they wish to. However, we do not consider the TMD to be a consumer-facing disclosure document.

Note: Consistent with the evidential purpose of making the TMD publicly available, the requirement applies to all TMDs made in respect of the product, including those that have ceased to apply: see Note 3 to s994B(9) and [Revised Explanatory Memorandum](#), paragraph 1.49.

Taking reasonable steps in relation to distribution: Issuers

RG 274.140 An issuer must take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the TMD (reasonable steps obligation): see s994E(1). To meet this obligation, an issuer will need to implement effective arrangements that are likely to direct distribution of the financial product to the target market. Issuers will not fail to take reasonable steps merely because a consumer outside the target market acquires the product: see s994E(2)(b). Similarly, the reasonable steps obligation is not a requirement to ensure that distributors comply with the TMD. If an issuer takes reasonable steps but the retail product distribution conduct of the distributor is still inconsistent with the TMD, the issuer would not have breached the obligation.

Note: See the [Revised Explanatory Memorandum](#), paragraph 1.101.

RG 274.141 An issuer must have effective arrangements to manage the risks identified in its distribution. The [Revised Explanatory Memorandum](#) states at paragraph 1.98 that:

... where a distributor's previous conduct indicates that they may be at higher risk of engaging in conduct that is not consistent with the target

market determination, issuers will need to take reasonable steps to address the risk. This could include: having systems that enable distributors to be alerted to updates of target market determinations; assisting distributors to address concerns; or, in extreme cases, ceasing to distribute the product through the distributor where doing so is possible. Other relevant factors include the complexity and risk profile of the product, and the nature of any relationship between an issuer and a distributor of a product.

- RG 274.142 An issuer must take into account all relevant factors in assessing what reasonable steps need to be taken in the circumstances. These factors include:
- (a) *risk*—the likelihood of the distribution being inconsistent with the TMD;
 - (b) *harm*—the nature and degree of harm that might result from the financial product being distributed otherwise than in accordance with the TMD; and
 - (c) *mitigation steps*—steps that can be taken to eliminate or minimise the likelihood of the distribution being inconsistent with the TMD and the harm that might result (see s994E(5)).

- RG 274.143 A reasonable step does not need to fall within the definition of retail product distribution conduct. This means that it includes proactive steps aimed at reducing the risk of distributing the product to consumers that are not in the product's target market. Setting appropriate distribution conditions should also assist in meeting the reasonable steps obligation: see RG 274.96–RG 274.100.

Note: See the [Revised Explanatory Memorandum](#), paragraph 1.102

Distribution strategy

- RG 274.144 In setting its distribution strategy, the issuer needs to consider whether the intended distribution channels and methods would likely result in distribution being consistent with the TMD.
- RG 274.145 In formulating distribution conditions (see RG 274.96–RG 274.100) and in meeting its reasonable steps obligations, an issuer will need to consider all of the circumstances of the financial product's distribution, including the distributors, methods, marketing, controls and supervision. Issuers should select distributors whose typical consumers, and services offered, are consistent with the target market for the financial product, and consider the potential risks of existing and prospective distribution methods.
- RG 274.146 The issuer will also need to consider the choice architecture built into the context of the sales process and the presentation of the product within that context. This is because the context surrounding the distribution of the product (for example the order in which options appear, website and face-to-face sales design, use of defaults and marketing) as well as the presentation

of the structure of the product itself (for example product choices, features and options or whether a product price is framed as a discount or as the base price), can affect the likelihood that the product will be distributed to its intended target market.

Factors relevant to our administration of the obligation

RG 274.147 We have set out some factors we expect will be relevant when considering whether an issuer has taken reasonable steps: see Table 4.

Note: The factors listed in Table 4 are not intended to be an exhaustive list of potentially relevant factors that we will consider when deciding whether steps should or could be taken in order to meet the 'reasonable steps' threshold.

Table 4: Factors relevant to our administration of the issuer's reasonable steps obligation

Factor	Explanation
Distribution conditions	<p>We will take into account whether the distribution conditions the issuer sets in the TMD are sufficient to direct distribution towards the target market for its financial product.</p> <p>A financial product with a narrow target market will likely require more specific and detailed distribution conditions. For a product with a comparatively wide target market, fewer distribution conditions may be needed to ensure that the products are sold in accordance with the TMD.</p> <p>In addition, we consider that more restrictive distribution conditions may result in fewer additional steps being required for issuers to meet the reasonable steps obligations.</p> <p>For example, if an issuer determines that the product should be distributed under a personal advice model only, owing to this distribution condition, the steps required to meet the reasonable steps obligation are likely to be reduced compared to if the issuer elects to distribute more broadly through general advice or no advice methods.</p>
Marketing and promotional materials	<p>We will take into account whether an issuer's promotional materials and marketing campaigns direct distribution towards the target market for the financial product.</p> <p>Note 1: In any promotional material for products that require a PDS, the issuer must describe the target market or specify where the TMD is available: see s1018A(1)(ca) and (2)(ca).</p> <p>Note 2: See also Regulatory Guide 234 <i>Advertising financial products and services (including credit): Good practice guidance</i> (RG 234).</p>
Selection of distributors	<p>We will consider the steps that an issuer has taken in conducting due diligence in the selection of distribution channels, methods and distributors. Reasonable steps will generally include making an assessment of the capacity of the distributor to comply with the distribution conditions imposed and meet its own obligations as a distributor.</p> <p>We consider that relevant factors would include an assessment of the distributor's resources, internal controls, past conduct, experience with the target market and competence to distribute the financial product to the target market.</p> <p>An issuer should consider the likelihood of the distributor's conduct being inconsistent with the TMD for the financial product. If the issuer has information that</p>

Factor	Explanation
Selection of distributors (continued)	<p>would lead a reasonable person to have conduct or resourcing concerns about a distributor, we would expect the issuer to undertake an assessment of the risk and the available steps to mitigate that risk in forming a view on whether it is reasonable to use that distributor.</p>
Supervision and monitoring	<p>We will consider whether an issuer has adequately supervised and monitored the distribution of its product, having regard to the target market for the financial product and the potential for harm that may result from a consumer outside of the target market acquiring the product.</p> <p>In implementing the obligations for existing products, and when issuing new products, issuers will need to consider whether the nature of their relationship with their distributors is appropriate in the circumstances. If the issuer has reason to believe that distribution of the product could be inconsistent with the TMD in circumstances where the relationship is not formalised, or data and qualitative information indicates that inconsistent distribution is occurring, the issuer should take steps to improve communication or oversight of distribution. This may require formalising the relationship. Where an issuer is unable to increase oversight of a particular channel in these circumstances it may need to cease distribution through that channel. This is consistent with a risk-based approach to the reasonable steps obligation.</p> <p>As noted in the Revised Explanatory Memorandum (note 34):</p> <p>The obligations do not require any formal relationship (for example, contract or other arrangement) to exist between an issuer and a distributor. However, the existence or non-existence of any such relationship may be relevant in determining whether or not an issuer has met its obligation to take 'reasonable steps'. In addition, it may be a 'reasonable step' for an issuer to formalise its relationship with a distributor or vary such a relationship where doing so is reasonably practicable and would promote distribution being consistent with a product's target market determination.</p> <p>We expect an issuer to review how evolving activity in the course of distribution over time remains consistent with (or deviates from) what was originally planned or envisaged for distribution of the financial product.</p> <p>In meeting its obligation to review the TMD to ensure that it remains appropriate, an issuer will need to:</p> <ul style="list-style-type: none"> • collect and analyse appropriate information at sufficient intervals to detect patterns in distribution as compared with the planned target market; and • assess the performance of the distribution methods through which its financial products are being distributed.
Conflicts of interest	<p>We will take into account whether a conflict, potential conflict or apparent conflict of interest exists (including in remuneration and incentive structures proposed for distribution) that is likely to result in distribution that is inconsistent with the TMD.</p> <p>In developing remuneration and incentives for the distribution of a financial product, an issuer should consider the role that incentives have in influencing behaviours that could result in distribution being inconsistent with the TMD, and the harm that could arise as a result.</p> <p>If it is likely that a distributor's incentives will result in distribution being inconsistent with the TMD, the issuer should consider requiring the distributor to alter its remuneration and incentive structures or not proceeding with that distributor.</p>

Factor	Explanation
Information sharing with distributors	<p>We will take into account whether an issuer has provided distributors with sufficient information to assist them with meeting their obligations to ensure distribution is consistent with the TMD.</p> <p>An issuer should consider whether distributors require tailored information in addition to materials prepared for an end consumer. For example, an issuer could consider (for each distribution channel or type of distributor):</p> <ul style="list-style-type: none"> • what information distributors of that type already have; • the distributors' likely level of knowledge and understanding; and • the distributors' information needs and what form or medium would best meet those needs (which could include discussions, training, or scripts as appropriate).

Reasonable steps for issuers: Examples

RG 274.148 Below are some examples to illustrate our guidance on reasonable steps for issuers.

Example 11: Superannuation and reasonable steps

Superannuation trustees may offer superannuation products in a fund through a number of distribution channels. These could include:

- direct-to-public issues through the trustee's website and member contact centre;
- employers; and
- financial advisers.

In determining what arrangements to put in place to meet its reasonable steps obligation, the trustee must consider the risks of distribution being inconsistent with the TMD in each of its distribution channels.

Direct-to-public

The superannuation trustee has direct control over distribution of the choice product in its direct-to-public distribution. In its member contact centre, the trustee could implement appropriate call scripts and general advice processes to mitigate the risk of inconsistent distribution.

The trustee should also consider information available about the choice product and its investment options on the fund website. This consideration may lead to the trustee putting in place further arrangements to reduce the possibility of members selecting a product (including its key attributes) that is unlikely to be consistent with their objectives, financial situation and needs.

For example, these arrangements might involve filters to direct members away from certain options due to the members being at an age where the time to decumulation phase is short.

Example continues over page.

Employer

The distribution arrangements for the choice product that the trustee puts in place for direct-to-public and adviser distribution are also likely to apply to members that joined the fund through their employer.

To further mitigate the risk that employee members may choose to switch to options that are unlikely to be consistent with their likely objectives, financial situation and needs, the trustee should consider its welcome information for employees. The trustee could also explain the risks of various options and who they may be appropriate for in any periodic seminars that are offered to employees.

