Design and Distribution Policy

Last updated on 16 September 2021

At a glance

Responsibility and review of this policy

The Compliance Officer of ETO Group Pty Ltd (hereafter '**ETO'**) is responsible for ensuring the Licensee implements this policy. The Chief Compliance Officer is also responsible for ensuring that the policy is reviewed.

Other people with responsibilities under this policy are:

- Sales and Marketing personnel
- Product and Liquidity team
- Investment Committees
- Compliance Committee
- The Board

DDO obligations

- The design and distribution obligations set out in Part 7.8A of the Act (**DD Obligations**) apply to the issuers and distributors of various financial products.

Product governance

- Issuers and distributors must implement and maintain robust and effective product governance arrangements to ensure they comply with the DD Obligations.

TMD

- Issuers must ensure that they prepare, maintain and review a target market determination (**TMD**) in respect of the financial products they are issuing
- Distributors must take reasonable steps to ensure that they only distribute the financial products in accordance with the requirements of the TMD.

Significant dealings

- Distributors must notify issuers of a significant dealing in the product that is not consistent with the product's TMD.
- Issuers must notify ASIC of a significant dealing (except excluded dealings) in a financial product that is not consistent with the issuer's TMD.

Why does this policy matter?

We all need to follow this policy because it helps us:

- meet our legal obligations
- stay true to our mission, which are "Connection. Pretention. Assistance".
- stay within our risk appetite.

Key requirements

Licensee

Do	When
ETO prepares a TMD for its financial product	Be ready for commencement of the DD Obligations on 5 October 2021
ETO shall ensure the TMD is available to the public free of charge before it distributes the financial product	From 5 October 2021
ETO and its distributors shall take reasonable steps in relation to distribution that will result in distribution being consistent with the TMD	At all times
ETO shall review the TMD to ensure it remains appropriate, including periodic reviews, and when a review trigger suggests the TMD may no longer be appropriate	Annually and as required when a review trigger has been met
ETO shall notify ASIC of significant dealings	As soon as practicable, and, in any case, within 10 business days of becoming aware of the significant dealings
ETO and its distributors shall keep records of decisions made in relation to TMDs, associated reviews, and prescribed distribution information	At all times
ETO shall keep records of prescribed information, including the number of complaints received about a product and information specified in the TMD	At all times

Introduction and scope

This policy provides a guide on the measures that must be taken by product issuers and distributors for the purposes of meeting their DD Obligations.

The DD Obligations also apply to product issuers who perform any distribution role in relation to their own products.

ETO operates a financial services business focusing on CFD and Margin FX trading. ETO is a product issuer and distributor of financial products to retail clients. The design and distribution obligations set out in Part 7.8A of the Act (**DD Obligations**) apply to the issue and distribution of certain financial products to retail clients (**Consumers**), including those offered by ETO from 5 October 2021.

The measures are intended to help product issuers and distributors to meet statutory and licensing requirements relating to:

- Making a target market determination (**TMD**);
- Reviewing TMD appropriateness;
- Record keeping requirements;
- Product governance arrangements;

- Aligning distribution with the TMD;
- Notification requirements for both product issuers and distributors.

This policy does not address:

- Product intervention powers;
- Information about specific products.

How does the law apply?

The design and distribution obligations apply to ETO in relation to certain financial products that it issues and distributes.

Financial products are issued where:

- a disclosure statement is prepared under the Act (e.g. a responsible entity of a managed investment scheme, an insurer, an issuer of OTC derivatives, an issuer of certain foreign exchange contracts, an issuer of a non-cash payment facility, a superannuation trustee and an issuer of hybrid securities), unless an exclusion applies; and
    - a product that is not covered by the above is issued, but which is within the scope of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**) (e.g. credit contracts).

There are specific obligations that **only apply to issuers**, which will be discussed in the following pages.

