REPORT 384

Regulating complex products

January 2014

About this report

This report examines the risks posed to retail investors by complex products, ASIC's work in regulating complex products, and opportunities for ASIC to undertake further work in this area.

This report should be read by financial services businesses involved in the development and distribution of complex products, providers of financial advice relating to complex products, and those with an interest in engaging with ASIC on our approach to regulating complex products.

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.

Disclaimer

This report 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 report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

Executive summary

1 Complexity in financial products can have an impact on the realisation of ASIC's strategic priorities of promoting confident and informed investors and financial consumers, and fair and efficient markets.

2 Innovation in financial markets, including the development of complex products, can result in the more efficient allocation of resources and thereby a higher level of capital productivity and economic growth. However, complexity can also increase the likelihood that retail investors[1] will not have a sufficient understanding of the risks associated with a product to make an informed investment decision.

3 This can lead to an investor acquiring a product that is not aligned with the level of risk they are willing to tolerate, which can in turn have a negative impact on investor confidence if unexpected losses occur. Therefore, it is important that product issuers and distributors effectively manage these risks to reduce the likelihood of mis-selling.

4 We have recently focused our attention in this area through a dedicated Complex Products Working Group. The group conducted a broad review of the risks posed to investors by complex products and our approach to regulating complex products. This report draws on the review to set out:

(a) our recent and current work on complex products; and

(b) opportunities for ASIC to undertake further work on complex products, including, where we identify issues related to the development or distribution of particular complex products, working with industry to address those issues.

5 We encourage financial services businesses involved in the development and distribution of complex products, and the provision of financial advice on complex products, to consider the risks outlined in this report in the context of their own business.

6 We were mindful of the Government's moratorium on new financial regulation, and its broader deregulatory agenda, when drafting this report and identifying opportunities for further work on complex products. If we consider it appropriate to provide further guidance on complex products in the future, we will take these government initiatives into account, and consult with industry and the public first.

[1] This report has focused on issues affecting retail investors. References to 'investors' mean 'retail investors'.

What is a complex product?

7 We have identified:

(a) product structures and/or features that are inherently more likely to make a product complex (see Table 1); and

(b) products that display these structures and/or features and that we currently consider to be complex (see Table 2).

Table 1: Indicators of complexity

Feature	Description and examples
Specific complex features	The product contains specific features that are complex and are likely to be difficult for investors to understand (e.g. embedded leverage or inverse returns).
Difficulty in assessing potential performance and risks	In addition to specific complex features, the product has a generally complex structure that makes it difficult to assess the product's potential performance and risks—for example: • performance depends on the interaction of a relatively large number of underlying components, indices or triggers; • the product includes capital guarantees or capital protection elements where the guarantee or protection is qualified; • the product uses complex algebraic formulas to determine the investor's participation in reference asset performance; • the product includes events such as triggers for the cash flows from the product to come in or out of existence that reduce income payments for the life of the investment or the returns on maturity (while the events themselves may be predetermined, it may be difficult for an investor to assess the likelihood of such events occurring); • the product involves complicated legal structures (e.g. the use of special purpose vehicles, interposed entities and chains of entities, or the inclusion of some legal structures based offshore); • there is exposure to underlying instruments that pose particular secondary risks (e.g. derivatives that are not centrally cleared or fully collateralised); and • a substantial portion of a product's ultimate investment exposure is obtained indirectly through derivatives.

8 Other features may not be complex in themselves but, in combination with a complex product, may increase the likelihood of investor detriment (e.g. use of leverage, exit charges or features that pose a barrier to exiting the product, lack of liquidity or a viable mark-to-market mechanism). Drawing on the indicators of complexity in Table 1, we have identified a non-exhaustive list of products we currently consider to be complex: see Table 2.

Table 2: Financial products that we currently consider to be complex

Products
Agribusiness managed investment schemes (based on individual contracts)
Exchange-traded options strategies
Hedge funds
Hybrid securities
Leveraged derivative products (e.g. contracts for difference (CFDs) and margin foreign exchange (margin FX) contracts)
Managed funds with complex non-standard or non-linear payoffs
Structured products
Warrants (non-vanilla)

Risks relating to complex products

9 Table 3 outlines the risks posed by complex products to investors at each stage of the product life cycle. The potential consequence of each risk is that an investor acquires a product that is not aligned with the level of risk they are willing to tolerate, which can in turn result in unexpected losses. Table 3 also summarises our current work in response to each risk and identifies opportunities for ASIC to undertake further work, including working with industry, where appropriate.

10 Where we identify serious misconduct related to complex products, we will take enforcement action where appropriate.

Table 3: Risks of complex products

Risk to investors	Our recent and current response	Opportunities for further/ongoing work
Product development stage (see Section C)		
Complex products that are poorly designed enter the market and are offered to investors	Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104) provides general guidance on what Australian financial services (AFS) licensees need to do to meet the general obligations. We have completed targeted work on specific complex products. For example, we have: • worked with the Australian Financial Markets Association (AFMA) to develop principles for its members to guide the product development process for retail structured products;[2] and • introduced AFS licence obligations that influence the way products are issued (e.g. licensees of agribusiness managed investment schemes must register leases and other rights to use relevant land before scheme interests are issued).	Where we identify issues relating to the development of particular complex products, we will work with industry to address those issues. There is also scope, if necessary, to issue guidance on our expectations of product issuers when developing complex products in the future.

[2] AFMA, *Principles relating to product approval: Retail structured financial products*, October 2012.

Risk to investors	Our recent and current response	Opportunities for further/ongoing work
Product distribution stage (Section D)		
Inappropriate distribution channels are used for offering complex products to investors	We have worked with AFMA to develop principles for its members to guide the distribution of retail structured products. We have requested that issuers of CFDs and margin FX contracts carefully review their distributor relationships to ensure that they are not facilitating the unlawful provision of financial services by any unlicensed distributors.	Where we identify issues relating to the distribution channels for particular complex products, we will work with industry to address those issues. There is also scope, if necessary, to issue guidance on our expectations of product issuers when selecting distribution channels for complex products in the future.
Disclosure relating to complex products is not clear, concise and effective	We have issued a range of guidance aimed at enhancing the quality of disclosure, including for products that are likely to be complex and difficult to explain: see Table 7. We conduct surveillances to monitor compliance with disclosure obligations: see Table 8.	We will continue to take a risk-based approach when conducting surveillances targeting product disclosure. We will consider whether there is scope to require, and the desirability of requiring, disaggregated cost and value disclosure to investors.
Advertisements for complex products do not fairly represent the complex product or its key features and risks, creating unrealistic expectations for investors	Regulatory Guide 234 *Advertising financial products and services (including credit): Good practice guidance* (RG 234) helps promoters comply with their legal obligations when advertising financial products and services. We conduct surveillances to monitor compliance with advertising obligations: see Table 9.	We will continue to take a risk-based approach when conducting surveillances targeting advertising.
Investors do not have access to general, independent information on complex products	We have provided a range of online information and tools about complex products.	We will continue to provide online information and tools on complex products.
Point-of-sale stage (Section E)		
Investors do not get appropriate financial advice on complex products	We conduct surveillances of financial advisers to monitor compliance with the law: see Table 10.	We will continue to take a risk-based approach when reviewing the quality of financial advice recommending investment in complex products.
Investors who acquire complex products without financial advice may not fully understand the nature of the product	Regulatory Guide 227 *Over-the-counter contracts for difference: Improving disclosure for retail investors* (RG 227) includes a benchmark on issuer responsibility to have in place a client qualification policy that tests prospective clients' understanding of the features and risks of over-the-counter (OTC) CFDs before they begin to trade. We have issued warnings about the risks of investing in hybrid securities and of trading in margin FX contracts.	We will explore the potential for using investor self-assessment tools to assist investors in testing their understanding of particular products before investing.

Risk to investors	Our recent and current response	Opportunities for further/ongoing work
Post-sale stage (Section F)		
Investors do not receive ongoing product information that is essential for making appropriate trading decisions	We have provided specific disclosure guidance for various complex products, which has included requirements to provide ongoing information about the performance of a product (e.g. in Regulatory Guide 240 *Hedge funds: Improving disclosure* (RG 240)).	Where we identify issues relating to the provision of post-sale information for particular complex products, we will work with industry to address those issues. There is also scope, if necessary, to issue more guidance on our expectations of product issuers in relation to the provision of time-critical post-sale information about complex products in the future.

A Introduction

Key points

We have considered the risks posed to investors by complex products, reviewed our approach to regulating complex products, and identified opportunities for further work in this area.

Our objective in publishing this report is to facilitate discussion between ASIC and interested stakeholders on the scope of the risks posed to investors by complex products, and the effective management of those risks.

We invite feedback on the issues raised in this report.

This report is divided into sections that focus on each stage of the product life cycle—product development, product distribution, point of sale and post sale.

Background

11 Financial products and markets are continually growing in complexity. The more complex a product becomes, the more difficult it is for investors to understand its key features and risks. More complex products are also more difficult to describe in a clear, concise and effective manner in disclosure documents. These factors can all increase the risk that products will be mis-sold to investors. This is a slightly different issue from how risky a product is. Not all complex products pose the same degree of risk, but the more complex a product is, the harder it is for investors (and even their advisers) to understand its features and risks.

12 The way complex products are distributed to investors is also relevant. If products are marketed and sold directly to investors, or investors receive advice from a financial adviser who does not understand the product, this may result in a poor outcome for investors.