Note: Employers are not subject to the reasonable steps obligation in s994E(3) when complying with certain superannuation guarantee obligations: see reg 7.8A.25 and [ASIC Corporations \(Design and Distribution Obligations Interim Measures\) Instrument 2021/784](#).

Adviser

The superannuation trustee assesses that the risk of inconsistent distribution through a financial adviser is lower than for distribution through other channels. This is because personal advice that requires the collection and analysis by the adviser of information relating to the member's individual objectives, financial situation and needs is provided in this channel. The trustee should consider any materials that may need to be prepared for advisers to assist them in distributing the product consistently with the TMD: see Table 4.

Example 12: Mortgage fund: Oversight of distribution

A mortgage fund is a managed investment scheme. The underlying portfolio of the fund generally comprises residential, commercial and development mortgages, with varying risk profiles.

An issuer should have appropriate oversight of the distribution of its product and the activities of distributors and take action if it has concerns about the conduct of a distributor.

For example, if the issuer is aware that a distributor uses the language of 'cash' or 'cash-like' to promote the mortgage fund, creating an inaccurate expectation that the product is low in risk and high in liquidity (which creates a risk that the product will be sold outside the target market), the issuer must take steps to address this conduct.

In these circumstances, the issuer could:

- require the distributor to immediately cease promoting the product in this way, either through distribution conditions or contact with the distributor;
- review the adequacy of information it provides to distributors;
- provide training if necessary;
- consider providing distributors with marketing materials, or vetting materials produced by distributors; and/or
- no longer distribute the product through the distributor, if appropriate in the circumstances.

Example 13: Listed investment companies

Listed investment companies (LICs) issue shares that are listed on a licensed exchange such as ASX or NSX.

LICs offer exposure to a wide range of underlying assets that will suit different types of consumers (e.g. some may invest mostly in Australian shares, whereas other LICs may specialise in infrastructure or technology shares). A key feature of LICs is that they are closed-ended, meaning the investor cannot redeem their investment and the only way to exit is to sell on-market. The design and distribution obligations apply to any initial public offer, and to any subsequent offer by the LIC that requires disclosure to investors under Pt 6D.2.

LICs have differing investment approaches, ranging from low to high risk. Some LICs use complex strategies through the use of short selling, derivatives and leverage that may result in significant or complete loss of capital. These strategies will not be suitable for all consumers.

As part of the capital raising process, LICs often use a highly intermediated structure to attract consumers, with allocations of securities distributed through networks of wealth management, private banking, stockbroking and financial advisory firms to utilise the existing consumer bases of these firms.

In selecting distributors that form part of this distribution network, LICs should keep in mind the target market for the product, the distribution conditions it has set and the broader approach to distribution: see RG 274.144–RG 274.146.

A LIC may have decided to specify distribution conditions requiring distributors to implement controls on marketing or an offer (e.g. by confining email marketing to those consumers whom it is aware have certain characteristics set out in the TMD). The LIC might also have placed restrictions on the content used by distributors to advertise the offer to ensure that the LIC and the financial product are fairly represented, which might include, for example, prohibiting the use of gross ‘non-actual’ past performance based on the LIC manager’s other funds: see Regulatory Guide 53 *The use of past performance in promotional material* ([RG 53](#)).

Particular considerations in selecting distributors are likely to include:

- whether the distributor provides no advice (e.g. information only), general advice or personal advice to consumers;
- the distributor’s general client base and whether the distributor deals directly with the investor, or through other intermediaries;
- whether the distributor has arrangements in place so that its representatives have sufficient knowledge and understanding of the product to be able to give appropriate advice to investors; and
- previous consumer outcomes that resulted from using a particular distributor.

An issuer should provide distributors in the distribution network with information sufficient to assist them to meet their obligations to ensure that distribution (including marketing and dealing) is consistent with the TMD. In particular, the issuer should seek to ensure that distributors are fully aware of the risks associated with the investment in the LIC, and how these risks might affect who is in the target market.

In planning the supervision required for the distribution network, an issuer should keep in mind that distribution will usually occur in a short timeframe. Issuers should have appropriate oversight of the distribution of the product, including to ensure that distributors do not use the short offer period to pressure investors to make a decision quickly without taking time to assess whether the investment meets their likely objectives, financial situations and needs.

To ensure that distribution is consistent with the TMD, an issuer might consider taking steps in advance of the offer, such as reviewing:

- the types of materials (in particular, non-prospectus materials) that will be presented to consumers by distributors; and
- the arrangements that distributors in the distribution network will use.

Note: While our example refers to LICs, much of the discussion also applies to listed investment trusts, which are incorporated as trusts, rather than companies.

Reviewing the TMD

- RG 274.149 To ensure that the TMD remains appropriate for the financial product over time, issuers must review the TMD:
- (a) periodically;
 - (b) in response to review triggers; or
 - (c) when other events or circumstances reasonably suggest that the TMD is no longer appropriate: see s994C.

Note: Setting review periods is discussed at RG 274.109–RG 274.112. Setting review triggers is discussed at RG 274.103–RG 274.108.

- RG 274.150 These review requirements only apply when a product is currently on offer for acquisition by issue, or regulated sale, to retail clients: see s994C(2)–(5). Issuers also have the discretion to review a product’s TMD at any time or to make a new TMD: see s994C(1) and the [Revised Explanatory Memorandum](#) at paragraph 1.74.

- RG 274.151 The review process must be established as part of the issuer’s product governance arrangements, and controls should be put in place to ensure that meaningful reviews take place. Figure 2 depicts possible outcomes from the review process. These include:
- (a) no change to the way the product is distributed.
 - (b) changing the product design, target market or distribution; or
 - (c) ceasing to distribute the product.

Note: Review of a product’s design is discussed at RG 274.50.

- RG 274.152 Taking a consumer-centric approach means being outcomes focused: see RG 274.5–RG 274.14. As such, while the initial TMD can be made based on

the information readily available to the issuer at the time, if it becomes aware of new information that could change the TMD, the issuer must conduct a review. This may be the case if the issuer varies a product: see Example 14.

Example 14: Product changes and reviewing the TMD

If an issuer adds a new promotional feature to a product, the issuer must consider whether the promotional feature has the effect of varying the product such that the target market for the product would need to be adjusted. If the promotional feature is concessional (e.g. a reduced or nil annual fee), it is likely that the existing target market will remain appropriate (i.e. because the product was previously assessed as likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market when it cost the full fee to acquire).

However, if the promotional feature is likely to encourage consumers outside the target market to acquire the product and distribution conditions on the product are not likely to limit distribution to the target market, it would no longer be reasonable to conclude that it is likely that the consumer will be in the target market, as required by the appropriateness requirement at s994B(8). The issuer, therefore, will need to review the TMD: it will need to adjust the description of the target market and review whether the distribution conditions will direct distribution to the new target market.

- RG 274.153 Issuers must ensure that their arrangements are able to identify areas of likely consumer harm and other factors that may indicate that a review of the TMD is required. To meet their review obligations issuers and distributors may need to improve their data capabilities to ensure that their data is timely, accurate, adequate and complete.
- RG 274.154 If the issuer becomes aware of information that would reasonably suggest that the TMD is no longer appropriate (e.g. a review trigger has occurred), it must stop issuing the financial product and direct its distributors to stop distributing until the issuer has reviewed the TMD and its product: see s994C(3)–(5).

Conducting a review

- RG 274.155 In reviewing a TMD, we expect that the issuer will take into account all available information on its financial product using multiple data sources. This could include:
- (a) information the issuer holds about the product and its distribution, for example:
 - (i) volume of sales;
 - (ii) percentage of sales to consumers who are not in the target market;
 - (iii) conversion rates; and

- (iv) web analytics (e.g. click data and website paths).
- (b) information the issuer holds about consumer behaviour and outcomes—for example:
 - (i) consumer and transaction data (e.g. claims outcomes for insurance products);
 - (ii) results of multi-method consumer testing;
 - (iii) assessment and measurement of product design and performance;
 - (iv) impact of choice architecture on consumer choice and outcomes; and
 - (v) purchase decisions and use of product;
- (c) information collected from distributors, including:
 - (i) the information that the issuer specifies in the TMD that must be provided to the issuer (see RG 274.113–RG 274.116); and
 - (ii) general product feedback and consumer complaints;
- (d) information collected from consumers and consumer advocates, including general product feedback and complaints, as well as the outcomes of those complaints based on internal dispute resolution information; and
- (e) information from other sources about consumer outcomes, including from the Australian Financial Complaints Authority (AFCA).

RG 274.156 The issuer should use credible and reliable data sources and collect information that is fit for purpose and unbiased. The issuer should consider their obligations under privacy laws and relevant ethical and data codes.

Note: Consumer satisfaction is not an appropriate source of data because it is an unreliable indicator of consumer outcomes. For example, shadow shopping research ASIC conducted with real consumers who sought retirement advice identified a large gap between the technical quality of the advice (as assessed by ASIC) and the consumers' own assessment of that advice: see Report 279 *Shadow shopping study of retirement advice* ([REP 279](#)). While 86% of consumers considered the advice they received to be good, ASIC assessors rated only 3% of the advice reviewed as good, with the remainder rated as adequate or poor. In an earlier shadow shop on superannuation advice, in cases where ASIC could see that the advice clearly lacked a reasonable basis, 85% of consumers still felt satisfied with the advice: see Report 69 *Shadow shopping survey on superannuation advice* ([REP 69](#)). See also APRA [Prudential inquiry into Commonwealth Bank of Australia](#) (PDF 1.1 MB), April 2018, pp 11, 39, 43, 89, 91–92.

RG 274.157 When conducting a review, an issuer should consider the objectives of the design and distribution obligations, including to minimise the risk of financial products being sold to consumers for whom the products are not likely to be consistent with their likely objectives, financial situation and needs. For example, when the performance of a product has varied materially from its stated objectives, the issuer should check:

- (a) whether the product is continuing to meet the likely objectives, financial situation and needs of the target market that it was designed for; or
- (b) whether the product's performance is materially different from what the issuer originally expected and communicated to the distributor or consumer at the time of the sale.