Financial products are distributed where the distributor engages in 'retail product distribution conduct'. This means:

- dealing in the product;
- giving a disclosure document in relation to an offer of the product under Part 6D.2 of the Act;
- giving a Product Disclosure Statement for the product under Part 7.9 of the Act;
    - providing financial product advice in relation to the product.[1]

Distributors can be an AFS licensee, issuer, seller of a financial product or a representative of an AFS licensee.[2]

There are specific obligations that **only apply to distributors**, which will also be discussed in the following pages.

As ETO's business involves both issuing and distributing financial products, it is important to understand and distinguish between the two obligations, as different obligations apply to the issue and distribution of financial products. This is discussed further below.

ETO takes its obligations to fully comply with all aspects of the DD Obligations very seriously.

The Act imposes civil and criminal liability for a contravention of each obligation under Part 7.8A of the Act (the DD Obligations).

What financial products do the design and distribution obligations apply to?

In this policy, 'financial products' refers to products that we issue, and to which the design and distribution obligations apply.[3]

The financial products that we offer, that are in scope for the purposes of the DD Obligations, are margin foreign exchange contracts (**Margin FX Contracts**) and contracts for difference (**CFDs**) such as Commodity CFDs, Index CFDs, Equity CFDs and Cryptocurrency CFDs (together, the **Products**).

Product categories	Products offered by ETO
Products for which a Product Disclosure Statement (PDS) must be prepared under Part 7.9 of the Act	• OTC derivatives – CFDs • Margin foreign exchange contracts

The design and distribution obligations apply to products both:

- launched after introducing the regime (**new products**); and
- which continue to be issued to Consumers after introducing the regime (**continuing products**).

What are the design and distribution obligations?

At its core, the obligations are to ensure a consumer-centric approach is maintained when designing and distributing products.

Broadly speaking, the DD Obligations requires ETO to:

- design and distribute products that are likely to be consistent with the likely objectives, financial situations and needs of Consumers; and
- target products to Consumers who would benefit from them, in order to improve customer outcomes.

The obligations provide a legislative framework for issuers and distributors to develop and maintain effective product governance arrangements across the lifecycle of financial products.

Obligations for issuers

The specific obligations that apply to **issuers** include:

- making a TMD for a financial product;
- taking reasonable steps to direct distribution of the relevant product;
- reviewing and monitoring the TMD (i.e. post-sales review);
- notifying ASIC of 'significant dealings'; and
- keeping records of decisions made and all other required records.

Obligations for distributors

The specific obligations that apply to **distributors** include:

- taking reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the most recent TMD;

- notifying the issuer of significant dealings, and providing the issuer with other required information; and
- keeping appropriate records.

Product governance arrangements

Product governance arrangements are the systems, processes and procedures in place across the lifecycle of financial products which can help ensure that an issuer/distributor complies with its design and distribution obligations.

As a product issuer

As a AFSL Licensee and a product issuer, ETO's product governance arrangements (arrangements to ensure ETO complies with the DD Obligations) should include the following:

- A document, such as a charter, policy, procedure or framework, that sets out who within ETO is responsible for performing the following functions, and who is accountable for these functions, as they relate to the issue of financial products:
    - a) product design;
    - b) approval of product design, establishing and launching the products (e.g. the board, a delegation of the board (investment committees, RM forums, compliance committees), senior management including the Head of Product or a combination of these stakeholders);
    - c) knowledge and expertise in relation to the relevant underlying assets (e.g. crypto assets, where the underlying for the CFDs is a crypto asset);
    - d) determining what the reasonable steps in relation to distribution are and separately, taking those steps;
    - e) Product related business and operational risk management;
    - f) product disclosure;
    - g) breach and reportable situation reporting;
    - h) product administration and operational functions in relation to the product;
    - i) complaints handling (including the existing complaints policy); and
    - j) conflicts of interest.
- Additional documentation, such as policies, procedures or frameworks, that set out how each of the above functions are actually to be performed, for example:
    - a) product design – a product specification document that sets out all of the specifications, functions, characteristics, limitations and the legal basis upon which financial products are to be issued and how they are to be distributed. This document should be reviewed and approved by all relevant stakeholders within our business (e.g. Board, Business Operations, Legal and Compliance, Tax, Finance etc.);
    - b) approval of product design – Board papers (i.e. papers written by Management and submitted to the Board for the Board's consideration), legal advice and Board minutes evidencing Board approvals. Where permitted by law, and where appropriate, some of these functions can be performed by a sub-committee/delegation of the Board;
    - c) compliance policies, including in relation to complaints handling and conflicts of interest;
    - d) breach and reportable situation reporting. This refers to incident, breach and other reportable situations policy, assessment and reporting systems as a whole. Where

