



**ASIC**  
Australian Securities &  
Investments Commission

CONSULTATION PAPER 325

# Product design and distribution obligations

December 2019

## About this paper

This paper sets out ASIC's proposals for guidance on the design and distribution obligations in Pt 7.8A of the Corporations Act. It also sets out additional proposals relating to our administration of the design and distribution regime. We are seeking the views of interested stakeholders, including industry and consumers, on our proposals.

Note: Draft Regulatory Guide 000 *Product design and distribution obligations* (draft RG 000), which is attached to this paper, is available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 325.

### About ASIC regulatory documents

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

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

**Regulatory guides:** give guidance to regulated entities by:

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

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

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

### Document history

This paper was issued on 19 December 2019 and is based on the Corporations Act as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

Sections B–E of this paper seek feedback on draft RG 000. We are also interested in feedback on any other issues you consider important.

Your comments will help us develop our policy on administering the design and distribution obligations. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section F, 'Regulatory and financial impact'.

### Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at [www.asic.gov.au/privacy](http://www.asic.gov.au/privacy) for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 11 March 2020 to:

Product Regulation  
Strategic Policy  
Australian Securities and Investments Commission  
GPO Box 9827  
Brisbane QLD 4001  
email: [product.regulation@asic.gov.au](mailto:product.regulation@asic.gov.au)

## What will happen next?

<b>Stage 1</b>	19 December 2019	ASIC consultation paper released
<b>Stage 2</b>	11 March 2020	Comments due on the consultation paper
<b>Stage 3</b>	2020	Regulatory guide released

## A Background to the proposals

### Key points

This consultation paper sets out our proposals on the implementation of the design and distribution obligations in Pt 7.8A of the *Corporations Act 2001* (Corporations Act). We have also attached draft Regulatory Guide 000 *Product design and distribution obligations* (draft RG 000) that sets out our proposed guidance.

The Financial System Inquiry (FSI) recommended in its final report the introduction of principles-based design and distribution obligations.

Note: See the 'Key terms' in draft RG 000 for a list of terms and definitions used in this paper. Draft RG 000 is available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 325.

### Introduction of the design and distribution obligations

- 1 The Australian Government introduced the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019 (Product Regulation Bill) into Parliament in September 2018. The Product Regulation Bill introduced two key reforms in financial services:
  - (a) a product intervention power for ASIC; and
  - (b) a new governance regime for the design and distribution of financial products (design and distribution obligations).
- 2 The Government introduced these reforms in response to the FSI's recommendations to enhance ASIC's regulatory toolkit. The FSI recommended that ASIC should have a product intervention power, so that we could temporarily intervene when there is a risk of significant consumer detriment. The FSI also recommended the introduction of principles-based design and distribution obligations. These obligations would require financial product issuers and distributors to consider a range of factors when designing products and setting distribution strategies.
 

Note: See FSI, [Financial System Inquiry: Final report](#) (FSI final report), November 2014, Recommendations 21–22.
- 3 The design and distribution obligations are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to designing and distributing products. The obligations provide a legislative framework for issuers and distributors to develop and maintain effective product governance processes across the lifecycle of financial products. The obligations do not equate to an individual

product suitability test that requires assessment based on an individual’s personal circumstances at point-of-sale.

- 4 The Product Regulation Bill passed Parliament on 3 April 2019. The product intervention power, introduced by the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (Product Regulation Act), came into effect on 6 April 2019.
- 5 The Product Regulation Act also introduced the new product design and distribution regime to Ch 7 of the Corporations Act. This paper is about the design and distribution obligations in Pt 7.8A of the Corporations Act, which commence on 5 April 2021.
- 6 References to provisions of the Corporations Act that have not commenced are to the provisions that will be inserted by Sch 1 to the Product Regulation Act.

## Context for the design and distribution obligations

### Regulation to improve the design and distribution process

- 7 The introduction of the design and distribution obligations recognises that the provision of mandatory information (or disclosure) to consumers does not necessarily result in ‘informed consumers’ and often does not correlate with good consumer outcomes. The regime seeks to rebalance—between consumers and industry—the onus for effecting good consumer outcomes, and avoiding poor ones, in the provision of financial products.
- 8 In recommending the principles-based design and distribution obligations for all financial products, the FSI sought to:
  - (a) decrease the number of consumers buying products that do not meet their needs;
  - (b) make industry more consumer-focused in product design; and
  - (c) promote fair treatment of consumers by firms that design and distribute products.
- 9 Issuers will have an increased responsibility to design products that are fit for purpose and deliver good consumer outcomes. More broadly, complying with the design and distribution obligations is consistent with some of the norms of conduct outlined by Commissioner Hayne in the final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission). In particular, financial firms should act fairly and provide services that are fit for purpose.

Note: See Royal Commission, [Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Final report](#) (Royal Commission final report), February 2019, vol. 1, pp. 8–9.

## An intentional shift beyond disclosure

- 10 In recommending the introduction of design and distribution obligations, the FSI noted that ‘disclosure alone is unlikely to correct the effect of broader market structures and conflicts that drive product development or distribution practices’ that result in poor consumer outcomes.

Note: See FSI, [Financial System Inquiry: Interim report](#) (FSI interim report), July 2014, p. 3-57.

- 11 In recognition of the shortcomings of the existing disclosure regime, the FSI recommended that issuers and distributors of financial products take greater responsibility for the design and distribution of products to promote positive consumer outcomes.

Note: See [FSI interim report](#), p. 3-57, and [FSI final report](#), Recommendations 21–22.

- 12 The FSI’s conclusions are consistent with what we have seen over the course of our regulatory work. We have observed that too often, under the existing regulatory settings, financial products are designed and distributed without sufficiently considering the consumer, or the outcomes a product or its distribution can have. Consumers are left, for example, to navigate and overcome complexity, structural obstacles and sophisticated sales strategies.