Note: When this occurs, the issuer needs to consider what further action may be required, such as informing its existing consumers.

Notifying ASIC of 'significant dealings'

RG 274.158 An issuer must notify ASIC of a significant dealing (except excluded dealings) in a financial product that is not consistent with the product's TMD. Issuers must notify ASIC in writing as soon as practicable, and in any case within 10 business days after becoming aware: see s994G and 1311(1).

Note 1: Excluded dealings consist of arranging for a consumer to apply for or acquire a product for the purpose of implementing personal advice that the person has given to a retail client: see s994A(1).

Note 2: While s994G requires notification of a significant dealing in the product in relation to 'a retail client', this includes significant dealings in relation to more than one retail client: see *Acts Interpretation Act 1901* s23(b).

Note 3: Issuers must provide significant dealing notifications to ASIC through the [ASIC Regulatory Portal](#).

Meaning of 'significant dealing'

RG 274.159 The term 'significant dealing' is not defined in the Corporations Act. This is consistent with the term 'significant' being undefined elsewhere in the Act. Whether or not a dealing is significant is a matter to be determined in the circumstances of each case. Issuers, who have an aggregate view of the distribution of their product, will take a more systemic approach to determining whether a dealing is significant.

RG 274.160 We expect that the following factors will be relevant for issuers when determining whether a significant dealing has occurred (these are not intended to be an exhaustive list of potentially relevant factors):

- (a) of those consumers who acquire the product, the proportion of consumers who are not in the target market, including the proportion of consumers who are part of a class that has been excluded from the target market acquiring the product;
- (b) the actual or potential harm to consumers, including the amount of any financial loss, resulting from consumers who are not in the target market acquiring the product;

- (c) the nature and extent of the inconsistency of distribution with the TMD (noting that distribution to a consumer can be either more or less consistent with a target market along a continuous spectrum);
- (d) the proportion of gross income or premium obtained from the product in respect of consumers who are not in the target market acquiring the product; and
- (e) the time period in which these acquisitions outside the target market occurred.

Note: In outlining the above factors to consider when determining whether a significant dealing has occurred, we have considered the factors outlined in the law in s994E(5) and the matters set out in s1023E(1) relating to determining significant detriment to retail clients.

RG 274.161 In determining whether a particular dealing is significant, we consider that it may assist issuers in meeting their obligations if they set objective criteria based on the nature and risk profile of their product. This would enable the issuer to have in place arrangements to monitor dealings in their product. Setting objective criteria that is widely available should assist issuers in identifying when a dealing is significant, and acting accordingly. It may also assist distributors in understanding the dealings that they must notify to the issuer.

RG 274.162 Distributors must notify issuers when they identify a significant dealing that is not consistent with the TMD: see s994F(6) and RG 274.212–RG 274.216. Note that whether a dealing is significant will likely differ between issuers and distributors given the different circumstances of their businesses. Still, the distributor’s determination that the dealing is significant will assist the issuer in making their own determination that the dealing is significant and therefore reportable to ASIC.

Content of the notification

RG 274.163 An online form is available through the [ASIC Regulatory Portal](#) to assist issuers in reporting significant dealings to ASIC. Some of the information that the form requests is listed in Table 5. If an issuer does not have information about specific matters requested in the online form at the date of the notification, the issuer should include the information that is available and provide further information as it becomes available.

Table 5: Content of a written notification of significant dealing

Date(s) of the significant dealing	Include both: <ul style="list-style-type: none"> the date that the significant dealing occurred, or date range during which dealings occurred that taken together are significant; and the date the issuer became aware of the significant dealing.
Description of the significant dealing	Describe the significant dealing, including why it is not consistent with the TMD.
Why the dealing is significant	Describe why the issuer considered the dealing to be significant.
How the significant dealing was identified	For example, the significant dealing may have been identified through the issuer's product governance arrangements, reporting from the distributor, as a result of a consumer complaint or the occurrence of a review trigger.
What steps, if any, have been, or will be, taken in relation to the significant dealing	Include details as relevant.

What ASIC will do with the information in the notification

RG 274.164 The information in the notification assists ASIC to consider whether issuers and distributors are complying with the design and distribution obligations. We will consider this information to decide whether it is necessary or appropriate to take any further action.

Keeping records of decisions made

RG 274.165 An issuer must keep complete and accurate records of decisions made in relation to the issuer's TMDs and associated reviews, together with the reasons (and underlying data) for those decisions, for up to seven years.

Note: See s994F(1) and 1101C. Keeping good records will assist issuers to meet the design and distribution obligations, particularly in relation to conducting reviews. Issuers are also required to keep records of complaints: see Section E of [RG 271](#).

RG 274.166 ASIC may request these records to determine compliance with the law. Good records are also likely to assist an issuer to demonstrate that it has taken the necessary steps to comply with the design and distribution obligations.

E Obligations for distributors

Key points

Distributors generally interact directly with the end consumer. A distributor can be an intermediary between the issuer of a financial product and the consumer, or the issuer itself, when the issuer deals directly with consumers.

Like issuers, distributors must take reasonable steps that will, or are reasonably likely to, result in distribution of a financial product being consistent with the TMD for that product: see s994E(3).

What are reasonable steps for distributors depends on the likelihood of distribution being inconsistent with the TMD, the potential harm that might arise from inconsistent distribution, and the steps that can be taken to mitigate these harms: see RG 274.172–RG 274.173.

In some cases, the reasonable steps obligation will require a distributor to collect or review data about consumers. This is not for the purpose of providing individualised advice, but rather to enable the distributor to assess whether a consumer, or group of consumers, is reasonably likely to be in the target market: see RG 274.175–RG 274.189.

Distributors also have obligations to report certain information to issuers, including when there is a significant dealing that is not consistent with the TMD. Distributors must also keep records of distribution information: see RG 274.217–RG 274.224.

Taking reasonable steps in relation to distribution

RG 274.167 Distributors generally interact directly with the end consumer. Distributors can be an intermediary between the issuer of a financial product and the consumer (e.g. a sales partner of the issuer or a referrer), or the issuer itself, when the issuer deals directly with consumers.

Note: All references to ‘distribution’ are to ‘retail product distribution conduct’, which includes, in relation to a product, dealing in relation to a consumer, providing financial product advice to a consumer, giving a disclosure document or PDS to a consumer, or arranging for the application, acquisition or issue of a financial product: see s994A(1).

RG 274.168 An issuer that distributes its products directly to consumers must comply with both the reasonable steps obligation under s994E(3) (described in this section of the guide) and the reasonable steps obligation under s994E(1) (described in Section D of this guide at RG 274.140–RG 274.148). For example, an IDPS platform operator must comply with:

- (a) the issuer’s reasonable steps obligation under s994E(1) in relation to interests in the IDPS issued to consumers; and

- (b) the distributor's reasonable steps obligation under s994E(3) in relation to the underlying financial products offered on the platform.

Note: See also Example 10.

RG 274.169 A distributor generally must not distribute a financial product unless a TMD has been made for it: see s994D.

Note: A distributor may distribute a product if it reasonably believes (after making all reasonable inquiries) that a TMD has been made, or that a TMD is not required, or when the distribution conduct is excluded conduct: see s994D.

RG 274.170 In addition, a distributor must take reasonable steps that will, or are reasonably likely to, result in distribution of a product being consistent with the TMD: see s994E(3).

RG 274.171 A distributor must have robust product governance arrangements in place to help ensure that it complies with its obligations, including the reasonable steps obligation: see Section B.

RG 274.172 Like an issuer, a distributor must take into account all relevant factors in assessing what reasonable steps need to be taken in the circumstances. These factors include:

- (a) *risk*—the likelihood of the distribution being inconsistent with the TMD;
- (b) *harm*—the nature and degree of harm that might result from the financial product being issued otherwise than in accordance with the TMD; and
- (c) *mitigation steps*—steps that can be taken to eliminate or minimise the likelihood of the distribution being inconsistent with the TMD and the harm that might result (see s994E(5)).

RG 274.173 A distributor must comply with distribution conditions in the TMD for the product and any distribution agreement with the issuer. However, in most circumstances, merely complying with the distribution conditions and any agreement with the issuer will not be sufficient to satisfy the distributor's reasonable steps obligation. The distributor will still need to consider what additional steps are reasonable for it to take in the particular circumstances. For example, if a product's TMD does not specify the distribution channel that must be used to distribute the product, the distributor should consider, having regard to the target market and the risk of harm that could result from inconsistent distribution, what distribution method would be appropriate and what additional arrangements need to be put in place that are reasonably likely to result in sale of the product being consistent with the TMD.

Factors relevant to our administration of the reasonable steps obligation

RG 274.174 Table 6 sets out some of the factors we expect to consider when examining whether a distributor has met its reasonable steps obligation.

Note: The factors listed in Table 6 are not intended to be an exhaustive list of potentially relevant factors that we will consider when deciding whether steps should or could be taken in order to meet the 'reasonable steps' obligation.