this function is operating correctly, breaches and incidents relevant to the product should be identified and considered internally. This will assist with identifying any product design issues that require rectification or remediation. This is a separate obligation to reporting significant dealings;

e) ongoing review of the TMD and ongoing periodic review of the relevant financial products – Board papers (i.e. papers written by Management and submitted to the Board for the Board's consideration regarding the establishment of the financial product and any review of the TMD), legal advice and Board minutes evidencing Board approvals. Some of these functions can be performed by a sub-committee/delegation of the Board;

f) systems, documentation and reporting functionality that is to be implemented for the purpose of receiving prescribed reporting from distributors (e.g. complaint and significant dealings data, as required by the DD Obligations).

As a product distributor

As a product issuer with distribution functions, ETO's product governance arrangements should also include the following:

- A document, such as a charter, policy, procedure or framework, that sets out who within ETO is responsible for performing the following functions and who is accountable for the following functions, as they relate to the distribution of financial products:

  a) Establishing distribution channels (e.g. the relevant members of our Distribution or Adviser Relationships/Adviser Services business unit, together with other relevant stakeholders);

  b) Remuneration and incentive structures proposed for distribution, including distribution staff;

  c) Marketing;

  d) Conflicts of interest;

  e) Breach and reportable situation reporting;

  f) Determining which products appear on the approved product list (**APL**), where relevant, and how that APL is re-assessed on an ongoing basis;

  g) Determining what the reasonable steps in relation to distribution are and separately, taking those steps;

  h) Distribution related business and operational risk management;

  i) Management and reporting of significant dealings.

- Additional documentation, such as policies, procedures or frameworks, that set out how each of the above functions are actually to be performed, for example:

  a) distribution – a document that is maintained by the Distribution team that sets out the guidelines as to how the distribution function is to be performed;

  b) the APL where appropriate, or other list of approved investments;

  c) Board papers;

  d) compliance policies, including in relation to complaints handling and conflicts of interest;

  e) breach and reportable situation reporting;

  f) operational and administration requirements in relation to the distribution of the product;

  g) compliance reporting framework, setting out how compliance reporting related to product distribution is to be performed, and also the reporting of the prescribed information required under the DD Obligations (discussed below) (e.g. complaint and significant dealings data, as required by the DD Obligations, and including other information as required by ETO).

Product design stage

The product design stage may involve a product approval system (including processes and procedures), which includes the following steps:

- identify the target market of a product;
- test the product;
- specify conditions or restrictions to direct the distribution of the product;
- set out the reasonable steps that will be taken to ensure distribution is made to the intended target market;
- determine how consumer outcomes will be monitored and measured;
- consider and determine what the key attributes of our financial product are and form a view on why they are likely to be consistent with the likely objectives, financial situation and needs of the consumer; and
- avoid engaging in conduct that is likely to cause Consumers to obtain financial products that are not consistent with their likely objectives, financial situation and needs, or that will result in Consumers receiving unsuitable products.
- Consider conflicts of interest that may arise due to the nature of the product. The nature of the financial product issued may mean that the product issuer and the Consumer's financial interests are not aligned. For example, ETO as a CFDs issuer may earn revenue directly as a result of its client's losing trades.