- 13 We recently released a joint report with the Dutch Authority for the Financial Markets (AFM) on disclosure: see [Report 632 Disclosure: Why it shouldn’t be the default](#) (REP 632). This report includes more than 10 years of evidence (33 case studies) where disclosure and warnings have often failed to deliver intended consumer outcomes, or have backfired.

Note: REP 632 recognised that disclosure remains necessary. It can and does contribute to better financial markets (e.g. when media, competitors and intermediaries use it to gauge and thus enhance competition). Regulators can use it to contribute to market transparency, integrity and efficiency. And consumers can use disclosure as post-purchase reference documents in the event of disputes. However, we cannot assume that disclosure alone, including warnings, will be effective in protecting consumers, enabling informed or good decision making, and driving competition from the demand side.

- 14 Globally, the use of design and distribution obligations as a regulatory tool is not a new concept. With passage of the Product Regulation Act, Australia has joined other international jurisdictions with established product design and distribution (or ‘product governance’) regimes. These jurisdictions include the United Kingdom (UK), Hong Kong, Singapore, the Netherlands and other member states of the European Union (EU): see the Markets In Financial Instruments Directive (Directive 2014/65/EU) (MiFID II) and the Insurance Distribution Directive (Directive 2016/97/EU).

Note 1: See Treasury, [Design and distribution obligations and product intervention power](#), proposals paper, December 2016.

Note 2: From 16 July 2007 until the introduction of MiFID II, the United Kingdom had a product governance framework under the Financial Conduct Authority’s [Regulatory](#)



*Guide on the Responsibilities of Providers and Distributors for the Fair Treatment of Customers.*

- 15 The EU and UK product governance requirements in particular have some key elements in common with the new Australian regime. Notably, they require issuers to design products that meet the needs of an identified target market and take reasonable steps to ensure that the product is distributed to that target market.
- 16 The introduction of the design and distribution obligations in Australia has been informed by international experience. We have engaged with peer regulators from comparable jurisdictions about their experience implementing and administering product governance regimes to inform our approach to the draft guidance.
- 17 Our approach to the draft guidance has also been informed by early feedback from stakeholders, including industry and consumer groups. Throughout August and September 2019, we invited stakeholders to attend roundtable consultations and provide initial thoughts on and questions about the design and distribution obligations. We have also considered additional issues raised by stakeholders outside of the roundtable consultation process. This early feedback has been taken into account as we have developed the draft guidance.

## **Role of our guidance**

- 18 Our proposed guidance explains:
- (a) our interpretation of the design and distribution obligations;
  - (b) our expectations for meeting these obligations; and
  - (c) our general approach to administering these obligations.
- 19 Our objective is for the guidance to be clear and useful, and to provide issuers and distributors with tools and direction to assist them to meet the design and distribution obligations. However, given the breadth and scalability of these obligations, which apply across the entire financial services sector, draft RG 000 is intentionally high-level and principles-based.
- 20 To supplement this approach, draft RG 000 also includes examples throughout the guide to help issuers and distributors comply with their obligations.
- 21 While issuers and distributors will be assisted by our guidance and the examples we have included, they remain responsible for deciding how they will meet the design and distribution obligations when providing their particular financial products and services.

- 22 We recognise that the design and distribution obligations are a new approach to regulation of financial product design and distribution for both industry and ASIC. Our guidance will be a useful starting point as industry prepares for commencement of the regime. Over time, our approach to administering the design and distribution obligations may evolve with the benefit of experience, and we will update our guidance as required.
- 23 We recognise that the approach taken by issuers and distributors to implement and comply with the requirements may also develop following practical experience which is likely to increase understanding of consumers' needs and objectives, and with the advancement of technology and data management capabilities.
- 24 For example, the approach taken by issuers and distributors to comply with the design and distribution obligations on commencement of the regime may be different from the approach taken several years from now. We expect that systems and processes will develop, be tested and be refined over time.
- 25 We expect to have a constructive relationship with industry during the implementation phase.

## Overview of the design and distribution obligations

- 26 The design and distribution obligations recognise the importance of identifying an appropriate target market for financial products at the outset and ensuring that it is the focus of all aspects of product development, design and distribution.
- 27 To meet the design and distribution obligations, we expect issuers and distributors to introduce and maintain effective governance processes across the lifecycle of financial products, focused on the design and distribution of products that are likely to be consistent with the likely objectives, financial situation and needs of consumers in an identified target market.
- Note 1: In this paper, references to 'financial products' or 'products' are references to products to which the design and distribution regime applies, unless indicated otherwise.
- Note 2: In this paper, the term 'consumer' means a 'retail client' for a financial product, unless otherwise specified.
- 28 We expect that compliance with the design and distribution obligations should not be onerous for those firms that are already committed to good business practice. As observed by the FSI, for those businesses with good practices that are already taking a consumer-centric approach to designing and selling products, the design and distribution obligations will require only minimal changes.

Note: See [FSI final report](#), p. 194.

## Products affected by the design and distribution obligations

### New, continuing and legacy products

- 29 Issuers and distributors must comply with the design and distribution obligations for financial products that are to be issued to a consumer: see s994B(1)–(2) and 994E(3). This means the obligations apply to:
- (a) products launched after commencement of the regime (new products); and
  - (b) existing products that continue to be issued to consumers after commencement of the regime (continuing products).
- 30 Closed products for which no further offers or issues are being made after commencement (legacy products) are not affected by the design and distribution obligations: see s994B(2).
- 31 Distributors do not have to comply with the design and distribution obligations for secondary sales of products, unless such sales are made in circumstances that could otherwise be used to avoid the obligations (regulated sale).