13 We have recently focused our attention on complex products through a Complex Products Working Group. The group conducted a broad review of the risks posed to investors by complex products and our response to those risks.

Purpose of this report

14 Our objective in publishing this report is to initiate further discussion with interested stakeholders on the scope of the risks posed to investors by complex products, and the effective management of those risks. With this in mind, this report:

(a) outlines the risks posed by complex products to investors;

(b) sets out our recent and current work on complex products; and

(c) identifies opportunities for further work.

15 We encourage financial services businesses involved in the development and distribution of complex products, and the provision of financial advice on complex products, to consider the risks outlined in this report in the context of their own business.

Overview

16 Section B discusses what makes a product ‘complex’, provides a non-exhaustive list of products that we currently consider to be complex, and sets out why complexity in financial products is significant.

17 Sections C–F consider the separate stages of a complex product’s life cycle, as follows:

(a) the product development stage (see Section C);

(b) the product distribution stage (see Section D);

(c) the point-of-sale stage (see Section E); and

(d) the post-sale stage (see Section F).

Feedback

18 We welcome feedback on the issues raised in this report—in particular, your views on:

(a) the risks posed to investors by complexity in financial products, and the extent of those risks; and

(b) the options for mitigating these risks, including the opportunities for further work identified in this report.

Please provide any feedback by 31 March 2014 to:

Barton Hoyle
Senior Lawyer
Strategy and Policy
Australian Securities and Investments Commission
email: barton.hoyle@asic.gov.au.

B Complex products

Key points

We have identified some indicators of complexity and set out a non-exhaustive list of financial products that we currently consider to be complex.

Complexity in products is significant because it may increase the likelihood that investors misunderstand the nature of a product and its risks.

We have conducted 'health checks' on some of the products we consider to be complex, and, where appropriate, have provided further guidance to industry on its responsibilities when offering these products to investors.

What is a complex product?

19 Internationally, there is no settled definition for what constitutes a 'complex product'.

20 In 2013 the International Organization of Securities Commissions (IOSCO) released a report that set out principles to govern the sale of complex financial products to investors.[3] The report nominates the following as common features of many complex products:

(a) terms, features or a complex structure that are not likely to be reasonably understood by an average investor (as opposed to more traditional and simpler investment instruments);

(b) difficulty in valuations (i.e. valuations requiring specific skills and/or systems); and

(c) a very limited or no secondary market (and, therefore, products are potentially illiquid).[4]

21 The Financial Industry Regulatory Authority (FINRA) in the United States takes a similar approach by identifying characteristics that may render a product 'complex' for the purposes of determining whether the product should be subject to heightened supervision and compliance (such as a suitability assessment and post-approval review). Typically, any product with multiple features that affect its investment returns differently under various scenarios is potentially complex.[5]

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[3] IOSCO, *Suitability requirements with respect to the distribution of complex financial products: Final report*, FR01/13, January 2013.
[4] Ibid., p. 10.
[5] FINRA, *Heightened supervision of complex products*, Regulatory Notice 12-03, p. 3.

22 The European Union provides a reasonably comprehensive definition of 'complex products'. It distinguishes between certain specified products that are automatically deemed to be complex (including convertible shares, derivatives and structured instruments that embed a derivative, and warrants), and products that are automatically non-complex (including ordinary shares admitted to trading on a regulated market, and money market instruments and bonds (other than those embedding a derivative)).

23 For those products falling between the two specific categories, complexity is assessed against the following criteria:

(a) whether there are opportunities for the product to be independently valued, and disposed of or otherwise realised;

(b) whether there is any actual or potential liability for the investor that exceeds the cost of acquiring the product; and

(c) whether adequately comprehensive information on the product's characteristics is publicly available and is likely to be readily understood so as to enable the average investor to make an informed judgement about whether to enter into a transaction in that instrument.[6]

24 However, there is also growing international recognition that, where financial products are concerned, complexity can be a relative concept. It depends on a number of things, including the experience and knowledge of a particular investor. Even within a single class of products, some might be more complex than others, depending on particular features.

25 For the purposes of this report, we have:

(a) identified product structures and/or features that are inherently more likely to make a product complex; and

(b) set out a non-exhaustive list of products that we currently consider to be complex.

26 This report focuses on ways to address the challenges posed by complexity in financial products, rather than setting a particular definition. Such challenges are likely to be specific to each investor's own financial literacy and experience.

Indicators of complexity

27 Any financial product involves some element of risk, of various kinds and to varying degrees. The key is for an investor to be able to understand the nature of the potential risk, and assess whether they are prepared to tolerate it in light of their financial situation, objectives and expected return on the investment.

[6] Markets in Financial Instruments Directive (MiFID), Level 2 Directive 2006/73/EC, Article 38.

28 However, where a product is complex, this may make the process of assessing risk more difficult. Specific features are inherently more likely to make a product complex, such as embedded leverage and inverse returns. Another key indicator of complexity is difficulty in being able to assess the potential performance and/or risks of a product (e.g. performance may depend on the interaction of a relatively large number of underlying components, indices or triggers: see Table 1). A product may have features that by themselves are not complex but, in combination with a complex product, may lead to investor detriment (e.g. exit charges, or lack of liquidity or a viable mark-to-market mechanism).

29 Table 4 provides a non-exhaustive list of products that we currently consider to be complex.

Table 4: Financial products that we currently consider to be complex

Product	Description/market information
Agribusiness managed investment schemes (based on individual contracts)	Invested money is used to invest in livestock, farming or forestry projects. Risks include the long investment timeframes and the many variables that make returns difficult to predict. In addition, the use of legal structures imposes obligations on investors that are not always well understood. *Investor market in Australia* • Investors in agribusiness managed investment schemes were steady at 22,500 over 2012.[7] • 63% of investors used an adviser in their most recent agribusiness managed investment scheme investment.[8]
Exchange-traded options strategies	Exchange-traded options strategies are a multi-leg option that is marketed to investors in a manner that creates a financial product as they are packaged as a strategy.
Hedge funds	Hedge funds use alternative investment strategies that are more complex than traditional managed funds. Characteristics that distinguish hedge funds from other managed investment schemes include the use of leverage, derivatives and short selling, or seeking returns with a low correlation to equity, bond or cash markets. These characteristics and other features of hedge funds, such as charging performance fees, mean that investors in these funds can be exposed to more complex risks than investors in funds pursuing more 'vanilla' investment strategies.[9] *Investor market in Australia* • At 30 September 2012, identified single-strategy hedge funds had $50.7 billion in funds under management, and funds of hedge funds had $15.2 billion. There was little movement in reported assets under management for identified single-strategy hedge funds over the 12 months to September 2012. Reported assets under management for funds of hedge funds have been declining since the start of 2009.[10] • Investors in hedge funds decreased 36% to 18,000 over the course of 2012.[11]

[7] Ibid., p. 375.
[8] Ibid., p. 379.
[9] RG 240, p. 5.
[10] Report 370 *The Australian hedge funds sector and systemic risk* (REP 370).

Product	Description/market information
Hybrid securities	Hybrid securities combine 'equity-like' and 'debt-like' characteristics, and include capital notes, convertible preferences shares and subordinated notes. Hybrid securities are a way for issuers to raise capital that may be eligible for particular prudential or credit rating treatment. The terms of hybrid securities are often very complex and many involve heightened risks for investors, such as risks deriving from long maturities and more complex features—for example, interest deferral or potential conversion into ordinary shares. *Investor market in Australia* • Following reduced activity during and immediately after the global financial crisis, hybrid securities have recently been used for significant capital raisings by both banks and well-known corporate entities. • In Australia, more than $18 billion was raised by companies between November 2011 and June 2013 through the issue of ASX-listed hybrid securities.[12] • Investors in hybrid securities grew 21% to 75,000 over the course of 2012.[13] • 40% of investors used an adviser in their most recent hybrid investment.[14] • Two-thirds of hybrid investors are self-managed superannuation funds.[15]
Leveraged derivative products (e.g. CFDs and margin FX contracts)	A leveraged derivative product derives its value from the value of an underlying asset (e.g. a share). A CFD essentially involves betting on whether the value of the underlying asset is going to rise or fall in the future. Complex features of CFDs include embedded leverage, counterparty risk and a lack of transparency of costs in the pricing spread. *CFD investor market in Australia* • ASX market—the open interest value (at 31 October 2013) was $40 million, which was down 46% from $74.5 million one year earlier; the notional value traded (from July to October 2013) was $361 million, down 28% from $498 million in the previous corresponding period.[16] • Investors in CFDs decreased 7% to 41,000 over 2012.[17]
Managed funds with complex non-standard or non-linear payoffs	Managed funds with non-standard or non-linear payoffs include capital protected and capital stable funds where there are complex conditions defining the scope of the protection. These products may also capture funds that target greater income returns and less capital return through the use of derivatives.
Structured products	These involve a promise by a company to pay investors a return that is usually based on the movement in the value of reference assets, such as a share index, securities or other assets, generally using derivatives arrangements. OTC structured products range from relatively simple investments, which are likely to at least return the investor's initial investment at maturity (subject to issuer or counterparty credit risk), to highly geared or speculative structured products where all the investor's outlay (capital) is at risk. *Investor market in Australia (capital protected products)* • Investors in capital protected products decreased 30% to 32,000 over 2012.[18] • 53% of investors used an adviser in their most recent capital protected product investment.[19]

[11] Investment Trends, *November 2012 Investor product needs report*, March 2013, p. 337.
[12] Report 365 *Hybrid securities* (REP 365), p. 4.
[13] Investment Trends, *November 2012 Investor product needs report*, March 2013, pp. 20 and 201.
[14] Ibid., pp. 20 and 213.
[15] Ibid., pp. 20 and 212.
[16] ASX, *ASX Group monthly activity report: October 2013*.
[17] Investment Trends, *2013 Australia CFD report*, June 2013, p. 10.
[18] Investment Trends, *November 2012 Investor product needs report*, March 2013, p. 26.