Table 6: Factors relevant to our administration of the distributor's reasonable steps obligation

Factor	Explanation
Compliance with distribution conditions	<p>The TMD prepared by the issuer will specify any distribution conditions.</p> <p>We will take into account the steps that a distributor takes to comply with the distribution conditions set by the issuer. As noted at RG 274.173, a distributor will also need to consider what additional steps may be required in addition to the conditions set by the issuer.</p>
Distribution method	<p>We will take into account whether the means through which a distributor chooses to interact with the consumer (i.e. its distribution method) is reasonably likely to direct and limit distribution to the target market for the financial product.</p> <p>Examples of distribution methods include online, face-to-face, and inbound or outbound telephone sales. Some methods may not be appropriate for all financial products.</p> <p>For example, if significant consumer harm could result from a financial product being sold to consumers who are not in the product's target market, and the risk of sales outside of the target market is material for a given distribution method, this method must not be used. This means, for example, that a distributor must not engage in sales of insurance products through a distribution method that gives rise to a risk that the product will be sold indiscriminately, including to consumers who are ineligible to claim, unless the risk of sale outside of the target market is mitigated.</p>
Marketing and promotional materials	<p>We will take into account the content and medium of delivery to end consumers of promotional or advertising materials circulated by distributors. The materials and delivery should be informed by, and consistent with, the TMD for the financial product.</p> <p>For example, mass market advertising or prominent online methods, such as banner advertising, generally are not appropriate for a product with a narrow target market. The disclosure necessary in these circumstances is more than the minimum disclosure about the target market required in promotional material by the obligations.</p> <p>Note 1: In any promotional material for products that require a PDS, the issuer must describe the target market or specify where the TMD is available: see s1018A(1)(ca) and (2)(ca).</p> <p>Note 2: See also (RG 234).</p>

Factor	Explanation
Effectiveness of product governance	<p>We will consider whether a distributor's product governance arrangements are effective to ensure that the distributor has sufficient control and oversight over its distribution processes.</p> <p>Effective product governance should allow distributors to:</p> <ul style="list-style-type: none"> • monitor whether distribution conduct is compliant with the law and consistent with the TMD; and • highlight areas for improvement in conduct of sales staff or in the operation of systems or processes. <p>A distributor should have a process for identifying changes that may negatively affect its product governance arrangements. Distributors must regularly review these arrangements to ensure that they remain effective.</p> <p>For guidance on reviewing product governance arrangements, see RG 274.57–RG 274.58.</p>
Inappropriate incentives	<p>We will take into account the steps the distributor has taken to eliminate or appropriately manage the risk that incentives for staff or contractors may encourage behaviour that could result in consumer harm or in distribution being inconsistent with the TMD.</p>
Training	<p>We will take into account whether a distributor has given staff involved in distribution operations sufficient training and has assessed the staff members' skills to perform the required duties.</p> <p>For example, a distributor should consider whether specific training is required for staff to understand the key product attributes and the target market for certain products, in addition to training about appropriate sales conduct.</p> <p>In many instances, this training could be incorporated into existing staff training requirements, particularly when existing continuing professional development requirements apply.</p>
Assessment of whether a consumer is in the target market	<p>We will take into account how a distributor assesses whether a consumer is reasonably likely to be in the target market for a financial product. For further guidance, see RG 274.175–RG 274.189.</p>

Assessing whether a consumer is reasonably likely to be in the target market for a product

RG 274.175 A distributor is not taken to have failed to take reasonable steps merely because a consumer who is not in the target market for the financial product acquires the product: see s994E(4). However, a distributor must have effective systems and processes in place that are reasonably likely to avoid this result: see s994E(3) and (5).

Distribution arrangements

RG 274.176 When considering whether the distributor's arrangements are reasonably likely to result in distribution that is consistent with the TMD, the starting point for the distributor should be to establish and maintain effective controls in each of the categories identified in Table 6.

RG 274.177 Where the distributor has taken steps to make these arrangements effective, the further steps that the distributor will need to take in the circumstances of each transaction may be fewer as the risk of inconsistent distribution may be lower. Distributors should take a risk management approach in determining the steps required.

RG 274.178 Beyond the general arrangements identified, there are a number of additional ways a distributor could determine whether a consumer is reasonably likely to be in the target market for a financial product. These include:

- (a) analysis of data held on the consumer or a class of similar consumers, which reasonably leads to the conclusion that they are reasonably likely to be in the target market;
- (b) the inclusion of ‘knockout questions’ within application processes for direct-to-consumer product sales, either through digital or other channels (e.g. if a consumer would be excluded from coverage under an insurance policy, the knockout question would operate to not allow the consumer to proceed with purchasing the cover); and
- (c) asking the consumer direct questions to determine whether they are reasonably likely to be in the target market.

Note: The law provides an exemption from the personal advice obligations for the actions of asking for information to ascertain whether a consumer is in the target market and informing them of the result: see s766B(3A) and RG 274.190–RG 274.195.

RG 274.179 Distribution arrangements must be consistent with the objectives of the design and distribution regime and the distributor’s obligations to distribute products appropriately. For example, while a distributor may ask a consumer to confirm factual information about themselves, it should not require the consumer to self-certify that they are in the target market.

Reliance on existing information about consumers

RG 274.180 In some cases, the distributor may already have information about a prospective consumer or class of consumers (e.g. if they are an existing consumer in the case of a renewal) prior to distribution.

RG 274.181 This information could include:

- (a) indicators about the likely circumstances of the consumer or a class of consumers (e.g. concession card status, income, employment status);
- (b) reasonable inferences about the likely circumstances of the consumer or a class of consumers (e.g. for insurance, information inferred from the postcode of the consumer’s residential address); or
- (c) data that the distributor may already hold about the consumer or similar consumers, or results derived from analyses of that data (e.g. analysis undertaken by the distributor of common characteristics of consumers who have purchased a product).

RG 274.182 Existing information about a consumer or class of consumers held by a distributor could, as part of meeting its reasonable steps obligation, be used to determine whether the consumer is reasonably likely to be within the class of consumers for which the product is likely to be appropriate. Using existing information in this way for the purpose of checking whether a consumer is in the target market would not constitute personal advice.

Note: See RG 274.187–RG 274.189 for more guidance on asking further questions of the consumer to determine whether they are in the target market.

RG 274.183 For example, if the target market for a product includes only employed people, and the distributor's records indicate that the consumer is unemployed, the distributor would not be complying with its reasonable steps obligations if it sold the product to the consumer.

RG 274.184 A distributor should consider the following factors, among others, in deciding whether it is appropriate to rely on existing information, and the extent to which it should rely on it:

- (a) the likelihood of circumstances changing so that consumers are no longer in the target market for the financial product;
- (b) the harm that may result from consumers who are no longer in the target market acquiring the product;
- (c) the time that has elapsed since the distributor formed a reasonable view of whether a consumer or class of consumers is reasonably likely to be in the target market; and
- (d) when the distributor last gathered relevant information.

RG 274.185 A distributor must have a reasonable basis for making conclusions about the above factors. For example, conclusions might be based on forecasts or predictive models and informed by ongoing data collection about the financial product.

RG 274.186 In addition to relying on existing information, a distributor will also need to consider whether, to meet its reasonable steps obligation, it should:

- (a) seek further information from the consumer; or
- (b) implement arrangements to filter out consumers who are no longer in the target market.

Asking additional, specific questions

RG 274.187 In most cases, a distributor should have sufficient existing arrangements, or information about a consumer or class of consumers, to determine whether the consumer is reasonably likely to be in the target market for a financial product. However, in some circumstances, a distributor may need to ask further, specific questions of the consumer.

- RG 274.188 In some cases, the information that the distributor needs may be obtained through existing sales processes and application forms. For example, information obtained from a consumer's credit card application will include information about the consumer's financial situation, such as income.
- RG 274.189 In determining whether further information is required (and, as a consequence, whether specific questions should be asked), a distributor must take into account the likelihood of the consumer being outside the target market, the potential for harm, and other mitigation steps that the distributor has available. For example, if a high degree of consumer harm would result from a consumer who is not in the target market acquiring the financial product (such as a consumer being sold an add-on insurance product despite the consumer being ineligible to claim), and the risk of that occurring is significant, the distributor should take additional steps to determine whether consumers are ineligible to claim before selling the product.

Example 15: Renewal of general insurance policies

Many general insurance policies are offered for renewal on an annual basis and consumers then enter into a new contract at each renewal. These include policies covering risks of loss or damage to motor vehicles and home buildings and contents.

Each renewal constitutes a financial product issue where reasonable steps are required. What reasonable steps are required at each renewal will need to be determined by the insurer based on the information it holds and its experience in practice. It may not be necessary to take the same steps at each renewal.

Insurers will need to assess information reasonably available to them to identify common events that would result in the likely objectives, financial situation and needs of consumers changing such that these consumers would no longer be in the target market for a policy, and the likelihood of those events occurring over time since initial policy purchase.

For example, depending on the particular policy, the passage of time may result in a change to the needs of consumers to obtain comprehensive car cover (given the age of the car), such that the consumers are no longer reasonably likely to be in the target market for the policy. At the time of renewal, an insurer (in its role as distributor) must take reasonable steps to ensure that the renewal process results in outcomes that are consistent with the TMD.

At the time of renewal of an insurance policy, an insurer generally should consider:

- the likelihood that consumers are no longer in the target market for the policy;
- information the insurer holds or can reasonably obtain about the asset being insured and relevant claims data;
- any updates the consumer has provided that affect whether the consumer is in the target market for the product; and
- whether more data should be gathered from or about consumers to inform the insurer's analysis.

An insurer should analyse information it holds or to which it reasonably has access. For example, if that analysis shows that:

- the risk of consumers in a particular class no longer being in the target market increases significantly after a set period (e.g. after the fourth or fifth renewal following initial policy purchase), the controls the insurer would apply, and further steps the insurer would take at that point, should be scaled up as appropriate; or
- the risk that consumers in a particular class are no longer in the target market increases significantly from a specific date or age, the controls and further steps should be similarly scaled up for consumers who have reached that threshold.

Examples of further steps that may be appropriate in the above scenarios could include:

- obtaining further information from the relevant consumers;
- informing the relevant consumers that information indicates the consumer may no longer be in the target market for the product; and
- offering alternative products with target markets that the consumer would likely be in.

When an insurer assesses that it is likely that a consumer is no longer in the target market for an insurance policy, an insurer need not decline to renew the policy, but would need to take reasonable steps to direct the consumer to a policy that is likely to be appropriate.

Personal advice exemption to ask for information

RG 274.190 For the purposes of the design and distribution obligations, the law provides that the acts of asking for information solely to determine whether a person is in the target market for a financial product, and of informing the person of the result of that determination, do not, of themselves, constitute personal advice: see s766B(3A).

Note: [RG 175](#) provides further explanation about the difference between personal and general advice.

RG 274.191 This is because, in some circumstances, the questions that a distributor may need to ask the consumer will relate to one or more of the consumer's objectives, financial situation or needs and therefore may otherwise constitute personal advice.

RG 274.192 Where the distributor considers they need to ask questions of the consumer and relies on the exemption, those questions must be for the sole purpose of determining whether the consumer is in the target market (or informing the consumer of their status in the target market). The exemption in s766B(3A) will not apply if the distributor sets up the interaction in a way that instead has the purpose of influencing consumers in making a decision about a financial product. Whether the conduct of the distributor goes beyond the scope of the exemption is a matter to be considered in the circumstances of the particular interaction.