Note: For the definition of ‘regulated sale’, see s994A(1).

### Products that are subject to the obligations

- 32 In this consultation paper, ‘financial products’ refers to products to which the design and distribution obligations apply: see s994AA and 994B(1). These products include:
- (a) products for which a Product Disclosure Statement (PDS) must be prepared under Pt 7.9 of the Corporations Act (e.g. interests in a managed investment scheme, general insurance, and interests in a superannuation fund);
  - (b) securities for which a disclosure document must be prepared under Pt 6D.2 of the Corporations Act—except for ordinary shares (unless the company is an investment company or intends the shares to be converted to preference shares) (e.g. hybrid securities);
  - (c) products that are not regulated under Pts 6D.2 or 7.9 of the Corporations Act, but that are ‘financial products’ under Div 2 of Pt 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) (see s994AA(1) of the Corporations Act)—this includes credit contracts and consumer leases, including those regulated under the *National Consumer Credit Protection Act 2009* (National Credit Act) (e.g. credit cards, home loans, funeral expenses policies); and
  - (d) credit facilities under the ASIC Act, which is broader than credit under the National Credit Act (e.g. short-term credit exempt from the National Credit Act).

## Products that are not subject to the obligations

33 There are some financial products that are not subject to the design and distribution obligations: see s994B(3). These include:

(a) MySuper products;

Note: For further guidance on the MySuper exemption, see draft RG 000 at RG 000.99–RG 000.100.

(b) margin lending facilities;

(c) generally, fully paid ordinary shares in a company (including a foreign company); and

Note: ‘Ordinary share’ is not defined in the Corporations Act. According to the [Revised Explanatory Memorandum for the Treasury Laws Amendment \(Design and Distribution Obligations and Product Intervention Powers\) Bill 2019](#) (Revised Explanatory Memorandum), consistent with existing practice, ‘ordinary share’ is to take its ordinary meaning having regard to the legislative context in which it is used and the purpose of the design and distribution regime. However, the use of the term ‘ordinary share’ is intended to distinguish such shares from other types of shares, particularly preference shares.

(d) securities issued under an employee share scheme.

Note 1: See the definition of ‘employee share scheme’ in s9.

Note 2: Financial products may also be excluded from the design and distribution regime under the Corporations Regulations 2001 (Corporations Regulations).

## Who the design and distribution obligations apply to

34 The design and distribution obligations apply to issuers and distributors of financial products. This includes:

(a) for issuers:

(i) persons who must prepare a disclosure document under the Corporations Act (e.g. a responsible entity of a managed investment scheme, an insurer, a superannuation trustee, and an issuer of hybrid securities); and

(ii) persons who issue a product if they are not covered by paragraph 34(a)(i) (e.g. an issuer of a funeral expenses policy); and

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

(b) for distributors—regulated persons, as defined in s1011B, including Australian financial services (AFS) licensees and authorised representatives.

Note: The Corporations Regulations may further prescribe who the design and distribution obligations apply to.

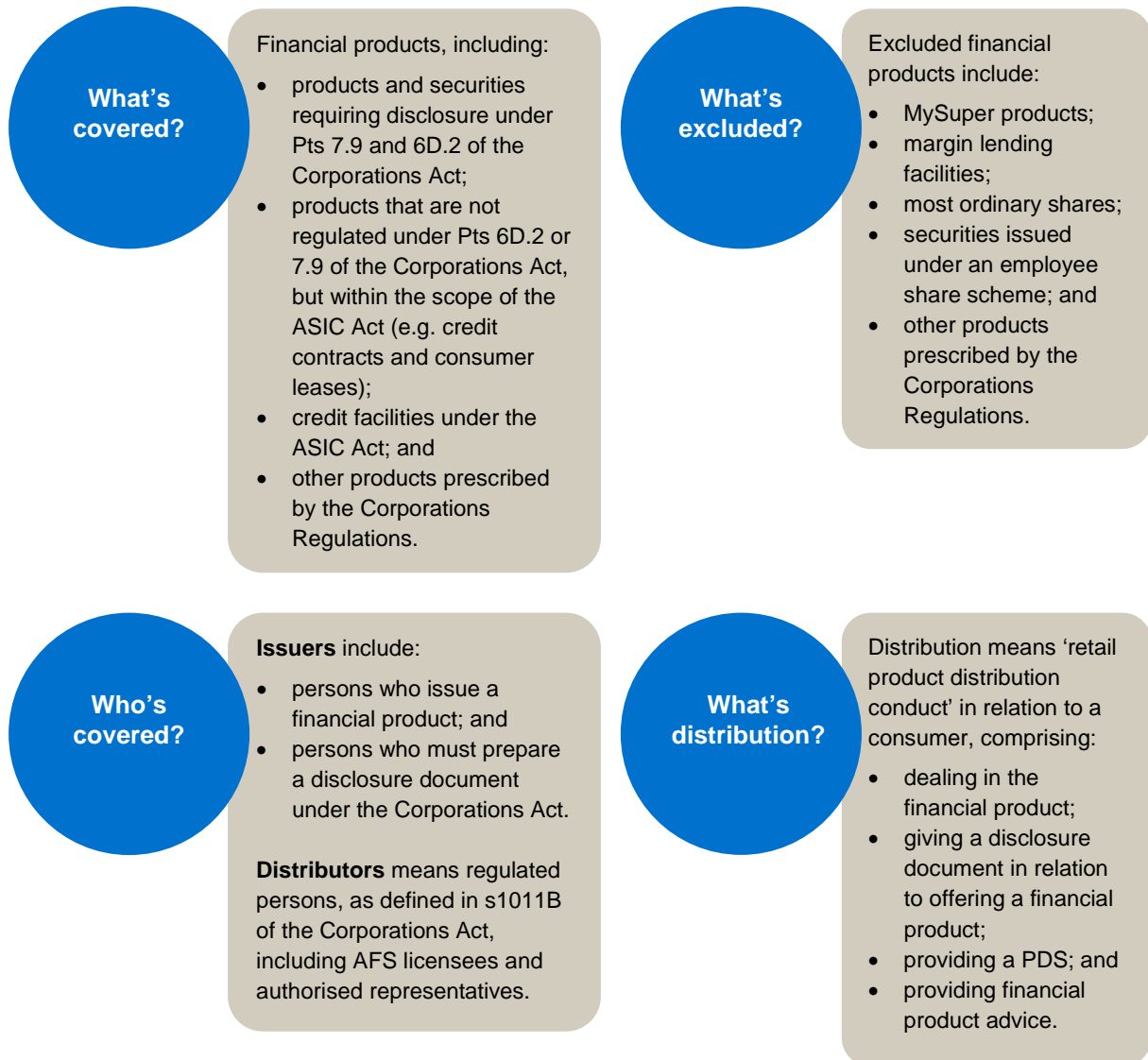
35 Distribution means ‘retail product distribution conduct’ in relation to a consumer, comprising:

(a) dealing in the financial product;

- (b) giving a disclosure document in relation to offering a financial product;
- (c) providing a PDS; and
- (d) providing financial product advice (see s994A(1)).

36 Figure 1 provides an overview of the coverage of the design and distribution obligations.

**Figure 1: Coverage of the design and distribution obligations**



Note: See paragraphs 32–35 for the information in this figure (accessible version).

### Obligations relevant to issuers

37 To comply with the design and distribution obligations, an issuer must make an appropriate target market determination for each financial product it issues. A target market determination must:

- (a) describe the target market;
- (b) specify any conditions and restrictions on distribution (distribution conditions); and
- (c) specify other information required to ensure that the target market determination remains appropriate.
- 38 The target market determination must be made publicly available. It must also be reviewed as required to ensure that it remains appropriate.
- 39 An issuer must also:
- (a) take reasonable steps that will, or are reasonably likely to, result in distribution of the financial product being consistent with the target market determination; and
- (b) notify ASIC of any ‘significant dealings’ in the financial product that are not consistent with the target market determination.
- 40 Table 1 provides an overview of the design and distribution obligations that apply to issuers.

**Table 1: Design and distribution obligations relevant to issuers**

Obligation	Brief description	Our guidance and proposals
Make a target market determination: see s994B	<p>An issuer must make an appropriate target market determination for its financial product. A target market determination must:</p> <ul style="list-style-type: none"> <li>describe the class of consumer that comprises the target market (within the ordinary meaning of the term) for the product;</li> <li>specify any distribution conditions and restrictions on distribution;</li> <li>specify review triggers (events that reasonably suggest the target market determination is no longer appropriate);</li> <li>specify when the first review of the target market determination must occur;</li> <li>specify when subsequent reviews of the target market determination must occur;</li> <li>specify reporting periods for when the distributor should provide complaints to the issuer; and</li> <li>specify what information distributor(s) must report to the issuer (and how frequently) to enable the issuer to identify whether the target market determination needs to be reviewed.</li> </ul>	For our proposed guidance, see draft RG 000 at RG 000.60–RG 000.106. For our proposals relating to this guidance, see paragraphs 57–88 in this paper.

Obligation	Brief description	Our guidance and proposals
Take reasonable steps in relation to distribution: see s994E(1)	An issuer must take reasonable steps that will, or are reasonably likely to, result in a distribution being consistent with the most recent target market determination.	For our proposed guidance, see draft RG 000 at RG 000.107–RG 000.121. For our proposals relating to this guidance, see paragraphs 89–93 in this paper.
Notify ASIC of ‘significant dealings’: see s994G	An issuer must notify ASIC if it becomes aware of a significant dealing in the product that is not consistent with the target market determination as soon as practicable (within 10 business days).	For our proposed guidance, see draft RG 000 at RG 000.146–RG 000.150. For our proposals relating to this guidance, see paragraphs 103–105 in this paper.
Review the target market determination to ensure that it remains appropriate: see s994C	<p>An issuer must review a target market determination within 10 business days if it knows, or ought reasonably know, that a review trigger (or similar event or circumstance) has occurred.</p> <p>An issuer must also review the target market determination periodically as set out in the target market determination to ensure that it remains appropriate.</p>	For our proposed guidance, see draft RG 000 at RG 000.122–RG 000.145. For our proposals relating to this guidance, see paragraphs 94–102 in this paper.
Keep records: see s994F(1) and 994F(3)	<p>An issuer must keep complete and accurate records of:</p> <ul style="list-style-type: none"> <li>• the decisions made in relation to its target market determinations, and associated reviews, including the reasons for those decisions; and</li> <li>• distribution information (to the extent that the issuer is also a distributor).</li> </ul>	For our proposed guidance, see draft RG 000 at RG 000.151–RG 000.153.

## Obligations relevant to distributors

- 41 Distributors generally interact directly with the end consumer. Distributors can be an intermediary between the issuer of a financial product and the consumer, or can be the issuer itself, where the issuer deals directly with consumers.
- 42 A distributor must take reasonable steps that will, or are reasonably likely to, result in its retail product distribution conduct being consistent with the target market determination.
- 43 Distributors are prohibited from distributing a product unless a target market determination has been made. A distributor must also notify the issuer of a product of any ‘significant dealings’ in the product that are not consistent with the target market determination.

44 Table 2 provides an overview of the design and distribution obligations that apply to distributors (including issuers that act as distributors).