Product	Description/market information
Warrants (non-vanilla)	Warrants are a way for an investor to lock in a price of an asset at a particular time for purchase at some time in the future. Warrants come in many forms. While standard warrants are generally not complex, more exotic warrants can be complex and lead to complex payoffs or risks. *Investor market in Australia* • Investors in instalment warrants increased 19% to 12,500 over the course of 2012.[20] • 49% of investors used an adviser in their most recent warrants investment.[21]

Why is complexity in financial products significant?

30 The low yield environment and non-trending equity market over recent years has contributed to the development of new products that have the potential to introduce new types of complexity. However, some complex products may be inherently difficult to understand, even for investors with a high degree of financial literacy.

31 Being more complex does not necessarily mean that a product is more risky. Likewise, a product could be relatively simple for an investor to understand, in terms of its features and structure, but still pose a high degree of risk. However, complexity can make it more difficult for investors to evaluate the level of risk posed by a financial product, and decide whether they are prepared to tolerate it, given the expected returns.

32 For example, in ASIC's recent stakeholder survey,[22] the majority of respondents (including industry, investors and consumers, and financial literacy specialists) believed that Australian investors did not understand the risks associated with complex products (71% of survey respondents believed that investors understood the risks involved in complex products either 'not very well' or 'not at all').

33 Complexity may lead investors to misunderstand the nature of a product and its risks by increasing:

(a) the difficulty in describing a product in a clear, concise and effective manner;

(b) the difficulty investors face in comprehending a product's key features and the risk/reward trade-off associated with these features;

(c) the difficulty in comparing products;

(d) the difficulty in understanding a product's pricing structures;

[19] Ibid., p. 8.
[20] Ibid., p. 252.
[21] Ibid., p. 277.
[22] ASIC Stakeholder Survey 2013, September 2013, p. 28.

(e) the potential that an investor will not understand when the product is performing poorly, and will inappropriately judge when to withdraw; and

(f) the difficulty in withdrawing from the product, particularly if the complexity relates to, or produces, illiquidity and difficulty in valuation.

34 The way that products are distributed and sold may reduce these risks, or alternatively exacerbate or fail to overcome these difficulties. For example, if products are marketed directly to investors, or are sold through execution-only channels rather than on the recommendation of a financial adviser, this could greatly increase the risk that an investor may misunderstand the features and risks of the product. This may lead to investors selecting products that are misaligned with their financial situation, objectives and needs. When complex products are issued or sold on an OTC basis, this may mean that there is little or no secondary market, increasing the difficulty for investors in withdrawing from the product, should they wish to do so.

ASIC's complex product 'health checks'

35 Given the risks that complex products can pose to ASIC's strategic priorities of promoting confident and informed investors and consumers, we have conducted a 'health check' of certain complex products. These reviews are listed in Table 5. Where appropriate, we have provided further guidance to industry following these reviews, and conducted surveillances to monitor compliance: see Sections D and E.

Table 5: ASIC's 'health check' reports for complex products

Product	Description and findings
CFDs	
Report 205 *Contracts for difference and retail investors* (REP 205)	This report (July 2010) summarised the results of a 'health check' we conducted in 2009 on the CFD market in Australia. Findings included: • OTC CFDs involve significant counterparty and other risks for investors. They may be inherently unsuitable for some investors. • Many investors do not understand these risks, and are overly confident in their understanding of CFDs and their ability to trade in them. The lack of awareness of the risks associated with CFDs was partly due to the fact that investors tend not to seek professional advice about OTC CFDs, and rely disproportionately on issuer marketing materials for information, which may not provide a sufficient basis for an informed decision.

Product	Description and findings
Report 316 *Review of client money handling practices in the retail OTC derivatives sector* (REP 316)	Between December 2011 and August 2012, we conducted a 'risk-based surveillance' of the client money handling practices of 40 AFS licensees that issue OTC CFDs or margin FX contracts to retail clients in Australia. We identified a number of contraventions of client money rules as part of our review, including: • 18 issuers (45%) failed to properly designate client accounts as trust accounts; and • 11 issuers (28%) failed to pay client money into a compliant account by the next business day following receipt. In addition, our review identified further weaknesses, including: • six issuers (15%) did not perform client money reconciliations on a daily basis; • five issuers (13%) had inadequate segregation of duties in their back office; and • 19 issuers (48%) had no formal escalation process for resolving variances in the reconciliation.
Hybrid securities	
Report 365 *Hybrid securities* (REP 365)	This report (August 2013) considered offers of hybrid securities in the Australian market since the global financial crisis, and, in particular, the extensive issuance from November 2011 to June 2013. The report noted: • Hybrid securities (whether issued by banks or corporate entities) are often very complex and can involve heightened risk for investors. This higher risk derives from relatively simple features (such as long maturity), more complex features (such as potential interest deferral or potential conversion), and the overall complexity of the security, which makes investor understanding of the product more difficult. • Like many complex products, hybrid securities test the limits of a disclosure-based regulatory regime. • The 'failure' of a number of hybrid securities issued between 2005 and 2007—which have operated according to their terms, but have nonetheless failed to meet the expectations of investors—suggests that many investors did not fully understand the features of these securities and the risks involved when they invested. • The sales process for hybrid securities is also heavily intermediated. This distribution structure introduces the potential for the sales message (in the form of non-prospectus sales documents or advice) to include information which is in addition to, or inconsistent with, the information in the prospectus, including by placing an undue emphasis on the high yield while downplaying the risks associated with the security.

Product	Description and findings
Structured products	
Report 340 *'Capital protected' and 'capital guaranteed' retail structured products* (REP 340)	This report (May 2013) summarised the results of a 'health check' we conducted in 2012 on the structured products market in Australia. Findings included: • Some structured products include a high degree of risk, including those that are labelled, described and promoted in a way that suggests they are not risky. • Investors generally have a poor understanding of this. Investors typically do not read disclosure documents relating to these products, and may receive incomplete information from product issuers. • Many investors in these products do receive financial advice, however, and are influenced by a recommendation from their adviser.
Report 377 *Review of advice on retail structured products* (REP 377)	This report (December 2013) summarised results of a 'health check' we conducted in 2013 on advice provided by financial services firms to investors about capital protected products. Findings included: • a narrowing of the scope of advice to a single structured product or focusing on one product, rather than considering a range of potentially suitable products; • a 'one-size-fits-all' approach, with inadequate consideration of the client's needs and circumstances and alternative strategies/asset allocation, with a lack of diversification; • unsuitable gearing recommendations or a lack of evidence to support gearing recommendations (e.g. to clients who may not have been able to afford the loan interest payments, or tax-driven advice where relevant risks were not highlighted); and • concerns with disclosure, including misrepresentation of the features of products recommended, including the degree of safety or capital protection.

Serious misconduct

36 Complex products can also be used to facilitate investment fraud because investors' lack of familiarity or understanding of the product can be used to conceal dishonest conduct.

Example

[Withdrawn in accordance with ASIC policy - see INFO 152 *Public comment on ASIC's regulatory activities*]

37 Where we identify serious misconduct related to complex products, we will take enforcement action, where appropriate.

Behavioural economics and the regulation of complex products

38 Sections C–F of this report consider each stage of the product life cycle, with a focus on the risks posed to investors during the relevant stage. When considering the risks at each stage, and how to respond to them, we are mindful of the way investors make decisions.

39 A long-standing general theory of financial regulation is that giving people access to all information that is relevant to a financial decision makes it more likely that they will make decisions that are in their best interests. As a result, securities regulators have tended to focus on ensuring comprehensive and accurate disclosure of relevant information.

40 Increasingly in recent years, the strength of that theory has been brought into question by two developments:

(a) advances in understanding of the psychology of decision making have provided further evidence that people's cognitive processes display tendencies that can cause people to make decisions that may not be in their best interests, even when in possession of all relevant information; and

(b) financial market outcomes, such as the financial crisis of 2008–09, indicate that full disclosure of relevant information to investors has a more limited effect in engendering better allocation of capital and protecting investors from losses on their investments because they had not appreciated the likelihood of those losses.

41 For complex products, psychological research indicates that, when faced with complexity, people respond automatically and unconsciously to try to simplify the decision-making process. This can cause them to make decisions based on less relevant but easily assessed criteria, while neglecting more relevant but hard-to-assess information, leading to poor financial decisions.[23] In this way, product complexity can frustrate the aims of comprehensive disclosure. Indeed, comprehensive disclosure can exacerbate the problem by triggering the automatic and unconscious response described.

42 The implication for regulators is that, as well as needing to ensure that relevant information is disclosed, it may also be necessary to ensure that information that bears heavily on the quality of a financial decision is displayed prominently and in a way that is comprehensible to investors.