- RG 274.193 If the distributor designs arrangements where additional questions will be asked of consumers, they can reduce the likelihood that their conduct will take them outside the exemption. They can avoid conduct that is likely to influence the consumer. For example, distributors could:
- (a) avoid involving a relevant provider (i.e. an individual authorised to give personal advice to consumers on relevant financial products) in the distribution process, particularly when there is an existing relationship, or the consumer is aware that the relevant provider is authorised to provide personal advice; and
 - (b) ask 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 product.

Note: These factors are not exhaustive. The distributor should consider the relevant risks in the circumstances of its distribution process.

- RG 274.194 Further, if a distributor relying on the exemption informs a consumer that they are in the target market for a financial product, the distributor must not suggest or imply that it has considered the consumer's personal objectives, financial situation and needs or that the product is *suitable* for the consumer's individual circumstances. To do so may be misleading or deceptive and would fall outside of the exemption: see s12DA(1) of the ASIC Act.

Note: Regulatory Guide 244 *Giving information, general advice and scaled advice* ([RG 244](#)) explains the differences between giving factual information, general advice and personal advice.

- RG 274.195 Conduct beyond the exemption provided in s766B(3A) could constitute the provision of personal advice in breach of the law if the associated personal advice obligations are not met.

Note: Where the advice relates to a financial product within the meaning of Div 3 of Ch 7, persons providing personal advice must act in the best interests of the consumer (the 'best interests duty') and related obligations in Div 2 of Pt 7.7A.

Consumers outside the target market

- RG 274.196 Issuers and distributors should implement product governance arrangements that make it unlikely that consumers will actively seek to acquire financial products that are not consistent with their likely objectives, financial situation and needs.
- RG 274.197 However, if a distributor becomes aware that it is interacting with a consumer who is outside the target market for the product that the consumer seeks to acquire, the distributor will need to take steps that are reasonably likely to avoid distribution of the product to the consumer. In determining what steps are reasonable in these circumstances, the distributor must consider:
- (a) the circumstances of the interaction, including the distribution method through which the interaction takes place (whether online, in person,

over the phone) and any information or advice provided to the consumer on the product before this interaction;

- (b) the nature and degree of harm that might result from the product being acquired by the consumer (which in these circumstances can be assessed based on the circumstances of the consumer in question); and
- (c) the steps that can be taken to eliminate or minimise the likelihood of harm.

RG 274.198 The distributor is not prevented from ultimately selling the consumer a financial product in such circumstances, provided reasonable steps are taken: see s994E(4). However, a product that has been sold to consumers on multiple occasions when consumer harm is likely to result can indicate a failure to meet reasonable steps obligations.

RG 274.199 When a distributor knows or should know that the financial product is unsuitable for the consumer (e.g. when a product only benefits those who are employed, and the distributor is aware that the consumer seeking the product is unemployed), the distributor should take reasonable steps to avoid distributing the product to that consumer.

RG 274.200 If consumers outside the target market are regularly seeking the financial product, the distributor should inform the issuer of that fact and, if applicable, notify the issuer that a significant dealing in the product has occurred: see s994F(6) and RG 274.212–RG 274.216. The issuer can then determine whether the product is appropriate for a broader class of consumers beyond the target market, or, if not, take steps to ensure that promotional material, and other means through which consumers are made aware of the product, are appropriately directed to the target market and not more broadly.

Interaction with personal advice

RG 274.201 When a distributor provides personal advice, it will not be required to take reasonable steps that will, or are reasonably likely to, result in distribution of a financial product being consistent with the TMD: see s994E(3) and the definition of ‘excluded conduct’ in s994A(1).

Note 1: Personal advice providers have other obligations under the design and distribution obligations, including to provide distribution information to issuers: see RG 274.217–RG 274.220.

Note 2: As a result of s994AA(2), excluded conduct currently covers personal advice that is provided in relation to products regulated under the ASIC Act, as well as those regulated under the Corporations Act: see RG 274.31.

Note 3: ‘Excluded conduct’ also includes the giving of a disclosure document or PDS in the course of providing personal advice about a financial product—see [ASIC Corporations \(Design and Distribution Obligations Interim Measures\) Instrument 2021/784](#). This is in line with the Government’s intended operation of the legislation as set out in a public statement titled ‘[Updated amendments to the design and distribution obligations](#)’.

RG 274.202 The [Revised Explanatory Memorandum](#) at paragraph 1.84 notes, for financial products under the Corporations Act:

While retail product distribution conduct includes providing financial product advice, the new regime excludes personal advice and associated conduct from most of the new distribution obligations. This reflects that such conduct already involves consideration of the client's individual circumstances and is subject to the best interest obligations under Pt 7.7A of the Corporations Act.

RG 274.203 We consider that a TMD for a financial product should be considered by financial advisers in providing advice and meeting their best interests duty.

Note: For example, we consider that a TMD may be a factor considered under s961B(2)(e).

RG 274.204 It may be appropriate for a financial adviser to advise a consumer outside of the target market to acquire a financial product, when acquisition would be in the best interests of the consumer. For example, it may be appropriate in the broader context of a particular consumer's portfolio, taking into account their relevant circumstances, for an adviser to recommend a product that would ordinarily be too high-risk for the consumer if it were a concentrated holding.

Implementing personal advice

RG 274.205 The law includes a provision to facilitate the implementation of personal advice by distributors who are not associated with the advice provider: see s994E(6). A distributor will satisfy the reasonable steps obligation if their distribution conduct is necessary to implement personal advice given to the client in relation to the product they are distributing.

RG 274.206 According to the [Revised Explanatory Memorandum](#) at paragraph 1.105, retail product distribution conduct will be 'necessary to implement personal advice' if the distributor is:

... satisfied of all relevant matters including: that the particular retail client has received personal advice in relation to a particular product; that the advice remains current; and that the distributor's proposed conduct would be consistent with that advice as it relates to the particular product they would be distributing.

RG 274.207 In some circumstances the distributor will not be able to review the personal advice (e.g. if there are privacy concerns about a distributor accessing the advice). It may be reasonable in these circumstances for the distributor to rely upon the certification of the advice provider attesting that the client has received personal advice in relation to the particular product, that the advice remains current and that the advice is consistent with distributor's proposed conduct.

Note: In relation to advice provided by a financial adviser, when considering whether advice remains current, the distributor should consider industry practice as set out in Statements of Advice (e.g. 30 to 45 days).

Referrers

- RG 274.208 Some referrers may be a regulated person for the purposes of the design and distribution obligations: see RG 274.28. When a referrer who is a regulated person engages in retail product distribution conduct, the issuer and the referrer must comply with the reasonable steps obligation: see s994E(1) and (3).
- RG 274.209 A referrer engages in retail product distribution conduct when dealing in a financial product or providing financial product advice: see s994A(1). Dealing includes ‘arranging’ for a person to apply for or acquire a financial product: see s766C, as amended by s994A(1). Ultimately, whether a referrer’s conduct will constitute arranging is a question of degree. For more information on conduct that may constitute arranging, see [RG 36](#).

Note: Conduct that amounts to credit assistance or conduct that is exempt under the National Credit Act may constitute dealing for the purposes of the design and distribution obligations.

Example 16: Comparison website

A website provides comparisons of the rates and features of available home loans and refers users of the website to the credit providers for those loans by using links to their websites and application forms. The website provider holds a credit licence.

The website provider is engaging in retail product distribution conduct if its conduct constitutes ‘arranging’ for a person to apply for or acquire a product. The more active the website operator’s role in bringing into effect dealings in the product, the more likely the operator is arranging. For example, the conduct of the web provider is more likely to amount to ‘arranging’ if the website provider receives a benefit based on sales.

If the conduct of the website provider amounts to retail product distribution conduct, the issuer of the product and the website operator will need to satisfy the reasonable steps obligation.

In complying with the reasonable steps obligation, the issuer and the website provider will need to have regard to the nature of the referral conduct and the effect this may have on product distribution. Referral conduct may have a different impact on product distribution depending on the nature of the product, nature of the referral, what other controls the issuer has in place and the risk of harm to consumers if a referral is made outside of the target market. For example, what is reasonable in the circumstances may differ according to whether the website provides generic information or enables the consumer to filter by specifying parameters, and whether the website recommends a particular product. For more information on the reasonable steps obligation, see RG 274.167–RG 274.189.

- RG 274.210 The conduct of a referrer who relies on a licence exemption is limited by the conditions imposed on the exemption. Taking reasonable steps in this circumstance would not extend to requiring the unlicensed referrer to do something they are not permitted to do under the exemption they rely on.

Licensed referrers can engage in a broader range of conduct, and, therefore what is reasonable in the circumstances would not be limited in this way.

Note: For example, the conduct of the unlicensed referrer may be restricted to informing the consumer that a licensee can provide a service and giving the consumer information about how to contact them: see reg 25(2) of the National Credit Regulations.

Reasonable steps for distributors: Examples

RG 274.211 Below are some examples to illustrate our guidance on reasonable steps for distributors.

Example 17: Tyre and rim insurance

Tyre and rim insurance products are generally sold at the time of purchase of a motor vehicle. The distributor should consider how to prevent distribution to consumers where the issuer has identified in the TMD that the product is clearly unsuitable for them.

For example, in Report 492 *A market that is failing consumers: The sale of add-on insurance through car dealers* ([REP 492](#)), we identified consumers being sold tyre and rim insurance when the type or use (e.g. personal use or business use) of the vehicle meant the consumer was not covered in the event of a claim.

Examples of the eligibility criteria identified in REP 492 include:

- the type or class of vehicle (e.g. if the policy does not cover vehicles over a certain age); and
- the use or purpose of the vehicle (e.g. if the vehicle is to be used as a taxi or for other similar business purposes).

Both of these eligibility criteria are objective and are usually readily ascertainable at the point of sale. Distributors must establish processes to minimise the risk of sales of tyre and rim insurance in circumstances where these types of eligibility criteria are not met.