Other matters to consider in relation to product design

- Is there a genuine market for the product? What evidence is there of this? Receiving pressure from either internal or external stakeholders (e.g. distributors) to launch a product or suite of products doesn't mean there is a genuine need or market for the product. Investigate whether there is actual demand for the product. A product that ultimately doesn't attract sufficient demand is unlikely to be appropriate for any class of Consumers in the long run and can also result in ETO suffering a loss.
- Will the financial product's proposed pricing be competitive? Has the pricing been tested against competitors and with Consumers? Issuing a financial product which has not been priced competitively is unlikely to create sufficient investor demand, even if it's otherwise a great product. Financial products often fail for this reason, not only from the client's perspective, but on the part of the product issuer as well.
- Who will perform various functions associated with the operation of the product? Is the product issuer best placed to perform most functions itself, or should the product issuer outsource various functions? For example, in the case of an investment product, is the product issuer best placed to provide its own investment management capabilities, or would the product issuer be better off outsourcing investment management? How did the product issuer choose its proposed outsourced service providers?
- Is the product demand being driven by Consumers, or a third party which may have an influence over ETO (e.g. a third party distribution network)? Is this appropriate in ETO's particular circumstances, and can the product launch otherwise by justified?

These processes and procedures aim to ensure that ETO is designing financial products with key attributes that are consistent with the likely objectives, financial situation and needs of the identified target market.

Product distribution stage

At the product distribution stage, there should be a process for effective communication between those responsible for designing the financial product and those responsible for marketing and distributing it.

This will ensure ETO meet its obligation to take reasonable steps in relation to distribution, as well as the obligation to notify issuers of significant dealings outside of the target market.

Monitoring and review stage

In the monitoring and review stage, there should be a process involving the collection and analysis of relevant and reliable consumer, product performance, value and transaction data.

This will provide for regular monitoring and review of product performance and enable improvement of design and distribution.

Why is it important?

Robust product governance arrangements will enable issuers and distributors to better comply with the design and distribution obligations, and to demonstrate compliance.

As many of our existing compliance measures currently in place are already similar to the examples provided above and can be expanded upon for the purposes of ensuring that our product governance arrangements address the DD Obligations. In order to have effective product governance arrangements, we will need to:

- document product governance arrangements as discussed above;
- fully implement the arrangements, monitor and report on the effectiveness of the arrangements (e.g. senior management to integrate the framework into the culture of the business);
- regularly review our product governance arrangements and ensure they are up-to-date (e.g. process for identifying material changes to obligations, external review, etc.).]

Making a target market determination

Before distributing a product, the issuer must make a TMD for each financial product.[4]

What constitutes an appropriate TMD will differ depending on the type and characteristics of the financial product to be issued, the intended distribution approach and product governance arrangements.

In any case, there are certain requirements that must be satisfied when making a TMD.

What must be included in a target market determination?

A target market determination must:

- describe the class of Consumers that comprises the target market for the product (**target market**);[5]
- specify any conditions and restrictions on distribution (**distribution conditions**);[6]

- specify events and circumstances that would reasonably suggest the target market determination is no longer appropriate (**review triggers**);[7]
- specify reasonable maximum review periods (**review periods**);[8]
- specify when the distributor should provide the issuer with information about the number of complaints about the product;[9]
- specify the kinds of information the distributor must provide to the issuer to determine that a TMD may no longer be appropriate, along with:
    - which distributors should provide those kinds of information; and
    - reporting periods for when the information should be provided to the issuer.[10]

Identifying the target market

In identifying the appropriate target market for a financial product, ETO must take into consideration whether the product and its key attributes are likely to be consistent with the likely *objectives, financial situation and needs* of the **class** of Consumers.