43 The Financial Conduct Authority (FCA) in the United Kingdom has recently noted its intention to apply behavioural economics to its regulatory work and

[23] For example, when required to make a difficult and consequential decision in an area where they have limited experience, people's deliberations can be influenced by their emotional state at the time, or the context in which the decision is presented. This mental shortcut, known as the 'affect heuristic', is often employed when people are judging risks and benefits. For more information, see Paul Slovic, Melissa Finucane, Ellen Peters and Donald G. MacGregor, 'The affect heuristic', in Thomas Gilovich, Dale Griffin and Daniel Kahneman, *Heuristics and biases: The psychology of intuitive judgment*, Cambridge University Press, 2002, pp. 397–420.

has released a paper setting out how it intends to do so. The Chief Executive of the FCA, Martin Wheatley, indicated that the FCA's application of behavioural economics may be useful to:

> … weed out products that are too complex for their target market … products with too many moving parts, products that are almost impossible to take a rational decision on. So you revert to the instinctive—what was the headline promise; do I like the look of the salesman; is there a pot of gold on the poster?[24]

44 We take behavioural economics into account when responding to issues that arise concerning investors, including issues related to complex products. For example, awareness of the fact that the increasing complexity of financial products will lead some investors to make instinctive decisions (such as focusing on headline rates) supports the view that regulators need to focus activities across the entire product life cycle—for example:

(a) a focus on the design of, and distribution channels used for, complex products—if investors are less likely to make rational decisions when acquiring complex products; and

(b) a focus on disclosure and advertising and advice—if investors are less likely to engage with product disclosure and more likely to focus on promotional material and advice (if sought), then the requirement that advertisements are not misleading, and that advice is appropriate, becomes even more significant.

Our risk-based approach to surveillance and complexity

45 We adopt a risk-based approach to direct resources towards the entities, products and transactions that pose the greatest threats to ASIC's strategic priorities.

46 Complexity in financial products is an indicator that ASIC takes into account when assessing the risk posed both by product types and specific products. In particular, we are interested in the relative complexity of products. Relative complexity is determined by considering complexity that has a potential negative impact on the investor (relevant complexity) in the context of how complex investors perceive the product to be. Generally, the risk is greatest when investors perceive a particular product as simple when in fact it has a complex structure and/or features that may have an impact on its performance.

[24] Speech by Martin Wheatley, Chief Executive, FCA, *Human face of regulation*, at the London School of Economics, London, 10 April 2013.

C The product development stage

Key points

The product development stage covers the design and origination of products. This stage is significant in terms of influencing which products enter the marketplace, and which investors acquire those products.

This section sets out our analysis of the product development stage in terms of the risks posed to investors by complex products, our approach to regulating complex products, and opportunities for ASIC to undertake further work.

The key risk posed to investors by complex products at the product development stage is that products that are poorly designed enter the market and are offered to investors.

Our regulation of the product development stage has been targeted at specific issues and products (e.g. our work with AFMA to develop principles for its members to guide the product development process for retail structured products).

Product issuer obligations

47 The processes that product issuers adopt when designing products can have a significant impact on the potential for those products to pose risks to investors. For example, products that are designed for a specific target market, take the needs and wants of that target market into account, and are appropriately tested, are more likely to provide value to investors. Conversely, products that are designed with an over-emphasis on product issuer return can result in poorly designed products that do not provide value to investors. This can lead to instances of mis-selling and investor loss.

Example

A relatively extreme case of focusing on the product issuer's return at the expense of investor value is the US Securities and Exchange Commission (SEC) fraud action against Fabrice Tourre, a former Goldman Sachs executive, for his role in a failed billion dollar investment that involved collateralised debt obligations (CDOs) whose value was linked to the performance of subprime residential mortgage-backed securities.

Significantly, it was not disclosed to investors that a large hedge fund, with economic interests directly adverse to the interests of investors in the CDOs, played a role in the portfolio selection process. While investors lost money, the hedge fund allegedly made a significant profit from the transactions. Following a guilty verdict, the SEC noted that it had 'proved that Mr Tourre, as a Goldman Sachs Vice President, put together a

> complicated financial product that was secretly designed to maximize the likelihood that it would fail'.[25]

48 While Australia's financial services regulatory regime places a strong focus on the role of disclosure in overcoming information asymmetries between financial services providers and investors, as complexity in financial products increases, the utility of disclosure to help investors understand a product is likely to decrease.

49 While we have invested significant resources in improving the quality of disclosure in complex products (e.g. by implementing 'if not, why not' benchmark disclosure for products such as OTC CFDs), complexity may diminish the value of disclosure that fully meets legal requirements and our guidance on presentation and content, and mean that we need to look to other areas of regulatory focus.

50 Product issuer obligations have been considered in recent parliamentary inquires. For example, the report by Richard St John, *Compensation arrangements for consumers of financial services* (Richard St John report), stated that:

> … most cases of large case consumer loss are associated with the failure of financial products … [I]n such cases a common issue appears that consumers had not been properly informed of, or had not understood, the complexity, suitability or risks of their investments.[26]

51 The report goes on to note that:

> [W]hilst ASIC is pursuing improved product issuer performance in the area of product disclosure, overall there is a more fundamental question whether consumers might be better protected if more were expected of product issuers in releasing products to the retail market.[27]

52 A number of jurisdictions have also been considering the importance of the product development stage. For example, the FCA in the United Kingdom is implementing a policy of intervening early in the product development process. The FCA's new product intervention powers enable it to make rules to block the launch of a product or stop sales for up to 12 months where there are serious problems with a product or product features.[28]

53 More recently, IOSCO released its report on the regulation of retail structured products.[29] The report proposes a number of regulatory tools that regulators could consider using when regulating structured products. For product development, these regulatory tools include:

[25] SEC, *Statement on the Tourre verdict*, 1 August 2013, www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370539749266.
[26] Richard St John, *Compensation arrangements for consumers of financial services*, 5 April 2012, p. 105.
[27] Ibid., p. 106.
[28] *Financial Services Act 2012* (UK), s138M.
[29] IOSCO, *Regulation of retail structured products*, report, December 2013.

(a) *intended investor identification and assessment*—placing a responsibility on, or encouraging, issuers to:

(i) identify and assess the type, class or features of investors that they intend to focus on for a structured product; and

(ii) take steps, to the degree legally possible, to highlight for distributors and others that the product is aimed at these types of investors, as appropriate;

(b) *use of financial modelling*—requiring issuers to internally model the potential performance of products when held by their target investors (to the extent permissible under the member's legal framework);

(c) *product approval processes*—requiring issuers to implement an internal product approval process to address specific (or common) challenges for product formation (taking into account the control of the product design, the interests of the target market and the management of conflicts of interest); and

(d) *product standards*—establishing minimum product criteria for products that are sold to investors (e.g. minimum capital requirements of issuers or guarantors of products, or to oblige certain retail structured products to be collateralised using collateral that meets minimum standards).

Legal obligations: Product development

54 In Australia, product issuers that are required to hold an AFS licence are subject to the general obligations in the Corporations Act: s912A. AFS licensees must do all things necessary to:

(a) ensure that they provide financial services in an efficient, honest and fair manner (s912A(1)(a));

(b) have in place adequate risk management systems (s912A(1)(h)), except for certain bodies regulated by the Australian Prudential Regulation Authority (APRA); and

(c) have in place adequate arrangements for the management of conflicts of interest (s912A(1)(aa)).

55 In our view, the duty for licensed product issuers to do all things necessary to ensure that they provide financial services efficiently, honestly and fairly will involve taking steps before the issue of a product to ensure that the financial service of issue occurs efficiently, honestly and fairly.[30]

[30] It is important to note that our regulatory remit concerning AFS licensing obligations has the following limitations: (a) the 'self-dealing' exemption means that entities issuing or otherwise dealing in their own securities do not require an AFS licence, unless their main business activity relates to providing investments (s766C(4)–(5)); and (b) the intermediary authorisation provides a licensing exemption to product issuers in some circumstances. Under s911A(2)(b), a product issuer may enter into an agreement with an AFS licensee, under which the licensee will distribute the issuer's product, and the issuer does not itself need to be licensed.

Our current approach to regulating product development

56 RG 104 explains what AFS licensees need to do to meet the general obligations, and this will depend on the nature, scale and complexity of their business.

57 Despite this general guidance, we have not traditionally focused our regulatory activities on the product development stage. We do have an important but limited role in the registration of managed investment schemes and the associated exercise of our relief powers, which may be viewed as part of the product development process. While we currently undertake some issuer-focused surveillance activity (e.g. in the managed investment, derivative and investment banking sectors), much of our current surveillance activity is focused further down the distribution chain than at the point of product development (e.g. on disclosure, advertising and point-of-sale interactions, and financial product advice).

58 This approach reflects the traditional theory of financial regulation that effective disclosure is sufficient to ensure that investors are able to make good financial decisions, and the fact that there are specific legal requirements applying at that stage.

59 Examples of our activities directed towards the development of complex products include the following:

(a) We have worked with AFMA to develop principles[31] for its members to guide the product development process for retail structured products. The principles aim to ensure that investors are treated fairly as an outcome of the product development process. For example, the principles state that:

  (i) a sound business case should exist for the product, which is based on its capacity to satisfy what are expected to be genuine investor demands; and

  (ii) the target market and the range of investor segments for which the product would be suitable should be determined during the product design stage.

(b) We have, in limited cases, introduced AFS licensing obligations that influence the way that products are issued. For example, for certain agribusiness managed investment schemes, we have introduced obligations that AFS licensees must register leases and other rights to use the land on which any primary production will occur, to protect members, before scheme interests are issued.

[31] AFMA, *Principles relating to product approval: Retail structured financial products*, October 2012.