Example 18: Direct life insurance

Direct life insurance is sold to consumers by insurers or their sales partners over the phone, online or face-to-face. These products are sold with general advice (meaning a consumer's individual circumstances are not considered), or with no advice (meaning only factual information is given).

In [REP 587](#), we found that sales practices for direct life insurance and the design of the product itself were leading to poor consumer outcomes. Practices such as pressure selling and inadequate explanations of future costs and product exclusions resulted in high rates of cancellations during the cooling-off period, short-term lapse rates, and poor claims outcomes.

Therefore, for this product, we expect distributors to consider the following as part of their reasonable steps obligations:

- the level of oversight to apply, including the provision of training and scripts to set clear professional standards for sales conduct (e.g. setting standards for how distributors behave with vulnerable consumers);
- the appropriate controls to apply, including implementation of quality assurance audits that monitor sales conduct and policies that resolve poor consumer outcomes;
- the product's distribution conditions;
- the choice architecture employed; and
- sufficient monitoring of consumer outcomes to ensure that the distribution processes are performing in line with expectations.

Note: See [REP 587](#), pp 37–62.

Notifying the issuer of 'significant dealings'

- RG 274.212 A distributor of a financial product must notify the issuer of a significant dealing in the product that is not consistent with the product's TMD. If a distributor becomes aware of such a dealing, it must notify the issuer in writing as soon as practicable, and in any event within 10 business days after becoming aware: see s994F(6).
- RG 274.213 This obligation extends to personal advice providers, or those that engage in conduct associated with such advice.
- RG 274.214 The obligation to notify the issuer of a significant dealing is intended to help the issuer make timely and appropriate decisions (for example, a decision to review a TMD) and to meet its obligation to report significant dealings to ASIC: see the [Revised Explanatory Memorandum](#) at paragraph 1.115.
- RG 274.215 As noted in Section D, consideration of whether a dealing is significant will likely differ between issuers and distributors: see RG 274.162. While issuers will have an aggregate view of dealings in their products, distributors will only be aware of their own dealings. This will likely mean that distributors will be reporting clusters of their own dealings that are not consistent with the product's TMD.
- RG 274.216 We expect a distributor and issuer to agree on the form and content of the notification.

Keeping records and reporting information

Collecting and reporting information

RG 274.217 All distributors, including financial advisers, serve a critical role in product governance given their direct interaction with consumers. Distributors must collect information about the financial products they distribute, and ensure that this information flows back to the products' issuers: see s994F(2)–(6).

Note 1: *ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784* modifies s994F(4) of the Act to relieve distributors of the requirement to report to issuers whether a complaint has been received, including where nil complaints are received. However, distributors are still required to report the number of complaints they receive during the reporting period, if any. This is in line with the Government's intended operation of the legislation as set out in a public statement titled 'Updated amendments to the design and distribution obligations'.

Note 2: *ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784* also modifies s994F(5) of the Act to relieve distributors of the requirement to report that information specified by the issuer in its TMD has not been acquired during the reporting period (i.e. where nil information is acquired). However, distributors are still required to report such information where it is acquired by distributors during the reporting period. This is in line with the Government's intended operation of the legislation as set out in a public statement titled 'Updated amendments to the design and distribution obligations'.

RG 274.218 A distributor must provide the following information in writing to an issuer of a product where they engage in retail product distribution conduct in relation to the product:

- (a) information about whether the distributor received complaints in relation to the product during the reporting period specified in the TMD, and if so, the number of complaints received; and
- (b) any further information acquired during the specified reporting period, that the TMD has specified should be reported to the issuer.

RG 274.219 Distributors must report the information described in RG 274.218 to the issuer as soon as practicable, but in any case within 10 business days, after the end of the relevant reporting period: see s994F(4)–(5).

RG 274.220 Being provided with this information gives the issuer greater insight into consumer outcomes, which is critical in enabling the issuer to meet its obligations to determine on an ongoing basis whether changes are required to the TMD, and/or to the design of the product. The purpose of having this information reported to the issuer is to enable the issuer to identify promptly whether a review trigger, or another event or circumstance that would reasonably suggest that the TMD is no longer appropriate, has occurred.

Keeping records

RG 274.221 Distributors must keep records of distribution information in relation to products that are currently being issued, for up to seven years: see s1101C.

Note: All distributors must keep records of distribution information, including those providing personal advice or engaging in conduct associated with such advice.

RG 274.222 'Distribution information' includes the following:

- (a) the number of complaints the distributor receives in relation to the financial product;
- (b) the steps the distributor has taken to ensure that its distribution is consistent with the TMD (see RG 274.167–RG 274.174);
- (c) any information that the distributor is required to report to the issuer (for the purpose of prompting a review), as specified in the TMD;
- (d) the dates on which the distributor reported to the issuer the following:
 - (i) the number of complaints received during a specified reporting period;
 - (ii) other information specified in the TMD that the distributor must report; and
 - (iii) any significant dealings in the product (see RG 274.212–RG 274.216);
- (e) the substance of its reporting to the issuer; and
- (f) further information prescribed by the Corporations Regulations (see s994F(2)–(3) and (7)).

Note: Licensees are also required to keep records of complaints under [RG 271](#) (see Section E under 'Data collection, analysis and internal reporting').

RG 274.223 Keeping good records will assist the distributor in monitoring its governance processes and controls to meet its reasonable steps and other obligations.

RG 274.224 We may request these records to ensure compliance with the law. Good records are also likely to assist a distributor in demonstrating that it has taken the necessary steps to comply with its obligations.

F Our administration of the design and distribution obligations

Key points

We will administer the design and distribution obligations to promote the provision of suitable financial products to consumers: see RG 274.225.

When we have concerns that the design and distribution obligations have been contravened, we are able to exercise a range of administrative powers, including making a stop order: see RG 274.228–RG 274.244.

If a consumer suffers loss or damage due to a breach of the design and distribution obligations, they can seek to recover that loss in court: see RG 274.246–RG 274.247.

We have powers to modify and provide relief to extend or exclude the application of the design and distribution obligations. In considering whether to grant relief, we will consider the policy intention underlying the obligations including the potential impact of relief on consumers: see RG 274.250–RG 274.254.

Our role

- RG 274.225 We will administer the design and distribution obligations to promote the objectives of Ch 7 of the Corporations Act, including to promote the provision of suitable financial products to consumers.
- RG 274.226 Under Pt 7.8A, we have the power to make a stop order to protect consumers from breaches of the design and distribution obligations: see RG 274.228–RG 274.237. In appropriate cases, we may take enforcement action to protect consumers and promote the confident and informed participation of investors and financial consumers in the financial system more generally.
- RG 274.227 We also have a product intervention power to intervene in relation to financial products when we are satisfied that the product (or class of products) has resulted, will result or is likely to result in significant detriment to consumers: see Pt 7.9A.

Stop order power

- RG 274.228 The stop order power under Pt 7.8A is an administrative mechanism that allows us to prohibit entities from engaging in specified conduct when we are satisfied that there has been a breach of Div 2 of Pt 7.8A or s994E of the Corporations Act. Examples of breaches include when an entity has:
- (a) failed to make, review, make public or otherwise satisfy the requirements for a TMD;

- (b) distributed a financial product when a TMD has not been made for the product or is no longer appropriate; or
- (c) failed to take reasonable steps that will, or are reasonably likely to, result in distribution of the product being consistent with the TMD.

RG 274.229 If we have concerns that there may have been a contravention of the design and distribution obligations, we will generally notify the issuer before making a stop order.

RG 274.230 Generally, we expect to use our stop order power to stop the issue or distribution of a financial product (e.g. when we are satisfied that the TMD has not met the appropriateness requirements: see RG 274.64–RG 274.66).

RG 274.231 If we make a stop order, we will serve it on the issuer of the financial product. The issuer in turn must take all reasonable steps to ensure that other people who engage in conduct to which the order applies are aware of the order: see s994J(7).

Hearings

RG 274.232 Before we make a stop order, we are obliged to hold an administrative hearing and give a reasonable opportunity for any interested persons to make verbal or written submissions to us on whether the order should be made: see s994J(3).

RG 274.233 Regulatory Guide 8 *Administrative hearings: Principles and conduct* ([RG 8](#)) sets out in detail the guiding principles and procedures we adopt in the conduct of administrative hearings. Issuers and distributors can also refer to Information Sheet 1 *Administrative hearings* ([INFO 1](#)) for a concise summary.

Interim stop orders

RG 274.234 ASIC has the power to make an interim stop order without a hearing if we consider that a delay would be prejudicial to the public interest. Such an interim stop order lasts for 21 days, unless revoked earlier: see s994J(4).

RG 274.235 ASIC also has the power to make an interim stop order during a hearing. Such an interim stop order lasts until ASIC makes a stop order or the interim stop order is revoked: see s994J(5).

RG 274.236 To make an interim stop order, consistent with making stop orders generally, ASIC must be satisfied that there has been a breach of Div 2 of Pt 7.8A or s994E: see RG 274.228.

RG 274.237 ASIC has the power to revoke an interim stop order at any time. To revoke an interim stop order, the delegate must be satisfied that the concerns have been adequately addressed.

Enforcing the law

- RG 274.238 The Corporations Act imposes civil and criminal liability for a contravention of each obligation under Pt 7.8A. A contravention of s994B, 994C, 994D or 994E(1) or (3) can also give rise to a private cause of action: see RG 274.246–RG 274.247.
- RG 274.239 In conjunction with using our stop order power, we may consider taking enforcement action for a breach of the design and distribution obligations.
- RG 274.240 We also have powers to make an application to the court for orders to redress, prevent or reduce loss or damage suffered by non-party consumers in relation to breaches of the design and distribution obligations: see RG 274.248.
- RG 274.241 For guidance on our approach to enforcement, see Information Sheet 151 *ASIC’s approach to enforcement* ([INFO 151](#)).

Product intervention power

- RG 274.242 The product intervention power contained in Pt 7.9A of the Corporations Act and Pt 6-7A of the National Credit Act enables ASIC to intervene in relation to a product (or class of products) when we are satisfied that the product (or class of products) has resulted, will result or is likely to result in significant consumer detriment.
- RG 274.243 The product intervention power complements the design and distribution obligations. When issuers and distributors comply with the design and distribution obligations, we expect that it will be less likely that we will be required to exercise the product intervention power.
- RG 274.244 When there is a risk of significant consumer detriment, we can use the product intervention power in the absence of a contravention of the design and distribution obligations: see Regulatory Guide 272 *Product intervention power* ([RG 272](#)).