**Table 2: Design and distribution obligations relevant to distributors**

Obligation	Brief description	Our guidance and proposals
Not to distribute unless a target market determination has been made: see s994D	A distributor must not engage in retail product distribution conduct in relation to a product unless it reasonably believes (after making all reasonable inquiries) that a target market determination has been made, or a target market determination is not required.	For our proposed guidance, see draft RG 000 at RG 000.156.
Take reasonable steps in relation to distribution: see s994E(3)	A distributor must take reasonable steps that will, or are reasonably likely to, result in a distribution being consistent with the most recent target market determination.	For our proposed guidance, see draft RG 000 at RG 000.154–RG 000.190. For our proposals relating to this guidance, see paragraphs 106–114 in this paper.
Notify the issuer of ‘significant dealings’: see s994F(6)	A distributor must notify the issuer if it becomes aware of a significant dealing in the product that is not consistent with the target market determination as soon as practicable (within 10 business days).	For our proposed guidance, see draft RG 000 at RG 000.191–RG 000.194.
Keep records: see s994F(3)	A distributor must keep complete and accurate records of distribution information, including: <ul style="list-style-type: none"> <li>• the number of complaints received about a product; and</li> <li>• information specified by the issuer in the target market determination.</li> </ul>	For our proposed guidance, see draft RG 000 at RG 000.199–RG 000.202.



## B Proposed guidance on the product governance framework

### Key points

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

Introducing and maintaining an effective product governance processes will support both the delivery of good consumer outcomes and the better management of financial and non-financial risk.

### Introducing a product governance framework

- 45 The design and distribution obligations provide a legislative framework for issuers and distributors to develop and maintain effective product governance processes across the lifecycle of financial products.
- 46 We use the term ‘product governance framework’ in draft RG 000 to collectively refer to the systems, processes, procedures and arrangements in place to help ensure that an issuer or distributor complies with its design and distribution obligations.

### Proposal

- B1** We propose to give guidance that a robust product governance framework that fulfils the objectives of the design and distribution regime should:
- (a) focus on the identified target market across the lifecycle of the financial product;
  - (b) be designed to reduce the risk of products being sold to consumers that are not consistent with their likely objectives, financial situation and needs; and
  - (c) be documented, fully implemented, monitored and reported on, and regularly reviewed to ensure that it is up to date.

See draft RG 000 at RG 000.30–RG 000.43.

#### *Your feedback*

- B1Q1** Is our guidance on a robust product governance framework useful? What additional matters, if any, do you think are important in ensuring that a product governance framework will be effective and support compliance with the design and distribution obligations?

## Rationale

- 47 The design and distribution obligations impose requirements in relation to product design, product distribution, information sharing between issuers and distributors, outcomes monitoring, and the conduct of reviews. To meet these requirements, issuers will need to implement a product governance framework for products they offer.
- 48 Introducing and maintaining an effective product governance framework is aligned with taking a consumer-centric approach to product design and distribution, and will ultimately support the delivery of good consumer outcomes.
- 49 A robust product governance framework will go some way towards issuers addressing the serious compliance issues in internal controls identified by the FSI and the Royal Commission. The FSI highlighted that weaknesses in processes for, and controls on, product distribution to consumers have led to significant consumer losses in some cases. It will also assist in the management of non-financial risk.

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

- 50 If an issuer does not implement a product governance framework, we consider it will be more difficult to comply with the design and distribution obligations, and to demonstrate compliance.
- 51 Documentation of the product governance framework will help issuers demonstrate whether or not they are complying with the design and distribution obligations. However, documentation alone is not enough to ensure that the framework is effective and actually supporting compliance with the obligations. The framework should also be fully implemented and integrated into day-to-day business operations. Regularly reviewing the framework will help to ensure that it remains effective.

## Delivery of good consumer outcomes

- 52 The design and distribution obligations are aligned with a consumer-centric approach to designing, marketing and distributing financial products.
- 53 We consider that this means issuers and distributors should not take advantage of behavioural biases or factors that can impede consumer outcomes (e.g. the effect of behavioural bias on consumer interaction with information). In addition, issuers and distributors should consider consumer vulnerabilities and how these vulnerabilities may increase the risk that products sold to consumers do not meet their needs and lead to poor consumer outcomes.

- 54 Consumer vulnerabilities can include a consumer’s personal circumstances, as well as the specific influence or impact of features in a product’s ‘choice architecture’.

Note 1: See European Commission, [Consumer vulnerability across key markets in the European Union](#), report, September 2016, pp. 39–40.

Note 2: ‘Choice architecture’ refers to features in an environment, noticed and unnoticed, that influence consumer decisions and actions. These features are present at every stage of product design and distribution. Examples include product bundling, default settings, and website and sales process design.

## Proposal

- B2** We propose to give guidance that issuers and distributors should not take advantage of behavioural biases or factors that can impede consumer outcomes. In addition, issuers and distributors should consider consumer vulnerabilities and how these vulnerabilities may increase the risk that products sold to consumers do not meet their needs and lead to poor consumer outcomes.

See draft RG 000 at RG 000.52–RG 000.56.

### *Your feedback*

- B2Q1 Is our guidance on the consumer-centric approach issuers and distributors should take to deliver good consumer outcomes useful?
- B2Q2 What additional matters, if any, do you consider to be relevant?

## Rationale

- 55 Given the complexity present in many financial products and services, disclosure alone is not sufficient to support consumers in making good decisions. This understanding of human behaviour underpins the introduction of the design and distribution obligations.
- 56 Issuers and distributors that take advantage of behavioural biases or factors in order to exploit consumers’ tendencies to make poor decisions is undesirable and not conducive to good consumer outcomes.