Opportunities for further work

Opportunities: Product development stage

Where we identify issues relating to the development of particular complex products, we will work with industry to address those issues.

There is also scope, if necessary, to issue guidance on our expectations of product issuers when developing complex products in the future.

60 The product development stage plays an important role in influencing which products enter the marketplace and which investors are offered those products. If product issuers do not meet their AFS licensing obligations (to take the necessary steps to ensure that they issue financial products in an efficient, honest and fair manner) when developing products, there is the potential for poorly designed products to enter the market and to be mis-sold to investors.

61 We will continue to consider product issuers' product development processes as part of monitoring the risks posed to investors by complex products. Our preference is to work with industry, in the first instance, to resolve any issues that arise (e.g. our work with AFMA on retail structured products, referred to in paragraph 59).

62 There is also scope to influence product development in this area by providing guidance for product issuers in relation to complying with their AFS licensing obligations (including doing all things necessary to ensure that they provide financial services in an efficient, honest and fair manner). If we consider it appropriate to provide any further guidance in the future, we would consult with industry and the public first.

D The product distribution stage

Key points

Product distribution is the process by which a product travels from issuer to investor. It may involve many intermediaries or none, and may include marketing to potential investors. Disclosure, including advertising, is a key source of information about a product in the distribution process.

This section sets out our analysis of the product distribution stage in terms of the risks posed to investors by complex products, our approach to regulating complex products, and opportunities for further work.

The key risks posed to investors by complex products during the product distribution stage are that:

- inappropriate distribution channels are used for offering complex products to investors;
- disclosure is not clear, concise and effective;
- advertising is misleading or deceptive; and
- investors do not have access to general, independent information on complex products.

Providing guidance to industry on disclosure and advertising obligations, and monitoring compliance with those obligations, is a key focus of our regulation of complex products.

Appropriate distribution channels

63 As noted previously, the more complex a product is, the greater the likelihood that investors will face difficulty in understanding and assessing the product and its risks, and in making an informed investment decision. The way in which products are distributed to investors can mitigate or increase this risk. For example, if an investor obtains advice from an adviser who understands the relevant product and conducts an investor suitability assessment, there is a reduced likelihood of a poor outcome for the investor than in the situation where the relevant adviser does not understand the product or does not conduct an investor suitability assessment.

Example

Our recent review of advice files where structured products were recommended to investors (REP 377) identified cases where advisers did not demonstrate expertise in the products they were recommending, and where there was inadequate consideration of the client's needs and relevant personal circumstances.[32]

[32] REP 377, p. 13.

64 The recent Richard St John report identified that greater responsibility could be applied to product issuers in terms of choosing appropriate distribution channels for their products to mitigate the risk of mis-selling:

> While the review has not had an opportunity to test these proposals, a first step might be to consider measures along the following lines by which product issuers would be expected to assume more responsibility for the protection of consumers of their products:
>
> (a) Subject product issuers to more positive obligations in regard to the suitability of their product for retail clients.
>
> Such obligations might be applied in particular to managed investment schemes in issuing products to the retail market, and would apply at each stage of a product's life cycle including its distribution and marketing…[33]

65 Again, this is an issue where a number of jurisdictions are considering the importance of product distribution and whether increased regulatory attention is necessary. For example, the Financial Services Authority (FSA)[34] in the United Kingdom provided guidelines on appropriate distribution and communications practices for issuers of retail structured products, including appropriately selecting and monitoring distribution channels, and passing on sufficient communications to distributors to allow them to direct products to an appropriate target investor market.[35]

66 IOSCO's report on retail structured products states that IOSCO members could consider requiring or encouraging:

> … issuers to take some level of responsibility for how products are distributed to retail investors. This would not require issuers to double-check the suitability of individual sales but would involve issuers evaluating whether the general distribution strategy developed by the issuer is appropriate for the target market.[36]

Legal obligations: Selecting distribution channels

67 The structure of the AFS regulatory regime is such that most intermediaries in the product chain are required to hold, or be the authorised representative of the holder of, an AFS licence to provide financial services, and an AFS licensee is responsible for its conduct and that of its representatives. For example, where distributors are AFS licensees, issuers are generally not treated as having undertaken the act or omissions of the distributors for the purposes of the statutory obligations under Ch 7 of the Corporations Act, and so to this extent would not be liable for their actions: s911B(3).

[33] Richard St John, *Compensation arrangements for consumers of financial services*, 5 April 2012, p. 150.
[34] On 1 April 2013 the FSA was replaced by the Financial Conduct Authority (FCA) following legislative amendments made to the *Financial Services and Markets Act 2000* (UK) by the *Financial Services Act 2012* (UK).
[35] FSA, *Retail product development and governance: Structured product review*, finalised guidance, March 2012.
[36] IOSCO, *Regulation of retail structured products*, report, December 2013, p. 28.

68 Therefore, issuers do not have a legal responsibility to monitor distributors' conduct in this sense (although they may have a responsibility under general law or other provisions, such as s601FB of the Corporations Act). Nevertheless, this should be distinguished from an issuer's broader AFS licensing obligations (to do all things necessary to ensure that it provides financial services in an efficient, honest and fair manner), which would encompass considering appropriate distribution channels for its products.

Our current approach to regulating product distribution

69 Examples of our activities directed towards the development of complex products include the following:

(a) We have worked with AFMA to develop principles[37] for its members to guide the product distribution process for retail structured products. The principles state that product issuers should consider the appropriateness of the distributors of their products, with relevant considerations, including:

(i) whether the distributor provides any advice, general advice or personal advice to the relevant investors;

(ii) the distributor's typical investor type, and whether the distributor deals directly with the investor, or via other intermediaries;

(iii) whether the distributor considers the suitability of a financial product on an individual investor basis or for a class of investor; and

(iv) 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.

(b) In November 2013, we requested that issuers of CFDs and margin FX contracts carefully review their distributor relationships to ensure that they are not facilitating the unlawful provision of financial services by any unlicensed distributors.

Disclosure

70 Fundamental to investors making informed investment decisions is for them to have access to effective product disclosure.

71 Where disclosure is not clear, concise and effective, there is a greater risk that investors will not make an informed decision when acquiring a complex product, which in turn may result in the selection of a product that is not suitable for their circumstances. Complexity can increase the difficulty in describing a product in a clear, concise and effective manner, and thereby

[37] AFMA, *Principles relating to product approval: Retail structured financial products*, October 2012, p. 150.

also increase the difficulty investors face in comprehending a product's key features and the risk/reward trade-off associated with them.

Legal obligations: Disclosure

72 Retail offer documents must include a range of information about the relevant financial product, including information about risks. Product Disclosure Statements (PDSs) and prospectuses must include information about the significant risks in investing in the financial product and must be worded and presented in a clear, concise and effective manner.

73 There are two sets of disclosure rules—one applying to securities (other than warrants), and another to all other financial products (other than products subject to the shorter PDS regime, being superannuation funds, simple managed investment schemes, first home saver accounts and margin loans), as summarised below. Some complex products are simple managed investment schemes as defined for that purpose.

74 Table 6 summarises the disclosure requirements for financial products.

Table 6: Disclosure requirements for financial products

Element of disclosure	Regulatory requirements	
	Securities (other than warrants)	**Other financial products**
Type of disclosure	Most offers of securities to retail investors in Australia require a disclosure document, typically a prospectus.	Most offers of other (non-security) financial products to retail investors in Australia require a PDS.
Content and presentation	The disclosure must be worded and presented in a clear, concise and effective manner (s715A), and include all the information investors and their advisers would reasonably require to make an informed assessment of the rights and liabilities of the securities, and the assets and liabilities, financial position and performance, profits and losses, and prospects of the issuer (s710–711).	The disclosure must be worded and presented in a clear, concise and effective manner (s1013C), and must contain information about the product and its key features and risks, the product issuer, and any other information that might influence a decision to acquire (s1013C–1013E).
Lodgement with ASIC	All disclosure documents to be used for an offer of securities must be lodged with ASIC: s718. Non-quoted securities may not be issued until seven days after lodgement of the relevant disclosure document with ASIC, and this period may be extended by ASIC by a further seven days: s727(3).	Generally, PDSs are not required to be lodged with ASIC, unless they relate to a managed investment product that can or is to be traded on a financial market (s1015B), in which case the product may not be issued or sold for seven days after the PDS is lodged, and this period may be extended by ASIC by a further seven days (s1016B(2)).

Element of disclosure	Regulatory requirements	
	Securities (other than warrants)	**Other financial products**
Regulatory powers to stop disclosure	ASIC can issue a stop order on a prospectus or PDS, if we find that: • some information that would affect an investor's decision is misleading or missing from the document; or • there are new circumstances that an investor needs to know about. An interim stop order can last for 21 days, and a final stop order can be issued after a hearing: s739 and 1020E. A stop order can prohibit the offer, issue, sale or transfer of the securities.	

Our current approach to regulating disclosure

75 Disclosure to retail investors is a key aspect of Australia's financial services regime. We have undertaken various streams of work to enhance the quality of disclosure, including for products that are likely to be complex and difficult to explain. For example, we have introduced an 'if not, why not' disclosure benchmark, and we also conduct surveillance of disclosure documents.