Remedies for consumers

- RG 274.245 Issuers, AFS licensees, Australian credit licensees and credit representatives are required by law to have a dispute resolution system that covers complaints made by consumers in relation to the financial services provided: see [RG 271](#). Consumers may raise concerns directly with an issuer or distributor in relation to the product or service provided by way of such a system.
- RG 274.246 If a consumer suffers loss or damage due to an entity’s breach of the design and distribution obligations in s994B, 994C, 994D, 994E(1) or (3), they can

seek to recover that loss or damage in court by taking action against the entity.

Note: An entity is not taken to have breached the reasonable steps obligations in s994E merely because a consumer who is not in the target market for the financial product acquires the product: see s994E(2) and 994E(4).

RG 274.247 The court may award compensation for loss or damage. It also has the power to make a variety of orders when it thinks it is necessary to do justice between the parties: see s994N. As such, the court may:

- (a) make an order declaring that a contract entered into by the person who suffered loss or damage is void; and
- (b) if it makes such an order—make such other orders as it thinks are necessary or desirable because of that order (e.g. an order for the return of money paid by a person and an order for payment of an amount of interest specified in, or calculated in accordance with, the order).

RG 274.248 We can apply to the court seeking orders to redress, prevent or reduce the loss or damage suffered by non-party consumers when there has been a breach of the design and distribution obligations set out in s994B, 994C, 994D, or 994E(1) or (3) that has caused, or is likely to cause, non-party consumers to suffer loss or damage.

Note: Non-party consumers are persons who have not been a party to proceedings under the Corporations Act in relation to the contravening conduct: see s994P.

RG 274.249 When a consumer has suffered loss or damage—whether monetary or non-monetary or both—as a result of an entity’s breach of the design and distribution obligations, we expect that the entity will remediate the consumer.

Note: See also Regulatory Guide 277 *Consumer remediation* ([RG 277](#)), which sets out our guidance on consumer remediation.

ASIC’s power to give relief

RG 274.250 ASIC has a discretionary power to provide exemptions from and modifications to the requirements of Pt 7.8A: see s994L.

RG 274.251 Our general approach to exercising our relief powers is set out in Regulatory Guide 51 *Applications for relief* ([RG 51](#)).

RG 274.252 When applying the general principles in RG 51 in the context of assessing applications for individual relief from provisions in Pt 7.8A, we will also take into account:

- (a) whether the objects of Ch 7 are being promoted, including the provision of suitable financial products to consumers (see s760A(aa));

- (b) the policy intention underlying the design and distribution obligations to:
 - (i) improve consumer outcomes; and
 - (ii) require financial services providers to have a consumer-centric approach to designing and distributing financial products; and
- (c) the legislative intent (as reflected in the law) for the design and distribution obligations to apply to a broad range of financial products.

RG 274.253 The requirement to comply with the design and distribution obligations, in some cases, flows from the requirement to provide disclosure: see, for example, s994B(1)(a) and (b). However, if we grant relief from the requirement to provide disclosure, relief from the design and distribution obligations will not automatically follow. An issuer or distributor seeking relief from disclosure requirements and the design and distribution obligations will need to specifically set out why relief should be granted in relation to each set of requirements. We will make separate decisions in relation to these requests.

RG 274.254 Our exemption and modification powers under Pt 7.8A can be used to provide relief on both an individual basis (i.e. in relation to a person) and class basis (i.e. in relation to a class of persons).

Appendix: Exchange traded products

RG 274.255 This appendix explains how the design and distribution obligations apply to issuers and distributors of exchange traded products (ETPs), which are traded on a financial market.

The nature and structure of exchange traded products

RG 274.256 Exchange traded products are open-end investment products that are traded on a financial market. In contrast to closed-end products such as LICs (see Example 13), an ETP's open-ended structure allows the issuer of an ETP to issue and redeem units on a daily basis resulting in the number of units on issue fluctuating depending on investor demand. An ETP issuer may use external market making (EMM) or internal market making (IMM) structures. Under the EMM structure, units are first issued to a wholesale client (the authorised participant) prior to being sold on a financial market, including to retail clients. Under the IMM structure, a trading participant is appointed as the issuer's agent to facilitate the issue of products on a financial market. In some circumstances, issuers of ETPs issue their product to consumers off-market.

Note: For more information on the nature and structure of ETPs, see Report 583 *Review of exchange traded products* ([REP 583](#)).

How the obligations apply

Issuers

RG 274.257 The Corporations Regulations clarify that an issuer of an ETP is required to make a TMD for an ETP that is designed to be sold to a retail client, even if it is first issued to a regulated person: see reg 7.8A.09. As a result, an issuer of an ETP that uses an EMM structure is required to prepare a TMD. An issuer that uses an IMM structure, where the trading participant acts as an agent of the issuer, directly issues to retail clients and is required to make a TMD as a result of s994B(1)(a) or (b).

Note: We have modified reg 7.8A.09 to address any uncertainty that it applies to certain securities as well as other financial products where the issuer issued the product with the intention that the acquirer would on-sell (see s1012C(6)(c)(i) and 707(3)(b)(i)). This reflects the types of products intended to be covered by the regulation: see reg 7.8A.09(4), s707(3)(b)(i) and [ASIC Corporations \(Design and Distribution Obligations—Exchange Traded Products\) Instrument 2020/1090](#).

RG 274.258 We have modified the obligations that apply to ETP issuers where they are required to prepare a TMD (either as a result of reg 7.8A.09 or s994B(1)(a) or (b)), to ensure that consistent obligations apply where these products are traded on financial markets. In particular, our modification clarifies that while issuers must review their TMD as necessary, they are not required to cease on-market distribution in circumstances where a TMD is no longer appropriate: see s994C(2) as modified by [ASIC Instrument 2020/1090](#). This is because, practically, an issuer of an ETP is not in a position to cease retail product distribution conduct in relation to a product traded on a financial market.

Note 1: In other circumstances, for example when an issuer of an ETP issues, or offers to issue, an ETP directly to a retail client off-market, it will be required to give a PDS or disclosure document to the retail client and the design and distribution obligations will apply to the issuer and distributor of the ETP in a similar manner to the design and distribution obligations for an initial offering by a LIC: see Example 13.

Note 2: In the absence of our modification, issuers and distributors of IMM structured ETPs would be subject to different obligations to issuers and distributors of EMM structured ETPs. See the definition of ‘regulated sale’ in s994A(1).

Distributors

RG 274.259 In circumstances where an ETP is acquired by consumers on a financial market, distributors of ETPs will only be required to comply with the obligation to keep records of complaint information and information that an issuer specifies in the TMD (see s994B(5)(h)), as well as to report this information to the issuer: see s994F as modified by [ASIC Instrument 2020/1090](#).

Note 1: A broker providing execution-only services would engage in ‘retail product distribution conduct’ within the meaning in s994A(1) because they are dealing in the ETP by arranging for the retail client to apply for or acquire the ETP: see s766C(1)(a) and 766C(2) and *Australian Securities and Investments Commission v Stone Assets Management Pty Ltd* [2012] FCA 630 where the facilitation of clients’ access to a derivatives trading platform was sufficient to constitute dealing for the purposes of s766C(2).

Note 2: The conduct of the interposed wholesale client (e.g. an authorised participant) that sells units on the financial market (including to consumers) would not amount to ‘retail product distribution conduct’ because disposing of a financial product is excluded from the definition of ‘dealing’ in s994A.

Reasonable steps for issuers

RG 274.260 An ETP issuer that is required to make a TMD must take steps that are reasonably likely to result in retail product distribution conduct (other than excluded conduct) being consistent with the TMD: see s994E(1).

- RG 274.261 ETPs are commonly acquired by consumers through online brokers in an execution-only context, where a consumer enters a trade on a trading platform. In considering its reasonable steps obligation, it is open to an ETP issuer to take into account the context of execution-only trading by consumers through brokers and the steps it is reasonably able to take to reduce the risk of distribution that is not consistent with the product's TMD. In this context, we would expect the issuer would generally be focused on factors that are likely to influence retail acquisition of its product. For example, the issuer is likely to focus on its own conduct in marketing the product and in interacting with consumers.
- RG 274.262 In any case, an ETP issuer is not required as part of its reasonable steps obligation to ensure that each on-market transaction involving retail clients is consistent with the TMD. As noted in the [Revised Explanatory Memorandum](#), at paragraph 1.101:
- If the issuer takes reasonable steps but retail product distribution conduct of third parties is still inconsistent with the target market determination, the issuer would not breach the requirement.
- RG 274.263 However, if an ETP issuer is actively marketing its product through a broker or other distribution channel, there are likely to be steps it could reasonably take to ensure that the marketing approach is consistent with the TMD. Further, if the issuer becomes aware that particular conduct by a broker is likely to result in its product being distributed outside the target market, it would be reasonable for the issuer to raise this with the distributor to attempt to address this conduct. If these practices were occurring as part of an arrangement the issuer had with the distributor to actively market its product, it may be open for the issuer to amend or enforce this arrangement.
- RG 274.264 Example 19 illustrates how an issuer of an ETP might approach its obligations where the product is intended to be sold on a financial market.

Example 19: Exchange traded products

An issuer of an ETP that is intended to be sold on a financial market prepares a TMD. In defining the target market for the product, the issuer takes into account that the product is geared. It excludes from the target market consumers with a low risk tolerance and consumers who do not have the ability to bear loss.

In setting distribution conditions and considering how it will meet its reasonable steps obligation, the issuer takes into account that its ETP is only available through execution-only broker channels and the issuer does not actively market its product through these channels. The issuer considers that consumers are unlikely to be influenced by conduct at this point of distribution and there are limited steps and controls available to it in relation to this conduct. Accordingly, the issuer determines that the steps reasonably available to it that are likely to reduce the risk of consumers

outside the target market acquiring the product generally relate to its own conduct, including:

- its website content and paths that contain information on its products as well as trading strategies using its various products;
- its marketing materials and strategy;
- its information packs that are available on request to consumers; and
- the call scripts used in relation to the product when consumers request a call from the issuer on its website.