## C Proposed guidance on obligations for issuers

### Key points

We are proposing to provide guidance for issuers on:

- making a target market determination, including identifying and describing a target market for a financial product (see paragraphs 57–88);
- how the ‘reasonable steps’ obligation applies to issuers (see paragraphs 89–93);
- the ongoing requirement to review a target market determination, including the collection of information from distributors to help an issuer meet its review obligations (see paragraphs 94–98); and
- how to meet the obligation to notify ASIC of any ‘significant dealings’ in a financial product that are not consistent with the product’s target market determination (see paragraphs 103–105).

### Making a target market determination

- 57 An issuer must make a target market determination for each of its financial products before any person distributes the product: see s994B(2). This applies to new products and continuing products.
- 58 A target market determination must:
- (a) describe the class of consumers that comprises the target market for the product (target market) (see s994B(5)(b));
  - (b) specify any conditions and restrictions on distribution (distribution conditions) (see s994B(5)(c));
  - (c) specify events and circumstances that would reasonably suggest the target market determination is no longer appropriate (review triggers) (see s994B(5)(d));
  - (d) specify reasonable maximum review periods (review periods) (see s994B(5)(e)–(f));
  - (e) specify when the distributor should provide the issuer with information about the number of complaints about the product (see s994B(5)(g), s994F(4)); and
  - (f) specify the kinds of information the issuer will need to promptly determine that a target market determination may no longer be appropriate, along with:
    - (i) which distributors should provide those kinds of information; and
    - (ii) reporting periods for when that information should be provided to the issuer (see s994B(5)(h)).

- 59 An issuer must also make its target market determination available to the public free of charge and keep records of the decisions made in relation to its design and distribution obligations.

### **Content and form of a target market determination**

- 60 We do not propose to give definitive guidance on the content and form of a target market determination and, in particular, the formulation of a target market.

- 61 A one-size-fits-all approach would not be appropriate, given the broad number of products the obligations apply to. We consider that industry is best placed to consider the circumstances of their own products.

#### **Proposal**

- c1** We propose to provide guidance that what amounts to an appropriate target market determination can differ, depending on the type and particular characteristics of the financial product to be issued, the intended distribution approach and the issuer's product governance framework.

See draft RG 000 at RG 000.64–RG 000.65.

#### *Your feedback*

- C1Q1 Do you agree with our approach to guidance on the form and content of a target market determination? If not, why not?

#### **Rationale**

- 62 The range of financial products that are offered to consumers is diverse and varied. We expect issuers to apply the guidance in the context of the financial products they issue.

- 63 This approach allows an issuer to determine the most effective and efficient form for a target market determination, given the particular financial product involved and the ways the issuer might adapt existing systems and processes.

Note: See paragraph 1.51 of the [Revised Explanatory Memorandum](#).

### **Identifying and describing a target market**

- 64 The class of consumers that comprises the target market for the financial product (target market) must be described in the target market determination for the product. The issuer of the product must make and document the target market determination.

- 65 An appropriate target market for a financial product is one where the product is likely to be consistent with the likely objectives, financial situation and needs of a consumer in a given target market: see s994B(8)(b).

## Proposal

- c2** We propose to provide guidance that, generally speaking:
- (a) for new products—issuers should identify the target market and design financial products that are likely to be consistent with the likely objectives, financial situation and needs of consumers in that target market; and
  - (b) for continuing products—issuers should still critically assess the product (and its features) and identify the target market under the design and distribution obligations by reference to the likely objectives, financial situation and needs of consumers for whom the product would likely be consistent. If issuers already have processes directed towards these purposes, they should check that the processes meet the detailed requirements of the legislation.

See draft RG 000 at RG 000.62–RG 000.65.

### *Your feedback*

- C2Q1 Is our guidance on the approach to identifying the target market for new products and continuing products useful?
- C2Q2 What additional matters, if any, do you consider to be relevant?

## Rationale

- 66 The purpose of the target market determination is to drive discipline in the design of financial products, to ensure issuers design products for which an appropriate target market can be defined, or conversely to consider whether the planned target market for products under development is appropriate: see the [Revised Explanatory Memorandum](#), paragraph 1.48. We consider that best practice would see issuers identify a target market, or the consumer need that the product is to address, at the early stages of product design.
- 67 We recognise that starting with a target market or consumer need will not be practical for continuing products, because these products have already been designed. Some issuers may already have a concept of a ‘target market’, in a marketing or commercial sense, for the product. For these products, a different approach can be taken. However, if required, issuers should be willing to modify the design of the product, revise the distribution strategy in line with the identified target market, or cease offering the product if an appropriate target market cannot be identified.

## Our examples for different product sectors

### Proposal

- c3** While we do not propose to give any definitive formulation of how a target market should be described in a target market determination, we propose to give guidance that explains the process and key

considerations for identifying and describing the target market by reference to examples across different product sectors.

See draft RG 000 at RG 000.66–RG 000.89.

#### *Your feedback*

- C3Q1 Do you have any comments on our approach to guidance on identifying and describing the target market?
- C3Q2 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.66–RG 000.89:
- (a) Example 1: Credit cards;
  - (b) Example 2: Reverse mortgages;
  - (c) Example 3: Cash options in superannuation;
  - (d) Example 4: Consumer credit insurance;
  - (e) Example 5: Low-value products; and
  - (f) Example 6: Basic banking products?
- C3Q3 What additional matters, if any, do you consider to be relevant?

### **Rationale**

- 68 Our approach to providing overarching considerations and examples reflects our objective of providing high-level principles-based guidance to reflect the broad and scalable nature of the design and distribution obligations, supplemented with practical examples.
- 69 We consider that industry is ultimately best placed to identify the target market and assess its financial products to ensure that they are likely to be consistent with the likely objectives, financial situation and needs of consumers it intends to sell its products to.