76 Table 7 sets out the guidance that we have issued for improving disclosure related to complex products.

Table 7: Regulatory guides on disclosure related to complex products

Complex product	Regulatory guide
Agribusiness managed investment schemes	Regulatory Guide 232 *Agribusiness managed investment schemes: Improving disclosure for retail investors* (RG 232), issued in January 2012—this provides guidance and new disclosure benchmarks and principles for agribusiness managed investment schemes to improve investor awareness of the risks associated with these products.
CFDs	Regulatory Guide 227 *Over-the-counter contracts for difference: Improving disclosure for retail investors* (RG 227), issued in August 2011—a guide for those involved in the issue of OTC CFDs, margin FX contracts and similar products to investors. It sets out our guidelines for improved disclosure to investors to help them understand and assess these products. It also provides guidance on the advertising of OTC CFDs.
Hedge funds	Regulatory Guide 240 *Hedge funds: Improving disclosure* (RG 240), issued in September 2013—a guide for those involved in the issue and sale of hedge funds. It sets out our guidance for improved disclosure to investors to help them understand and assess these products.

77 We generally take a risk-based approach to identifying disclosure documents for our review. Table 8 sets out our work since 2012 targeting disclosure of products that are currently considered to be complex.

78 Our surveillance activities often involve testing compliance with disclosure requirements. These surveillances involve:

(a) reviewing prospectuses in the lodgement period before securities are issued, as well as following issue; and

(b) selecting PDSs for review that have been lodged with ASIC or are currently in use.

Table 8: Examples of ASIC surveillances and other reviews of disclosure related to complex products

Project/description	Surveillances	Outcomes
Agribusiness managed investment schemes		
Testing compliance with new disclosure benchmarks	We have reviewed both of the two PDSs issued for agribusiness schemes since 1 August 2012.	We found that issuers had generally adopted the guidance and that no further action was warranted in relation to the PDSs reviewed.
CFDs and margin FX contracts		
Review of disclosure against RG 227 benchmarks	More than half of the issuers reviewed had failed to disclose against the benchmarks in RG 227.	Each of these issuers was required to reissue its PDS to incorporate the benchmark disclosures.
PDS reviews	We reviewed two issuers' PDS disclosure of the operation and risks of a complex 'protection trust' used in their handling of client money.	We required each of these issuers to reissue its PDS with an improved explanation of their client money handling practices and risks.
	We identified concerns about the adequacy of an issuer's risk management systems.	We required the issuer to strengthen its risk management systems and update its PDS.[38]
Exchange-traded options		
Disclosure	We have reviewed 13 PDSs.	We found that there was limited information in the PDSs reviewed of the specific risks of trading in more complex risk strategies such as 'sold put' strategies. We contacted the issuers concerned and asked them to include more detailed risk warnings about such strategies, and to include specific references that encourage clients trading in more complex strategies to seek appropriate advice before trading.
Hedge funds		
Disclosure	We have reviewed the PDSs for 12 hedge funds since January 2012.	Where appropriate, we required the issuer to reissue its PDS with changes to ensure that the issuer's disclosure obligations were met. In some cases, no further action was required.

[38] See Media Release (13-229MR) *ASIC imposes additional licence conditions on Roco Forex*, 26 August 2013.

Project/description	Surveillances	Outcomes
Hybrid securities		
Improving prospectus disclosure for hybrid securities	We have worked with issuers of hybrid securities and their lawyers to improve the standard of disclosure, by reviewing and providing comments on draft prospectuses for more than 90% of the ASX-listed hybrid offers made since January 2012 (with all the remaining offers reviewed before securities were issued).	Issuers made changes in response to our comments. Since commencing these reviews, prospectus disclosure for hybrid securities has improved, and continues to improve. The names given to different hybrid securities have also become more consistent and 'true to label'.

Advertising

79 Consumers can be heavily influenced by advertisements for financial products and financial advice services. Advertisements can be misleading and create unrealistic expectations that may lead to poor financial decisions if they:

(a) do not fairly represent the financial product or its key features and risks;

(b) do not fairly represent the nature and scope of the advice service; or

(c) include comparisons with other products that do not share similar characteristics.

80 Advertisements are designed to attract consumers and for the key message that the advertising seeks to give to be easily understood. This has consequences for both promoters and consumers. For promoters, there is a temptation to focus on the benefits or advantages of the financial product or advice service, and to give less prominence to unattractive features or risks. For consumers, there is a temptation to make decisions on the basis of advertisements alone and not to seek further information, even though advertisements necessarily only contain limited information about the product or service.

81 Our research has indicated that marketing information plays a particularly strong role in product distribution and may influence investors' decision making more than other product disclosure.[39] In particular, when investors approach product issuers or other intermediaries responsible for selling products directly, rather than going through advisers, the information contained or implied in product issuers' marketing information is often the first, and may be the only, information that investors use to decide whether or not to invest in that product.

[39] See, for example, REP 205, summarising our findings on the role of advertising in investors' decision making on retail OTC CFDs.

Legal obligations: Advertising

82 Promoters of financial products have a legal obligation not to make false or misleading statements or engage in misleading or deceptive conduct.[40] Such statements or conduct could contravene the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act), and result in ASIC taking action against the promoter. Promoters who hold an AFS licence also risk breaching their obligation to comply with financial services laws. In addition, advertising or other promotional material for a financial product should be consistent with, and must refer to, the relevant PDS or prospectus: see s734 and 1018A of the Corporations Act.

Our current approach to regulating advertising

83 In February 2012, we released RG 234 to help promoters comply with their legal obligations when advertising financial products and services.

84 We generally take a risk-based approach to monitoring advertising of complex products, with surveillances often undertaken as part of a thematic review of a particular type of product. Table 9 sets out examples of our surveillances that targeted advertising of complex products.

Table 9: Examples of ASIC surveillances targeting advertising of complex products

Project/description	Surveillances	Outcomes
CFDs and margin FX contracts		
Website advertising	Since 1 July 2012, we have conducted 10 surveillances of potentially misleading website advertising or misuse of the ASIC logo.	In each case, we required the removal of the offending material. Most notably, we: • [redacted] • banned a director for five years.[42]
Reminder of obligations	We wrote (in November 2013) to all issuers to remind them, among other things, of their advertising obligations. The letter warned issuers to refrain from making unsubstantiated statements about returns, bait advertising regarding spreads, misleading representations about the 'safety' or 'security' of client money, and misuse of the ASIC logo.	We continue to conduct risk-based reviews of issuers' websites and other advertising.

[40] RG 234 provides a detailed list of the provisions on misleading or deceptive advertising.
[redacted]
[42] See Media Release (12-319MR) *ASIC bans director of forex promoter for five years*, 17 December 2012.

Project/description	Surveillances	Outcomes
Hybrid securities		
Review of selling methods used for offers of hybrid securities	We undertook a targeted review of the selling methods used for a sample of five hybrid offers in the 12 months to the end of March 2013, to encourage the appropriate use of non-prospectus documents as part of the sales process, and monitor the methods by which hybrid securities are sold to investors.	While no further regulatory action was taken in connection with the sales documents reviewed, targets for subsequent surveillance activities were identified: see REP 365. For example, the report notes that we will investigate any reports of brokers promoting hybrid securities as fixed income products in a misleading fashion.
Structured products		
REP 340 (May 2013)—our 'health check' report on the market for unlisted and unquoted 'capital protected' and 'capital guaranteed' retail structured products	This report found that, in some cases, the labelling and description of certain structured products as 'capital protected' could create a perception of safety that is inconsistent with the risks. It also found that the use of phrases such as 'conditional capital protection' or 'contingent protection' may be potentially misleading for certain investments where capital is at risk.	Since the report's publication, our actions have resulted in changes by a number of product issuers and advice providers in the promotion of structured products. In addition, a number of issuers have amended disclosure materials in light of the risks and concerns highlighted by the report.
Ongoing	We examined the advertising and promotional materials for 'capital protected' retail structured products.	The following entities withdrew or amended promotional materials for retail structured products following our intervention:[43] • Commonwealth Bank of Australia; • HSBC Bank; • Credit Suisse Investment Services (Australia) Limited; • UBS AG Australia; and • Instreet Investment Limited.

Access to general, independent information

85 A key risk posed to investors by complex products during the product distribution stage is that investors do not have access to general, independent information on complex products.

Online information and tools

86 Investor education is a key aspect in the distribution of financial products because it empowers investors to select products that suit their objectives,

[43] See Media Release (13-176MR) *ASIC concerns see CBA and HSBC change advertising*, 16 July 2013, and Media Release (13-246MR) *ASIC concerns prompt banks to change promotional materials*, 4 September 2013.

financial situation and needs. It also helps investors to better understand how to read disclosure documents, and know when to seek financial advice. We have a specific mandate to deliver investor education and foster financial literacy, particularly through our MoneySmart consumer and investor website (www.moneysmart.gov.au) and outreach programs.

87 We have developed a series of investor guides on complex products, *Thinking of investing in …?*. Where we have developed benchmark disclosure guidance, these investor guides specifically lead investors through the process of reading and interpreting the responses under each benchmark in a PDS.

88 Guides we have published on complex products include:

(a) *Investing in agribusiness schemes?*

(b) *Get the facts: Capital guaranteed or protected investments*; and

(c) *Thinking of trading in contracts for difference (CFDs)?*

89 Our recent focus has been on creating web-based information on complex products. Relevant website content includes information on:

(a) exchange-traded products;

(b) warrants;

(c) CFDs;

(d) structured products;

(e) hybrid securities;

(f) hedge funds; and

(g) agribusiness managed investment schemes.

