



DDO – ASIC Draft Regulatory Guide

On 19 December 2019, ASIC released Consultation Paper 325 (CP) on the Design and Distribution Obligations (DDO) as well as a draft Regulatory Guide (RG). The CP and RG give ASIC's view on some key aspects of DDO as well as some examples of how the regime will operate in practice.

Product Governance Framework

Whilst there is no formal DDO requirement for organisations to operate a product governance framework, ASIC has acknowledged that such a framework is likely to be at the core of organisation's implementation programs and has stated that it will be difficult to demonstrate compliance without a well embedded framework.

The guidance on what constitutes an effective framework is unlikely to present anything new for most organisations, however its inclusion is a clear sign that ASIC does not view DDO as a box ticking exercise and that organisations will need to conduct a comprehensive review of their product governance arrangements as part of their implementation programs.

Scope Clarifications

The CP has provided clarity on some scoping issues, particularly in relation to MySuper products, investor directed portfolio services (IDPS) and customisable products.

MySuper products that offer an insurance component will not be subject to DDO and therefore issuers will not need to produce a target market determination (TMD) for either the MySuper product or the insurance element. However, Choice superannuation products are still covered by DDO and must meet the requirements, even if they are distributed alongside a MySuper product.

ASIC has also clarified that IDPS are considered to be products in their own right (separately from the underlying investments they offer) and that operators must comply with the DDO issuer obligations. Whilst this undoubtedly adds to the regulatory burden for IDPS operators, the platforms are relatively simple products and it should be possible to adopt a proportionate approach to meeting the requirements.

Where a financial product is customisable at the point of sale (e.g. selecting a waiting period for an income protection product), issuers are expected to consider the different options when determining the target market and may have to create separate TMDs for each permutation of the product. The same logic has also been applied to products that have different variations (e.g. differing terms, features, functionality or fees). Whilst ASIC acknowledges that the TMD is unlikely to change for every choice or option, this approach is likely to cause a shift in thinking for some organisations who may have been considering establishing high level TMDs that cover a number of similar products.

Target Market Determinations and Review Triggers

One area where ASIC has provided new guidance is in relation to the factors that should go into a TMD. The draft guidance is clear that organisations should not be using consumers' understanding or experience of products as the predominant factor in setting the TMD, and that when consumer understanding is used, it should be assessed as part of an issuer's reasonable steps obligation. This is unsurprising given the regulation's focus on designing products that address consumer needs, however it does reemphasise the importance of organisations developing a robust methodology for determining the target market.

Whilst ASIC has not set out a comprehensive list of review triggers (due to the need for them to be tailored to specific products) it has provided some examples for insurance and managed funds, as well as examples of information that issuers might request from distributors. The example distribution information should be a wake-up call for distributors who until now may have expected little direct impact from DDO. Some of the data points are unlikely to be readily available to distributors (e.g. sales to the negative target market and number of requests for information from consumers) and may require changes to existing sales practice to enable them to be gathered.


Reasonable Steps

The industry has been considering the issue of what constitutes reasonable steps for ensuring sales to the target market since DDO was introduced. By sticking to a requirement for organisations to consider the potential risk, harm and mitigation steps when implementing controls, the draft RG has not provided additional clarity.

Vertically integrated organisations that distribute their own products are likely to find it easier to demonstrate taking reasonable steps as there should be linkages between control frameworks on the product and distribution sides of the business. However, issuers who rely on third party distributors may find it more difficult as demonstrating reasonable steps is likely to rely on conducting ongoing due diligence of distributors which is a complex and time-consuming task.

What Next for Organisations

Although there are some elements of DDO where organisations may not feel there is enough guidance to help with their implementation planning, ASIC's principles-based approach should be welcomed as it allows organisations to adopt a suitable and proportionate approach. The next steps for organisations should be to review any implementation decisions that have already been made in the context of the draft guidance and continue to develop product governance frameworks that address the DDO requirements and implement the obligations.

Consultation Paper 325 and the draft Regulatory Guide can be [found here](#). 

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