### **Diversification**

#### **Proposal**

- c4 We propose to give guidance that when an issuer considers it appropriate to contemplate consumers in the target market acquiring the financial product as part of a diversified portfolio, the reasonable steps obligation will require the issuer to manage the risk of the product being sold to consumers who do not have a diversified portfolio.

See draft RG 000 at RG 000.78–RG 000.79.

#### *Your feedback*

- C4Q1 Do you have any comments on our proposed guidance for issuers considering the role of diversification as it relates to their identification of the target market?

### Rationale

- 70 We recognise that many investment products are intended to form part of a diversified portfolio. However, the design and distribution obligations are intended to reduce the number of consumers being sold products that are not consistent with their likely objectives, financial situation and needs. Without appropriate management of that risk, consumer harm may arise as a result of consumers acquiring and holding a product in a way that was not intended by the issuer—for example, when a product is held in a concentrated way despite being intended by the issuer to form part of a diversified portfolio for the target market.
- 71 We are also mindful that some products, even if acquired as part of a diversified portfolio, may still be unlikely to be consistent with the likely objectives, financial situation and needs of a consumer (e.g. because the product is inherently flawed, or does not serve a genuine investment purpose).

### Consumer understanding

#### Proposal

- c5 We propose to give guidance that we do not consider a target market for a product should be predominantly based on consumer understanding of a product.

See draft RG 000 at RG 000.80.

#### *Your feedback*

- C5Q1 Do you agree that consumer understanding of a product does not necessarily equate to the product being likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market? If not, why not?

### Rationale

- 72 There has been broad recognition that reliance on the concept of the ‘informed consumer’ is not resulting in good consumer outcomes. The Royal Commission observed that, while consumers can choose from an array of products, they are often not able to make a well-informed choice between them, given the marked imbalance of power and knowledge between those providing the product or service and those acquiring it: see [Royal Commission final report](#), p. 2.
- 73 The design and distribution obligations require issuers to consider objectively whether a product is likely to be consistent with the likely objectives, financial situation and needs of a class of consumers. We therefore do not consider that a target market should be predominantly based on consumer understanding of a product.



## Considering the ‘negative target market’

### Proposal

- c6** We propose to provide guidance that in making a target market determination, it will also be useful for the issuer to consider, in addition to the target market, those for whom the financial product is clearly unsuitable (the ‘negative target market’).

See draft RG 000 at RG 000.90–RG 000.92.

#### *Your feedback*

C6Q1 Do you agree that it may also be useful for an issuer to describe the negative target market for its financial product? If not, why not?

C6Q2 Is our guidance on the role of describing a negative target market adequate and useful? If not, please explain why, giving examples.

### Rationale

74 Unlike the EU product governance regime, the design and distribution obligations do not specify that a negative target market, where one exists, must be described in the target market determination: see s994B(5). The EU requirements are to identify the negative target market in addition to identifying the ‘positive’ target market for a product.

75 However, we consider that identification of a negative target market is likely to help issuers define the target market at a sufficiently granular level. This will prevent issuers from including any groups of consumers for whom the financial product would likely be inconsistent with their likely objectives, financial situation and needs. It would also be useful for distributors as they implement their obligations to take reasonable steps.

## Product-specific issues

### Proposal

- c7** We propose to give guidance on how the target market determination applies for certain products when the application of the obligation is not straightforward, including:
- (a) to superannuation and investor directed portfolio services (also known as ‘platforms’ or ‘IDPS’);
  - (b) when products are offered and acquired as a ‘package’ or ‘bundle’; and
  - (c) when products are customisable by the consumer at point-of-sale, including through choices or options (e.g. selecting a waiting period for an income protection insurance product).

See draft RG 000 at RG 000.98–RG 000.106 and Examples 7–8.

*Your feedback*

- C7Q1 In relation to our guidance on how a target market determination should be approached for superannuation products, as set out in Example 7:
- (a) Do you agree with our proposed guidance that if investment options are suitable for different groups of members, then the trustee should account for this in undertaking its target market determination for the Choice superannuation product? If not, why not?
  - (b) What factors do you consider relevant to the grouping of investment options in making a target market determination? Why?
  - (c) Do you agree with our proposed guidance to consider insurance as part of the target market determination for a Choice product? If not, why not?
  - (d) How should a trustee take into account insurance in making a target market determination for a Choice product?
- C7Q2 Do you agree with our guidance on the application of the target market determination obligation to IDPS?
- C7Q3 Do you agree with our guidance on how a target market determination should be approached for a bundled product? If not, why not?
- C7Q4 Do you agree with our proposed approach to the application of the design and distribution obligations to products that can be customised at point-of-sale? If not, why not?
- C7Q5 Are there any particular options or choices, or types of options or choices, that you consider would affect the product's suitability for a consumer if selected? Please give examples.

**Rationale**

- 76 The range of financial products that are offered to consumers are diverse and varied, as are:
- (a) the ways in which financial products are distributed;
  - (b) the nature, scale and complexity of the issuers that design financial products; and
  - (c) the issuers and distributors that sell financial products.
- 77 It would not be practical to provide a definitive and comprehensive outline of how a target market determination should be approached for each type of financial product that exists.
- 78 However, we have sought to provide practical guidance for industry by setting out examples to illustrate how the target market determination should

be approached for certain products when application is not straightforward. While, in most cases, the examples will not directly apply to a particular issuer, issuers should consider the underlying approach set out in the examples for relevance to their own circumstances.

79 We consider that industry is best placed, given its knowledge and experience of its financial products and how customers are reached, to consider the appropriate approach to the target market determination.

#### *Superannuation products*

80 Superannuation products that are not MySuper products are Choice products. Choice products are subject to the design and distribution obligations, whereas MySuper products are exempt: see s994B(3)(a).