Research houses

90 Research report providers play an important gatekeeper role in the distribution chain for complex products because some AFS licensees authorised to provide financial product advice require positive product research reports in order to place products on their approved product lists. Additionally, the reports are often publicly available and may directly influence the decision making of investors. However, the quality and integrity of this research may be adversely affected by conflicts of interest, research methodologies that are poorly understood and applied, and a lack of transparency.

91 We provide guidance to providers of financial product research on our expectations in relation to research quality, transparency and methodology, and managing conflicts of interest: see Regulatory Guide 79 *Research report providers: Improving the quality of investment research* (RG 79). In December 2012, we released an updated version of this guidance, reflecting

concerns we had developed through a review of the industry about the practices of some research providers.

92 The updated guide provides greater guidance on our expectations of providers to take a more active and diligent compliance role. We have included examples to show how research report providers can meet their obligations, taking into account different types of research and business models. We intend to assess compliance with our updated guidance through targeted surveillance activity.

Opportunities for further work

Opportunities: Product distribution

Where we identify issues relating to the distribution channels for particular complex products, we will work with industry to address those issues.

There is also scope, if necessary, to issue guidance on our expectations of product issuers when selecting distribution channels for complex products in the future.

We will consider requiring, and the desirability of requiring, disaggregated cost and value disclosure to be provided to investors.

Distribution channels for complex products

93 We will continue to consider the distribution channels for complex products as part of monitoring the risks posed by these products to investors. Where appropriate, our preference is to work with industry to resolve any issues that arise (e.g. our recent request to issuers of CFDs and margin FX contracts that they review their distributor relationships).

94 We can also influence industry behaviour by providing guidance to product issuers on our expectations for complying with existing regulatory obligations (to do all things necessary to provide financial services in an efficient, honest and fair manner) in terms of distributing complex products. If we consider it appropriate to provide any further guidance in the future, we would consult with industry and the public.

Disaggregated cost and value disclosure

95 By their nature, complex products often include a number of different underlying components—for example, structured products often combine a base instrument (e.g. a bond) with a derivative. Internationally, some debate is currently occurring as to whether investors should be provided with information that helps them determine the relative value of purchasing a complex bundled product, as opposed to the cost of separately purchasing its

different components. This could allow investors and their advisers to determine whether the prices being charged by the issuer are fair for the economic exposure and credit risk of the product.

Example

The European Securities and Markets Authority (ESMA) found that, based on a sample of 76 products sold in the European Union and maturing between 2008 and 2011, structured products have hidden costs and are sold to investors with a significant 'issuance premium' estimated at around 4.6% of the notional value of the product, or 5.5% including issuer credit risk. ESMA suggested that these fees may in part be based on the difficulties that investors have in evaluating the intrinsic value of structured products and the costs that might be embedded in the selling price.

Further, ESMA's analysis of a sample of around 2,750 products over a 14-year period found that, on average, the performance of structured products with 100% capital protection was less than that of a risk-free investment.[44]

96 There is some contention about whether such information would be useful to investors, in particular, and what action they would be likely to take on receiving it. Nevertheless, such information may be useful to intermediaries (e.g. advisers deciding whether to recommend a product), and may also assist in the comparison of products.

[44] See ESMA, *Retailisation in the EU*, Economic Report No. 1, 3 July 2013.

E The point-of-sale stage

Key points

The point of sale is typically the point at which advice (if any) is given, and disclosure is provided if it has not been seen before. Point-of-sale issues relate particularly to whether or not the product is suitable for a specific investor, including their risk appetite, current financial situation and needs and objectives, and their experience and understanding of the type of product in question.

This section sets out our analysis of the point-of-sale stage in terms of the risks posed to investors by complex products, our approach to regulating complex products, and opportunities for further work.

The key risk posed to investors by complex products at the point-of-sale stage is that the investor will receive poor quality advice, which can result in a poor outcome, or no advice at all, which can result in ill-informed selection of a product.

Our work on improving the quality of financial advice has been, and continues to be, a key focus of our regulatory activities.

Financial advice

97 The risk at this stage of the product life cycle is that investors do not receive appropriate advice, which may result in a poor outcome for the investor. For complex products, where investors may have difficulty in assessing the risks associated with the product, the quality of the financial advice provided becomes even more critical.

Example

Our recent review of advice files where structured products were recommended to investors (REP 337) identified cases where advisers did not communicate the key features and risks accurately to clients. In some cases, advisers may have misrepresented the product as being less complex than it was.[45]

Legal obligations of financial advisers when providing advice

98 Where personal advice is provided to a retail investor (i.e. advice considering one or more of a person's objectives, financial situation and needs), financial advisers must ensure the advice is appropriate: s961G of the Corporations Act.

[45] REP 377, p. 13.

Our approach to regulating financial advice

99 We generally take a risk-based approach to monitoring financial advice, with surveillances often undertaken as part of a thematic review of a particular type of product. Table 10 sets out recent surveillance work targeting quality of advice for particular complex products.

Table 10: Examples of ASIC's surveillances of advice related to complex products

Project/description	Surveillances	Outcomes
Exchange-traded options		
Review of advice	We reviewed a sample of 50 advice files from 10 AFS licensees where structured products were recommended to investors.	REP 337 provides examples of good practices identified, and highlights risks and common pitfalls for advisers who advise on these products. Where deficiencies have been identified, we are considering appropriate regulatory outcomes. This has included follow-up with the relevant AFS licensees. In other cases, we are conducting further surveillance with a view to enforcement action where merited.
Hybrid securities		
Review of selling methods used for offers of hybrid securities	As part of a broader surveillance of 'selling methods', we sought details on whether a sample of three syndicate brokers provided advice in connection with three hybrid offers in the 12 months to the end of March 2013.	Fewer than 10% of investments in the sample involved the provision of personal advice, informing future surveillance work focused on pro-forma general advice material prepared by the lead managers.
Structured products		
Review of Statements of Advice (SOAs) incorporating advice on exchange-traded options	We conducted seven surveillances.	We found some SOAs that contained inadequate explanation of the risks associated with exchange-traded options. Changes were made by the entities involved to address the findings.

Non-advised sales

100 Where investors acquire products without seeking financial advice, there is a risk—particularly with complex products—that they may not fully understand the nature of the product, and as a result, that product may not suit the investor's financial situation, objectives and needs.

Example

In Australia, most CFDs are not traded on an exchange—they are issued as OTC products. They are generally marketed to, and traded by, retail investors. Many of these investors do not seek or receive financial advice before deciding to invest, but instead rely on advertising and disclosure materials to inform their decision to invest.

Previous ASIC research[46] suggests that many investors do not fully understand the risks of trading in CFDs. This is partly due to the inherent complexity of the subject matter.

Given that most investors do not obtain personal financial advice before investing in CFDs, instead relying solely on information provided in disclosure documents, it is crucial to ensure that these disclosure documents are of a high quality and contain all the information that investors require to make an informed decision.[47]

101 This is an issue that has had a significant amount of attention at an international level. In its *Suitability requirements with respect to the distribution of complex financial products*,[48] IOSCO has proposed that regulatory systems should provide adequate means to protect customers from the risks associated with complex products, regardless of whether or not the investor has received financial advice.[49]

102 Examples of steps that have been implemented in other jurisdictions include:

(a) In European Union member states, under the Markets in Financial Instruments Directive (MiFID), investment firms are generally required to assess the knowledge and experience of investors before selling a complex product in an 'execution-only' situation. The list of products that are 'complex' for this purpose is likely to be extended as part of an upcoming review of MiFID, to be implemented by around 2015 ('MiFID II').[50] Where the obligation to make this assessment applies, investment firms are required to seek information from an investor to determine whether they have the knowledge and experience—to the extent appropriate to the nature of the investor, service and product—to understand the risks involved in the transaction or service that is envisaged. However, firms are able to determine in what form this information is sought from the investor (e.g. in a telephone or face-to-face interview, or via an online or hard copy test).

[46] REP 205.
[47] See paragraph 105 for our response to this issue.
[48] IOSCO, *Suitability requirements with respect to the distribution of complex financial products*, FR01/13, January 2013.
[49] Ibid., p. 20.
[50] European Commission, *New rules for efficient, resilient and transparent financial markets in Europe*, press release, 20 October 2011.

(b) In 2011, Belgium introduced a voluntary moratorium on the sale to investors of particularly complex structured products, which has been agreed to by the majority of issuers and distributors.

(c) In Japan, Hong Kong and Singapore, intermediaries are required to assess investors' knowledge and experience about certain complex products before providing any services to them. For example, in Singapore, intermediaries dealing with an investor in a non-advised situation are required to formally assess an investor's investment knowledge and experience before selling certain specified products.

(d) The FCA in the United Kingdom has the power to ban the sale of a product either before or after it is first issued.[51]

Legal obligations concerning non-advised sales

103 Unlike some international jurisdictions, Australian regulation generally does not impose requirements to assess product suitability for investors in an execution-only situation. Issuers and other intermediaries may choose to issue or sell complex products directly to investors, rather than through a financial adviser (e.g. by adopting a general advice or seminar model to promote products). By doing so, they do not need to meet any requirements to assess product suitability for investors.

104 Given that investors may have difficulty in assessing whether a complex product meets their financial situation, objectives and needs, and disclosure alone may not be able to overcome product complexity, there is a risk that investors may acquire a product that is not suitable for them.

Our approach to regulating non-advised sales

105 To address this problem for OTC CFDs, we released a regulatory guide (RG 227) with disclosure benchmarks for these products. One of the benchmarks relates to whether the issuer has in place a client qualification policy that tests a prospective client's understanding of the features and risks of OTC CFDs before they begin to trade.