Identifying common objectives, financial situation and needs

The following should be taken into account when identifying the common objectives, financial situation and needs of the class of Consumers:

- the target market's ability to bear loss;
- the age bracket;
- income level of the target market;
- risk tolerance; and
- the objectives of the target market (e.g. is the class of Consumers seeking capital growth from the relevant financial product?).

A client's understanding of the product can be taken into account. However, ASIC notes that the target market should not be predominantly based on the client's understanding;[11] and where the TMD refers to the client's understanding, it must be shown how the client's understanding of a particular product will be assessed as part of its reasonable steps obligation.

It is important to keep in mind that the relationship between common objectives, financial situation and needs are not mutually exclusive, and should be considered in totality.

Considering the Consumer's life stage may also assist in determining the target market.

Critical assessment

As a way of assessing that an appropriate target market has been identified for a particular product, the following questions can be considered as part of the process[12]:

- What is the purpose of the product? Does it fulfil a well-founded need for Consumers in the target market? Is it fit for purpose?
- Is the product likely to deliver what has been promised? Has this type of product resulted in good outcomes for the target market in the past? Did it deliver what was promised?
- Does the product benefit the Consumers in the target market? Who has benefited from this type of product in the past?

- Did the product meet the needs of those we distributed it to? What did our key data points show were the ongoing benefits, risks and outcomes for Consumers?
- How is the product likely to perform in the hands of the Consumers in the target market?
- Does the product include features that could be harmful or unnecessary for the target market?
- Does the product need to be redesigned or changed to be suitable for the target market? Or does the target market need to be further limited?

Describing the target market

In describing the target market, the target market must be identified at a sufficiently granular level to avoid including classes of Consumers for which the financial product would not be likely consistent with their objectives, financial situation and needs.[13]

It is not enough to define the target market broadly, but restrict the distribution to a narrower set of Consumers by use of distribution controls.

Consumers for whom the product is unsuitable

Identifying classes of Consumers for whom the relevant financial product is not suitable, could assist in describing the target market by excluding classes of Consumers whose objectives, financial situation and needs are not consistent with the financial product. For example, Consumers who are vulnerable for any reason (such as financial hardship) would form a class of Consumers for whom a financial product may not be suitable.

As an example, a high-risk investment product would be unsuitable for a class of Consumers, which have a low risk tolerance and who do not have the ability to bear loss.

Documenting classes of Consumers for whom a product is unsuitable can help demonstrate that the target market identified is otherwise appropriate. Determining classes of Consumers for whom the financial product is unsuitable can also be a useful guide for distributors in complying with their obligations to take reasonable steps in relation to distribution.

Specifying conditions or restrictions on distribution

Conditions and restrictions on distribution (**distribution conditions**) must also be specified as part of the TMD. This is part of our obligation to take reasonable steps in ensuring the distribution of the financial product is consistent with the TMD and directed towards its intended target market.[14] Where the distribution conditions are inadequate (i.e. because a substantial amount of distribution is occurring outside the target market), the TMD should be amended to ensure that the financial product is distributed to the intended target market.

Where there is a narrow target market for a financial product, the distribution conditions must be more specific and detailed to direct the intended distribution method. This is so that the distribution strategy would reflect these distribution conditions in order to reduce the risk of the product being sold to Consumers outside of the target market. For example, the distribution strategy could involve targeted advertising, specific content placed on the website about the product, call centre and advice line scripts and greater guidance for distributors.[15]

On the other hand, where there is a wider target market for a financial product, there may be fewer distribution conditions needed to ensure the products are sold in accordance with the TMD.[16]

Reviewing and monitoring the target market determination

As the issuer, the design and distribution obligations also require ETO to review the TMD periodically, and, in response to review triggers, to ensure that the TMD is appropriate for the financial product over time.[17]

The following must be specified when preparing the TMD:

- review triggers;[18]
- reasonable maximum review periods;[19]
- information that product issuers need from distributors to decide if a determination may no longer be appropriate; and
- when the distributor should provide the product issuer with information about complaints.

