

PRODUCT DESIGN AND DISTRIBUTION OBLIGATIONS (DDO)

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Key Messages

- ASIC's approach: Given Design and Distribution Obligations (DDO) commenced in October 2021, industry has now had sufficient time to implement the regime. One of ASIC's strategic priorities is reducing the risk of harm to consumers of financial and credit products caused by poor product design, distribution and marketing, especially by driving compliance with new requirements. Implementation of DDO is one of our core strategic projects, as outlined in ASIC's Corporate Plan 2022-26 - Focus 2022-23.
- We have 10 targeted surveillance projects on foot focussed on sectors where we have seen consumer harms from poor design or distribution practices in the past, including superannuation, crypto, buy now pay later, credit cards and small amount credit products. ASIC is also taking a product governance lens to our business-as-usual work, including in reviewing disclosure for investment products – resulting in some recent stop orders.
- These early surveillances have been focussed on TMDs, but as time goes on the focus will move to whether firms are meeting their monitoring and review obligations, including appropriately responding to outcomes.
- Early indications are whilst some in industry have implemented the obligations appropriately, there is more work that could be done to improve approaches, see for example ASIC's recent [media release](#) urging superannuation trustees to improve the effectiveness of their target market determinations (TMD). Where ASIC identifies harms, we will use our full regulatory toolkit, including negotiated improvements, stop orders and enforcement action. ASIC expects that industry will improve their approach to DDO compliance over time, and that the regime will drive better designed and targeted products and improve consumer outcomes.

Background

- The DDO require financial product firms to develop products that meet the needs of the consumers in their intended target market, and to direct distribution to that target market, including through setting appropriate distribution conditions. Issuers are also required to monitor outcomes and review their arrangements over time. The DDO apply broadly and cover most products across all sectors of the financial services market. The reforms make issuers and distributors more accountable for ensuring products are designed with consumer needs in mind and targeted at appropriate sectors of the population.

- **The DDO 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 so that the products being marketed to consumers are likely to be consistent with their likely objectives, financial situation and needs.
- Similarly, **DDO is not a limitation on consumer choice**. Consumers are still able to purchase a full range of products, should they wish to. However, DDO requires issuers and distributors to appropriately target their products. This means that consumers generally should not be targeted and marketed products that are not appropriate for their needs. Note: some issuers of hybrid securities have put in place distribution controls that exclude some consumers from being able to acquire these products – this is a decision taken by the issuer of the product having regard to their risk and the controls they are able to put in place to reduce the likelihood the products will be distributed to consumers outside the target market.

ASIC Action

ASIC's approach to supervision and enforcement

- ASIC will pursue targeted, risk-based surveillances and take enforcement and other regulatory action, including issuing stop orders, to address poor design and distribution of products.
- We will focus on sectors and products that pose the greatest risks of consumer harm and apply a DDO lens when responding to poor consumer outcomes that we identify.
- Our actions include **conducting surveillances in relation to** superannuation products, managed funds, credit cards, small amount credit providers and buy now pay later providers.

Recent regulatory actions

- In August, ASIC issued a media release urging super trustees to improve the effectiveness of TMDs for their products, after a sample review of trustee compliance found some poor practices.

Stop order actions

- ASIC has taken 11 stop order actions to date. Please see the table in the Annexure for details.

Industry's implementation of the obligations

- Our early reviews of TMDs highlighted some disappointing approaches. But we have seen some positive improvements in response. The key themes identified from across our engagements on TMDs have included:
 - appropriately defining the target market. In particular, we have encouraged (as per our guidance) the use of objective and tangible parameters to describe the class of consumers in the target market, rather than focusing solely on consumer preference (for example, 'consumer who wants access to a points credit card', or 'consumers who want exposure to hybrid securities' as the whole target market). We have seen some issuers focus too heavily on consumer preference, which is likely to shift the onus back onto the consumer at the point

of sale and not achieve the policy intent of this reform. We have found that where there is a clearly defined target market, this often reflects better internal processes used to assess suitability.

- the use of appropriate distribution conditions that make it more likely that the consumers who acquire the product will be in the target market
- the use of robust review triggers (circumstances that are likely to suggest the TMD may no longer be appropriate) that are appropriate for the risk of the product (e.g. for superannuation products, an adverse member outcomes conclusion was not always a review trigger).

Interim measures

- Following feedback from industry stakeholders, Treasury released a statement on **9 August 2021** (and updated this on **14 September 2021**) setting out the Government's intention to make amendments to the application of the DDO.
- To provide certainty on the application of the DDO regime in the period prior to the Government making the amendments listed in the statement, ASIC, following targeted consultation, put in place interim measures for a period of 2 years consistent with the Government's stated policy intent, using its modification and exemption powers under s994L of the Corporations Act. These interim measures provide certainty on the application of the DDO, including to exclude margin loans to businesses, clarify the exemption for employers, narrow the scope of non-cash payment facilities and to turn off the 'nil complaints' requirement that would have otherwise required distributors to make reports where they had not received relevant information during a reporting period.

Further amendments in due course

- In releasing its statement on the interim measures, Treasury indicated that it intends to consult on further measures with stakeholders, including amendments to:
 - make clear that more streamlined obligations (i.e. only record keeping and notification obligations) for distributors apply where the intermediary has a duty to act in the consumer's best interests, such as where personal advice is provided under the Corporations Act, or where mortgage brokers engage in similar conduct. In RG 274, we note that a TMD for a financial product should be considered by financial advisers in providing advice and meeting their best interests duty;
 - ensure that the DDO regime applies to consumer leases; and
 - consider the operation of the complaints reporting regime to ensure that it is fit-for-purpose, following immediate action to remove the requirement for distributors to report nil complaints and nil information to issuers.

Annexure A – DDO Stop Orders

Company	Investment	Reasons	Date	Status	Reference
UGC Global Group	UGC Global Alpha Fund Limited	§ 47C	28 July 2022	Interim order in place	22-194MR
	UGC Global Alpha Limited	§ 47C	28 July 2022	Interim order in place. § 45	22-194MR
<div>§ 47C</div>					
Responsible Entity Services Limited	Pleasure Point Mine units (PPM units)	§ 47C	28 July 2022	Order lifted 10 August 2022 following hearing and TMD adjustments made	22-194MR See IM performance and risk marketing brief



Open Corp Funds Management (t/a ResiFund)	Australian Residential Property Fund	<p>§ 47C [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>13 Sep 2022.</p> <p>Further interim order 28 September 2022.</p>	Interim order revoked after revised TMD was accepted by the delegate.	22-252MR
Fawkner Property Limited	Private Property Trust No.20	<p>§ 47C [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>13 Sep 2022</p> <p>Further interim order 29 September 2022</p>	Interim order revoked after revised TMD was accepted by the delegate.	22-252MR See IM performance and risk marketing brief
Australasian Property Investments Limited (APIL)	APIL Essential Retail Income Fund	<p>§ 47C [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>30 Sep 2022</p>	APIL ceased fundraising for the fund and removed the PDS and TMD from the market.	22-266MR
Holon Investments Limited	Holon Bitcoin Fund ARSN 659 090 294	<p>§ 47C [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>10 Oct 2022</p>	Stop order hearings	22-278MR



	Holon Ethereum Fund ARSN 659 090 516 Holon Filecoin Fund ARSN 659 090 614	s 47C [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]		scheduled for late October	
Westlawn Financial Services Limited	Westlawn Income Fund	s 47C [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	20 October 2022	Interim order in place	22-284MR
Neldner Road Vintners Limited	Class A shares	s 47C [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	24 October 2022	Interim order in place	MR <i>not yet published</i>