106 While this is not a mandatory requirement, issuers are asked to state in their PDS whether they have undertaken such testing, and if not, why not. We state in RG 227 that issuers should assess a prospective investor against qualifying criteria that address the investor's understanding of, and experience with, the product (e.g. the investor's previous experience in investing in financial products, including securities and derivatives, and their understanding of relevant concepts such as leverage, margins and volatility). RG 227 also sets out our view that the process of assessing a prospective

[51] HM Treasury, *A new approach to financial regulation: Building a stronger system*, CM 8012, consultation, 17 February 2011.

client's qualification to trade could be distinguished from, and does not constitute the giving of, personal financial product advice.

107 Because this benchmark has only been in place for a short amount of time, we do not yet have sufficient information to assess whether this measure has reduced the risk that investors trade in CFDs or margin FX contracts where these are not well suited to their personal circumstances.

Opportunities for further work

Opportunities: Point of sale

We will explore the potential for using investor self-assessment tools to assist investors to test their understanding of particular products before investing.

F The post-sale stage

Key points

Post-sale issues relate to the provision of ongoing information to investors, the resolution of disputes with investors and the provision of compensation where necessary.

This section sets out our analysis of the post-sale stage in terms of the risks posed to investors by complex products, our approach to regulating complex products, and opportunities for further work.

A key risk to investors post sale is that they do not receive ongoing product information, which can be essential to making informed decisions about whether to hold or dispose of a product.

Where we identify issues related to the provision of post-sale information to investors for particular complex products, we will work with industry to address those issues.

Ongoing provision of information

108 Receiving ongoing product information can be essential to investors making appropriate trading decisions. For relevant market-linked complex products, investors may be required to make time-critical trading decisions in various market conditions.

109 A difficulty that complex products typically pose for investors is in understanding risk, which means that investors may not understand how quickly market movements may affect the performance of a product (particularly products such as OTC CFDs that involve leverage), and that they may be required to make an urgent trading decision.

Example

Our recent qualitative research on structured products found that, in some cases, investors received poor post-sales communications from product issuers, particularly when products became frozen or cash-locked.[52]

110 IOSCO's report on retail structured products states that 'IOSCO members could consider requiring issuers to disseminate or make available to investors information that will affect the value of their structured product during the life of the product'.[53]

[52] REP 340, p. 45.
[53] IOSCO, *Regulation of retail structured products*, report, December 2013, p. 30.

Legal obligations: Disclosure of ongoing product information

111 Product issuers must provide investors with ongoing disclosures of material changes and significant events in relation to matters required to be disclosed in a PDS under s1017B of the Corporations Act (unless the financial product concerned is an interest in a registered managed investment scheme that is a disclosing entity, in which case continuous disclosure requirements apply).

112 Where the change relates to an increase in fees or charges, notice must be provided at least 30 days before the change takes effect; in all other cases where change is adverse (other than for superannuation products to which some different rules apply), notice must be provided before the change takes effect, or as soon as practicable afterwards, but not more than three months after the change occurs.

Our approach: Disclosure of ongoing product information

113 We have provided specific disclosure guidance for various complex products, which has included the requirement to provide ongoing information about the performance of a product. For example, in RG 240 on hedge funds disclosure, we have included a disclosure benchmark regarding whether a responsible entity has, and implements, a policy to provide periodic reports on certain key information, including publishing the fund's total net asset value and the redemption value of each unit class on a monthly basis.

114 These ongoing disclosure obligations relate to information that would have been required to be included in a PDS (i.e. information relating to the key features and risks of a product). However, this requirement may not cover the provision of other information that investors might require on a more urgent basis, which does not concern changes to the product itself, but how an individual product is performing in relation to external factors such as market conditions.

115 Issuers of margin lending facilities are subject to a specific requirement to take reasonable steps to notify their retail clients when facilities enter into margin call: s985M of the Corporations Act.

116 We have provided some guidance on the importance of making such notifications for relevant market-linked products. For example, in RG 227 we set a disclosure benchmark concerning whether issuers of OTC CFDs have a written policy that the issuer will take reasonable steps to notify investors of a margin call before closing out positions.

Opportunities for further work

Opportunities: Post-sale conduct

Where we identify issues relating to the provision of post-sale information for particular complex products, we will work with industry to address those issues.

There is also scope, if necessary, to issue more guidance on our expectations of product issuers in relation to the provision of time-critical post-sale information about complex products in the future.

117 Examples of relevant post-sale product information for investors could relate to:

(a) the ongoing financial performance of the issuer or other entities, the performance or financial standing of which might influence the value of the product;

(b) key events that affect the value of the product, such as a trigger or credit event; and

(c) the past performance of the product, and the way its value has changed over its lifetime.

Key terms

Term	Meaning in this document
advice	Personal advice given to retail investors
AFMA	Australian Financial Markets Association
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 Note: This is a definition contained in s761A.
agribusiness managed investment schemes	See Table 4 for an explanation of this product
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
capital protected or capital guaranteed	These terms are used in a variety of inconsistent ways across the financial services industry. Products that are described as offering capital protection may range from deposits with prudentially regulated entities to leveraged investments with limited recourse loans, and structured notes where the investor's capital return bears the risk of the reference assets
CDOs	Collateralised debt obligations
CFDs	Contracts for difference
Ch 7	A chapter of the Corporations Act (in this example numbered Ch 7), unless otherwise specified
client	A retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
complex products	See Table 1 for a description of product structures and/or features that are inherently more likely to make a product complex, and Table 4 for a list of products that we currently consider to be complex
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
ESMA	European Securities and Markets Authority

Term	Meaning in this document
exchange-traded options strategies	See Table 4 for an explanation of this product
FCA	Financial Conduct Authority (UK)
financial advice	Personal advice given to retail investors
financial product	A facility through which, or through the acquisition of which, a person does one or more of the following: • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.
financial services	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
FINRA	Financial Industry Regulatory Authority (US)
general obligations	The obligations of an AFS licensee under s912A(1) of the Corporations Act
hedge funds	See Table 4 for an explanation of this product
hybrid securities	See Table 4 for an explanation of this product
investors	Retail investors
IOSCO	International Organization of Securities Commissions
leveraged derivative products (e.g. CFDs and margin FX contracts)	See Table 4 for an explanation of this product
managed funds with non-standard or non-linear payoffs	See Table 4 for an explanation of this product
margin FX	Margin foreign exchange
MiFID	Markets in Financial Instruments Directive
OTC	Over the counter
personal advice	Financial product advice that is given or directed to a person in circumstances where the provider of the advice has considered one or more of the person's objectives, financial situation and needs, or a reasonable person might expect the provider to have done so Note: See s766B(3) of the Corporations Act for the exact definition.

Term	Meaning in this document
point of sale	The stage in a product's life cycle where the investor is recommended or invited to acquire the product. It is typically the point at which advice (if any) is given, and disclosure is provided if it has not been seen before
post sale	The period after a product is acquired by the investor
product development	The stage in a product's life cycle involving the design and origination of products
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
product distribution	The stage in a product's life cycle where the product travels from issuer to investor
product life cycle	Includes the development and distribution of products, the sale of products to investors and post-sale issues
s911B (for example)	A section of the Corporations Act (in this example numbered 911B)
SEC	Securities and Exchange Commission (US)
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act, as modified by Subdivs 4.2 to 4.2C and Schs 10B, 10C, 10D and 10E of the Corporations Regulations, which prescribe the content and length of the PDS for first home saver accounts, margin loans, superannuation products and simple managed investment schemes
Statement of Advice (SOA)	A document that must be given to a client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act Note: See s761A for the exact definition.
structured products	See Table 4 for an explanation of this product
surveillance	A surveillance refers to activities where ASIC gathers and analyses information to test either a targeted sample of the regulated population, or a specific entity, transaction or product, for compliance with regulatory requirements or best practice standards
warrants (non-vanilla)	See Table 4 for an explanation of this product

Related information

Headnotes

agribusiness managed investment scheme, CFDs, complex products, contracts for difference, derivatives, exchange-traded options, hedge funds, hybrid securities, leveraged derivative products, managed funds, margin foreign exchange, margin FX, point of sale, post sale, product development, product distribution, structured products, warrants

Regulatory guides

RG 79 *Research report providers: Improving the quality of investment research*

RG 104 *Licensing: Meeting the general obligations*

RG 219 *Non-standard margin lending facilities: Disclosure to investors*

RG 227 *Over-the-counter contracts for difference: Improving disclosure for retail investors*

RG 232 *Agribusiness managed investment schemes: Improving disclosure for retail investors*

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

RG 240 *Hedge funds: Improving disclosure*

Legislation

ASIC Act

Corporations Act, Chs 5 and 5C, s710–711, 715A, 727, 734, 739, 766C, 911A, 911B, 912A, 912B, 985M, 1013C–1013E, 1015B, 1016B, 1017B, 1017G, 1018A, 1020E

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Reports

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REP 205 *Contracts for difference and retail investors*

REP 316 *Review of client money handling practices in the retail OTC derivatives sector*

REP 340 *'Capital protected' and 'capital guaranteed' retail structured products*

REP 341 *Retail investor research into structured 'capital protected' and 'capital guaranteed' investments*

REP 365 *Hybrid securities*

REP 370 *The Australian hedge funds sector and systemic risk*

REP 377 *Review of advice on retail structured products*

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