Review triggers

Review triggers are events and circumstances which would reasonably suggest that the TMD is no longer appropriate. For example, this can include (but are not limited to):[20]

- an event or circumstance that would materially change a factor taken into account in making the TMD for the product;
- whether the product is not being distributed and purchased as envisaged by its TMD;
- the nature and extent of any feedback received from those who distribute or acquire the product;
- the number of complaints received in relation to the financial product (if there are more than 5 complaints received for any one particular product a review may be triggered depending on the circumstances);
- where the product is an investment product which holds a portfolio of underlying assets, how the financial product has performed over various time periods;
- changes in laws that may affect the operation of the product (e.g. tax laws);
- whether the product has performed in an unexpected manner, particularly, where such performance is unfavourable.

When distribution of the financial product must be stopped

When a review trigger occurs, then, from as soon as practicable, but no later than 10 business days after the person first knew of the occurrence of the review trigger, event or circumstance, the person must not engage in retail product distribution conduct – ***i.e. the distribution of the financial product must stop until the TMD and the product is reviewed.***

Reasonable maximum review periods

In addition to review triggers, the TMD must state the frequency of proposed periodic reviews.[21] Review periods serve as a 'backstop' to ensure that the TMD is being reviewed with sufficient frequency, according to the financial products issued.

In setting a periodic review period, the following must be taken into account:

- nature of the financial product;
- the market in which the product is sold; and
- the way the product is to be distributed.

For example, high-risk investment products with a narrow target market, which could be detrimental if sold to Consumers outside of the target market, will need to be reviewed more frequently than a product that has less potential to result in detriment,[22] ideally not less frequently than annually.

Information required from distributors

Information required from the distributor to determine whether a TMD is still appropriate, must be specified in the TMD. This should include:

- complaints data;
- consumer feedback (including performance of the product);
- requests for information that the distributor has received from Consumers;
- percentage of sales to Consumers who are not in the target market;
- samples of recorded sales calls;
- conversion rates;
- volume of sales; and
- web analytics.

Complaints data may be a particularly useful indicator for certain financial products in demonstrating that the TMD is not being complied with or is no longer appropriate.[23]

Distributor reporting period

In determining the types of information required from distributors, the TMD should also specify reporting periods for when that information should be provided.

Similar to specifying a periodic review period, in setting a reporting period for distributors, the risk of detriment to Consumers if the TMD is no longer appropriate, and the need to stop distributing the financial product, should be considered.[24]

Taking reasonable steps in relation to distribution

Taking reasonable steps that will, or are reasonably likely to, result in retail product distribution conduct to the product being consistent with the TMD is part of the design and distribution obligations, and should be considered when developing the distribution strategy.[25]

Distribution strategy and methodology will differ between different financial products.

Generally speaking, the following factors should be kept in mind in taking reasonable steps to ensure that the distribution of the financial product is consistent with the TMD:

- risk – the likelihood of the distribution being inconsistent with the TMD;
- harm – the nature and degree of harm that might result from the financial product being distributed outside of the target market;
- mitigation steps – steps that can be taken to eliminate or minimise the likelihood that distribution of the product will not be consistent with the TMD, and the negative impacts that this may have, which likely include asking Consumers questions in accordance with our existing client qualification policy (see ASIC's RG 227– Benchmark 1).[26]

As an Issuer

As part of the reasonable steps obligation, the following should be considered when developing the distribution strategy:

- ensure the distribution conditions in the TMD are sufficient to direct distribution towards the target market for the financial product.
- ensure the promotional materials and marketing campaigns are aimed at the target market for the financial product. Please also note that the product issuer must ensure that promotional material describes the target market, or must specify where the TMD is available – this can be added to an existing prominent disclaimer (along with meeting the other standard disclosure requirements set out in s1018A of the Act, for products requiring a PDS).
- assess the capacity of the distributor to comply with the distribution conditions imposed (taking into account the distributor's resources, requisite knowledge and competence to distribute the financial product);
- have in place processes that adequately supervise the distributor, to ensure that the financial product is distributed in a way that is consistent with the TMD;
- collect data, analyse and assess the performance of distribution channels through which its financial products are distributed;
- take into account and manage any conflict or potential conflict of interest which exists;
- develop remuneration and incentives for our distribution/sales staff that will not result in distribution being inconsistent with the TMD and applicable laws. The product issuer should also ensure that it has an understanding of whether an external distributor's staff incentive/remuneration policy is consistent with the TMD and applicable laws, or whether it may encourage behaviours that introduce unnecessary risks; and
- ensure sufficient information has been provided to the distributor to meet its obligations.

As a Distributor

For distributors, the following factors should be relevant in satisfying the reasonable steps obligation:

- ensure the distribution method (i.e. the means through which the distributor chooses to interact with the client) is reasonably likely to be consistent with the target market for the financial product;
- take additional steps to comply with the distribution conditions set by the issuer (merely complying with the distribution conditions will not be sufficient to satisfy the reasonable steps obligation);
- ensure the content and medium of delivery to Consumers of promotional or advertising materials are informed by, and consistent with, the TMD for the financial product;
- put in place effective product governance arrangements to allow for an appropriate degree of control and oversight over the distribution process;
- implement a process which identifies changes that may impact on the effectiveness of product governance arrangements to ensure they remain effective;
- eliminate or manage the risk incentives may influence behaviours that could result in distribution being inconsistent with the TMD;
- ensure that remuneration and incentives for our distribution/sales staff will not result in distribution being inconsistent with the TMD;
- consider additional steps to meet the reasonable steps obligation when relying on existing information about Consumers (e.g. seeking further information from the client, checking whether the client's circumstances had changed);

- ensure staff involved in distribution receive sufficient training; and
- ensure the client is reasonably likely to be in the target market for a financial product.

Notifying 'significant dealings'

Both issuers and distributors have obligations to notify 'significant dealings' in financial products that are not consistent with the product's TMD. Issuers have the obligation to notify ASIC, whilst distributors have the obligation to notify the issuer,[27] of any significant dealings.

'Significant dealing' is not defined in the Act. Whether a dealing is significant will depend on the circumstances of each case.

In determining whether a significant dealing has occurred to which the relevant parties should be notified (see obligations to notify in the next page), the following factors are relevant:

- the proportion of Consumers who are not in the target market acquiring the financial product;
- the actual or potential harm to Consumers (e.g. amount of monetary loss, resulting from Consumers who are not in the target market acquiring the product); and
- the nature and extent of the inconsistency of distribution with the TMD.[28]

As an Issuer

Where there is significant dealing in a financial product that is not consistent with the product's TMD, *issuers must notify ASIC* as soon as practicable, and in any case, within 10 business days after becoming aware.[29]

The notification to ASIC must be in writing and must contain the following details:

- dates of the significant dealing (e.g. date or date range in which the dealings occurred that, taken together, are significant; and the date the issuer became aware of the significant dealing);
- description of the significant dealing and why it is not consistent with the TMD;
- how the significant dealing was identified and why it is considered significant;
- what steps have been taken in relation to persons affected by the significant dealing; and
- what steps have been taken to ensure that the significant dealing does not occur again.[30]

As a Distributor

Where the distributor becomes aware of any significant dealing in a financial product that is not consistent with the product's TMD, *it must notify* the issuer as soon as practicable, and, in any event, within 10 business days after becoming aware.[31] This obligation also extends to financial advisers (see ASIC's RG274.212).

The product issuer is likely to have a prescribed template it will ask distributor to use for the purposes of reporting significant dealings.

Record keeping obligations

We must keep good records for the purpose of demonstrating our compliance with the DD Obligations. The product governance arrangements that we put in place to address the DD Obligations should include appropriate record keeping requirements (e.g. keeping appropriate records of Board papers and Board minutes). ASIC can require us to produce those records to them.