Taking into consideration the above factors, the issuer sets distribution conditions and puts in place arrangements so that the product is directed towards consumers in the target market, and away from consumers outside the target market. For example, it ensures its call scripts are designed to reduce the risk that the product will be acquired by consumers with a low risk tolerance and consumers who do not have the ability to bear loss. To reflect the distribution approach that it will take in relation to the product, the issuer sets a distribution condition that the ETP will only be available to retail consumers on-market (as opposed to, for example, direct issue off-market to retail clients).

In preparing its TMD, the issuer specifies information that distributors will have to report (under [ASIC Instrument 2020/1090](#)) so that the issuer can properly review its TMD as necessary.

The issuer also sets review triggers for the product. Because the product has an objective to track an index in a particular way, it specifies a review trigger in relation to a material deviation from that objective. Because the target market includes consumers whose likely objectives, financial situation and needs are consistent with the relatively lower management fees of the product, the issuer also specifies that a review should occur if there is a significant increase in management fees.

If the issuer were to also make the ETP available by way of off-market direct issue to consumers, in respect of those direct off-market issues only, the issuer and distributors will be subject to the design and distribution obligations as they ordinarily apply. The issuer will need to consider its TMD requirements and reasonable steps obligation in these circumstances, noting that there is an increased ability to control off-market retail acquisition of the product, compared with an acquisition by a consumer on a financial market.

Key terms

Term	Meaning in this document
AFCA	Australian Financial Complaints Authority—AFCA is the operator of the AFCA scheme, which is the external dispute resolution scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC Instrument 2020/1090	<u>ASIC Corporations (Design and Distribution Obligations—Exchange Traded Products) Instrument 2020/1090</u>
ASIC Regulations	<i>Australian Securities and Investments Commission Regulations 2001</i>
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee Note: This is a definition contained in s761A.
CCI	Consumer credit insurance
choice architecture	Refers to features in an environment that influence consumer decisions and actions. These features are present at every stage of product design and distribution. Examples include product bundling, default settings, sales process and website design
choice product	A superannuation product that is not a MySuper product
consumer	A 'retail client' for a financial product, unless otherwise specified
continuing products	Existing products that continue to be issued to consumers after commencement of the design and distribution regime
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act

Term	Meaning in this document
Corporations Regulations	<i>Corporations Regulations 2001</i>
design and distribution obligations	The obligations contained in Pt 7.8A of the Corporations Act
design obligations	Has the meaning given in s994B and 994F of the Corporations Act
distribution condition	Has the meaning given in s994B(5)(c) of the Corporations Act
distribution information	Has the meaning given in s994F(2)–(3) and (7) of the Corporations Act
distributor	A 'regulated person', as defined in s994A(1) of the Corporations Act Note: An issuer can also be a distributor.
employee share	Has the meaning given in s9 of the Corporations Act
exchange traded product	Has the meaning given in ASIC Instrument 2020/1090
financial adviser	An individual who is authorised to give personal advice to consumers on Ch 7 financial products
financial product (or product)	Has the meaning given in s994AA of the Corporations Act, and includes credit contracts regulated under the National Credit Act as well as short-term credit not regulated under the National Credit Act
financial advice	A recommendation or a statement of opinion, or a report of either of these things, that is intended to, or can reasonably be regarded as being intended to, influence a client in making a decision about a particular financial product or class of product as defined in s766B of the Corporations Act
FSI	Financial System Inquiry
FSI final report	Financial System Inquiry: Final report , November 2014
IDPS	An investor directed portfolio service as defined in Class Order [CO 13/763] <i>Investor directed portfolio services</i> or any instrument that amends or replaces that class order
issuer	A person who is subject to the TMD requirements in s994B (including sellers in a regulated sale situation), unless indicated otherwise

Term	Meaning in this document
key attributes	<p>The features and attributes of a product that affect whether the product is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market</p> <p>Note: For more information, see RG 274.8.</p>
LIC	A listed investment company
MySuper product	A superannuation product provided under Pt 2C of the SIS Act
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Regulations	<i>National Consumer Credit Protection Regulations 2010</i>
new products	Products issued for the first time following the commencement of the design and distribution regime
non-party consumers	Has the meaning given in s994P(1)(c) of the Corporations Act
PDS	<p>A Product Disclosure Statement—a document that must be given to a consumer for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> the person giving the advice has considered one or more of the person's objectives, financial situation and needs; or a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p>
platform	An investor directed portfolio service (IDPS) and IDPS-like scheme
product	A financial product or service
product governance	The systems, processes, controls, procedures, audits, or other arrangements in place to ensure that, as far as reasonably practicable, issuers and distributors comply with their design and distribution obligations
product intervention power	Means the power contained in Pt 7.9A of the Corporations Act and Pt 6-7A of the National Credit Act
Productivity Commission Inquiry report	Productivity Commission, Competition in the Australian financial system: Inquiry report , June 2018

Term	Meaning in this document
Pt 7.8A (for example)	A part of the Corporations Act (in this example numbered 7.8A), unless otherwise specified
reasonable steps obligation	The obligation to take reasonable steps to ensure distribution is consistent with the TMD, as defined in s994E(1), (3) and (4) of the Corporations Act
regulated person	Has the meaning given in s994A(1) of the Corporations Act
regulated sale	Has the meaning given in s994A(1) of the Corporations Act
REP 622 (for example)	An ASIC report (in this example numbered 622)
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations and as modified by ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784 .
retail product distribution conduct	Has the meaning given in s994A(1) of the Corporations Act
review period	Has the meaning given in s994B(5)(e)–(f) of the Corporations Act
review triggers	Events and circumstances that would reasonably suggest that the TMD is no longer appropriate, as defined in s994B(5)(d) of the Corporations Act
Revised Explanatory Memorandum	Revised Explanatory Memorandum for Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019
RG 51 (for example)	An ASIC regulatory guide (in this example numbered 51)
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
Royal Commission final report	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Final report , February 2019
s994B (for example)	A section of the Corporations Act (in this example numbered 994B), unless otherwise specified
significant dealing	The term 'significant dealing' is not defined in the Corporations Act. In this guide, we have listed factors to consider when deciding if a significant dealing has occurred: see RG 274.159–RG 274.162
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>

Term	Meaning in this document
stop order power	An administrative mechanism that allows ASIC to prevent entities from engaging in specified conduct when, in ASIC's view, there has been a breach of Div 2 of Pt 7.8A or s994E of the Corporations Act. ASIC is granted this power under Pt 7.8A of the Corporations Act
target market	The class of consumers described in the TMD for the product under s994B(5)(b) of the Corporations Act
target market determination	Has the meaning given in s994B of the Corporations Act
TMD	Means a target market determination document

Related information

Headnotes

consumer, financial product, design obligations, design and distribution obligations, distribution obligations, distributors, issuers, key attributes, product governance, reasonable steps obligation, retail client, significant dealings, target market, target market determination, TMD

Regulatory guides

[RG 8](#) *Administrative hearings: Principles and conduct*

[RG 36](#) *Licensing: Financial product advice and dealing*

[RG 51](#) *Applications for relief*

[RG 53](#) *The use of past performance in promotional material*

[RG 104](#) *AFS licensing: Meeting the general obligations*

[RG 175](#) *Licensing: Financial product advisers—Conduct and disclosure*

[RG 205](#) *Credit licensing: General conduct obligations*

[RG 234](#) *Advertising financial products and services (including credit): Good practice guidance*

[RG 244](#) *Giving information, general advice and scaled advice*

[RG 271](#) *Internal dispute resolution*

Note: This guide came into effect on 5 October 2021.

[RG 272](#) *Product intervention power*

[RG 277](#) *Consumer remediation*

Information sheets

[INFO 1](#) *Administrative hearings*

[INFO 151](#) *ASIC's approach to enforcement*

Consultation papers

[CP 325](#) *Product design and distribution obligations*

Reports

[REP 69](#) *Shadow shopping survey on superannuation advice*

[REP 279](#) *Shadow shopping study of retirement advice*

[REP 454](#) *Funeral insurance: A snapshot*

[REP 470](#) *Buying add-on insurance in car yards: Why it can be hard to say no*

[REP 492](#) *A market that is failing consumers: The sale of add-on insurance through car dealers*

[REP 580](#) *Credit card lending in Australia*

[REP 583](#) *Review of exchange traded products*

[REP 586](#) *Review of reverse mortgage lending in Australia*

[REP 587](#) *The sale of direct life insurance*

[REP 632](#) *Disclosure: Why it shouldn't be the default*

[REP 674](#) *Response to submissions on CP 325 Product design and distribution obligations*

Legislative instruments

[ASIC Class Order \[CO 14/1262\]](#)

[ASIC Corporations \(Basic Deposit and General Insurance Product Distribution\) Instrument 2015/682](#)

[ASIC Corporations \(Deferral of Design and Distribution Obligations\) Instrument 2020/486](#)

[ASIC Corporations \(Design and Distribution Obligations—Exchange Traded Products\) Instrument 2020/1090](#)

[ASIC Corporations \(Design and Distribution Obligations Interim Measures\) Instrument 2021/784](#)

Legislation

ASIC Act, Div 2 of Pt 2, s12DA

ASIC Regulations, reg 2B(3)

Corporations Act, Ch 7, Pts 6D.2, 7.8A, 7.9 and 7.9A, s9, 707, 760A, 766B, 766C, 910A, 912A, 912D, 961B, 994A, 994AA, 994B, 994C, 994D, 994E, 994F, 994G, 994J, 994L, 994N, 994P, 1012C, 1018A, 1023E, 1101C, 1311

*Corporations Amendment (Design and Distribution Obligations)
Regulations 2019*

Corporations Regulations, reg 7.6.01, 7.8A.02, 7.8A.05, 7.8A.06, 7.8A.07,
7.8A.08, 7.8A.09, 7.8A.10, 7.8A.20

National Credit Regulations, reg 25

National Credit Act, Pt 6-7A

SIS Act, s52

*Treasury Laws Amendment (Design and Distribution Obligations and
Product Intervention Powers) Act 2019*