As an Issuer

As the issuer, complete and maintain accurate records of decisions (and the reasons) made in relation to the issuer's TMD and associated reviews. These records should be kept for 7 years.

A product issuer, who is required to make a target market determination for a financial product, must collect and keep complete and accurate records of:

1. (i) all target market determinations for the product;
   (ii) review triggers for those target market determinations;
   (iii) review periods for those target market determinations;
   (iv) all other target market determination requirements.

   and decisions made in relation to the above.
2. Complaints.
3. Distribution related information if they are also a distributor.

As a Distributor

Distributors, including financial advisers, must collect information about a financial product and ensure that the information is communicated to the issuer.[32] The information to be collected is set out by the issuer in the TMD, which should include:

- whether any complaints were received in relation to the product during the reporting period specified in the TMD, and the number of complaints received; and
- any further information acquired during the specified reporting period that the issuer has specified should be collected in the TMD.

Information set out in the TMD must be reported to the issuer within 10 business days after the end of the relevant reporting period.[33]

Records of distribution information, in relation to financial products that are issued, must also be kept for 7 years.[34]

'Distribution information' includes the following, which must be kept:

- number of complaints received in relation to the financial product;
- steps taken to ensure the distribution is consistent with the TMD;
- information that the issuer specified in the TMD; and
- dates on which the following information has been reported to the issuer:
  - number of complaints received during the specified reporting period;
  - information specified in the TMD required by the issuer;
  - any significant dealings in the product; and

- substance of those reports.

References

Who does this policy apply to?

Product Providers - ✓

Advice Providers - ✓

Money remitters - ✓

Fintech - ✓

CFD Providers - ✓

Digital Currency - ×

Credit providers - ✓

Related policies and tools

Policies	Risk Management.
Tools	TMD - CFD - Cryptoassets, TMD - CFD & Margin FX Contracts - Other Underlying Assets.

Keywords: product distribution, product issuer, retail product, target market, target market determination.

Legislative requirements and references

Legislation	*Corporations Act 2001*
Regulations	Corporations Regulations 2001 - Chapter 7
Regulatory guidance	ASIC's RG 274 – Product design and distribution obligations

Endnotes

[1] Section 994A(1) of the Act.
[2] Section 1011B of the Act.
[3] Sections 994AA and 994B(1) of the Act
[4] Section 994B(2) of the Act.
[5] Section 994B(5)(b) of the Act.
[6] Section 994B(5)(c) of the Act.
[7] Section 994B(5)(d) of the Act.
[8] Sections 994B(5)(e) and 994B(5)(f) of the Act.
[9] Sections 994B(5)(g) and 994F(4) of the Act.

[10] Section 994B(5)(h) of the Act.
[11] ASIC's RG 274.82.
[12] ASIC's RG 274.13.
[13] ASIC's RG 274.83.
[14] Section 994E(1) of the Act.
[15] ASIC's RG 274.98.
[16] Sections 994B(5)(c) and 994B(8)(a) of the Act.
[17] Section 994C of the Act.
[18] Section 994B(5)(d) of the Act.
[19] Sections 994B(5)(e)-(f).
[20] Revised Explanatory Memorandum (paragraph 1.62).
[21] Sections 994B(5)(e)-(f) of the Act.
[22] ASIC's RG 274.110.
[23] ASIC's RG 274.117.
[24] ASIC's RG 274.109.
[25] Section 994E of the Act.
[26] ASIC's RG 274.141.
[27] Section 994F(6) of the Act.
[28] ASIC's RG 274.159.
[29] Section 994G of the Act.
[30] ASIC's RG 274.99.
[31] Section 994G of the Act.
[32] Sections 994F(2)-(6) of the Act.
[33] Sections 994F(4)-(5) of the Act.
[34] Section 1101C of the Act.