81 A Choice product may offer one investment option, or a number of investment options. Generally, a Choice product that offers multiple investment options will be one financial product, unless a separate beneficial interest in the Choice product exists to create a separate Choice product.

82 When the Choice product offers a large number of investment options, making an appropriate target market determination at the product level may be more challenging for trustees. Some options may be more 'suited' to particular groups of members based on their objectives, financial situation and needs. The outcomes for members will depend on which investment option(s) have been selected for their superannuation.

83 We are proposing to provide guidance that, if investment options are suitable for different groups of members, then the trustee should account for this in undertaking its target market determination for the Choice superannuation product. In practice, this is likely to involve a single target market determination for the Choice superannuation product that describes multiple target markets for each investment option or group of investment options offered as part of the product.

84 We consider that providing this guidance will assist superannuation product issuers to the extent that there is any uncertainty about the application of the design and distribution regime to superannuation products.

85 We consider that taking into account the investment options offered in making a target market determination for a Choice product is consistent with the legislative intent of the design and distribution regime.

86 Similarly, when a Choice product has insurance as a component of the product, we consider that it will be necessary for the issuer to consider insurance in making a target market determination for the product.

- 87 The Government has introduced member outcomes reforms for superannuation trustees. The member outcomes reforms and the design and distribution obligations are separate but complementary obligations.
- 88 We will work with the Australian Prudential Regulation Authority (APRA) to consider whether specific guidance on the interaction between member outcomes and design and distribution obligations is required.

## Taking reasonable steps in relation to distribution: Issuers

- 89 An issuer must take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the target market determination for the financial product (reasonable steps obligation): see s994E(1).
- 90 When determining what steps are reasonable to take, an issuer must take into account all relevant factors, including:
- (a) *risk*—the likelihood of the distribution being inconsistent with the target market determination;
  - (b) *harm*—the nature and degree of harm that might result from the financial product being issued otherwise than in accordance with the target market determination; and
  - (c) *mitigation steps*—what steps can be taken to eliminate or minimise the likelihood of the distribution being inconsistent with the target market determination and the harm that might result (see s994E(5)).

### Proposal

- c8** We propose to give guidance on the reasonable steps obligation for issuers, and set out our view on the factors that may be relevant to the obligation. These factors include:
- (a) the distribution conditions that are specified in the target market determination;
  - (b) the issuer's marketing and promotional materials;
  - (c) the selection of distributors;
  - (d) the supervision and monitoring of distributors;
  - (e) the issuer's ability to eliminate or appropriately manage conflicts of interest; and
  - (f) whether issuers have provided distributors with sufficient information to help them ensure that distribution is consistent with the target market determination.

See draft RG 000 at RG 000.107–RG 000.120, Examples 9–11 and Table 3.

*Your feedback*

C8Q1 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.107–RG 000.120:

- (a) Example 7: Superannuation products;
- (b) Example 8: Investor directed portfolio services;
- (c) Example 9: Superannuation;
- (d) Example 10: Mortgage fund; and
- (e) Example 11: Listed investment companies?

C8Q2 Do you agree with the factors listed in Table 3 of draft RG 000 that we expect will be relevant when considering whether an issuer has met the reasonable steps obligation? If not, why not?

C8Q3 What additional factors, if any, do you consider should be included in Table 3 of draft RG 000?

**Rationale**

- 91 To meet the reasonable steps obligation, we expect issuers to implement controls that are likely to direct distribution of the financial product to the target market. As part of its controls, we expect an issuer to have appropriate systems and processes to effectively manage the risks identified in its distribution arrangements.
- 92 Our proposed guidance on the reasonable steps obligation is high-level and principles-based, which is consistent with our general approach to guidance on the design and distribution obligations. We consider that an issuer is best placed, given its knowledge and experience of its financial products and distribution channels, to consider the appropriate approach to meeting its reasonable steps obligation.
- 93 However, in order to assist issuers, we have sought to set out in draft RG 000 the factors we will consider in our administration of the reasonable steps obligation for issuers. In identifying these factors, we have taken into account our regulatory experience and the focus of the law on managing the risk of harm in distribution. We consider that these factors are likely to be relevant across many sectors of the regulated population.

**Reviewing the target market determination**

- 94 An issuer must review the target market determination periodically and in response to review triggers, to ensure that the target market determination remains appropriate for the financial product over time: see s994C.

- 95 An issuer must also collect information from its distributors with sufficient frequency to help it meet its review obligations.

## Specifying review triggers and reasonable maximum review periods

### Proposal

- c9 We do not propose to set out in guidance standard review triggers and maximum review periods for issuers to adopt. Instead, our draft guidance sets out examples to illustrate what review triggers may be appropriate for certain types of financial products.

See draft RG 000 at RG 000.127–RG 000.134 and Examples 12–13.

#### *Your feedback*

- C9Q1 Do you have any comments on our guidance on setting appropriate review triggers and maximum review periods?
- C9Q2 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.127–RG 000.130:
- (a) Example 12: Insurance; and
  - (b) Example 13: Managed fund?

### Rationale

- 96 The design and distribution obligations require an issuer to review the target market determination to ensure that it remains appropriate. However, the obligations do not set out how frequently an issuer should review the target market determination, or what circumstances should trigger a review. This allows an issuer to determine the most appropriate and effective review process for its particular financial product and its existing systems and processes.
- 97 We have provided examples of review triggers. However, we do not propose to set benchmarks or minimum standards for reviews in our guidance for all products. The design and distribution obligations apply to broad classes of financial products and to different issuers and business models. This means that different or additional considerations will be relevant for different products.

## Specifying required information from distributors and reporting periods

### Proposal

- c10 We propose to give guidance on the issuer's obligation to specify in the target market determination:

- (a) any information that it considers is necessary to require from its distributors in order to promptly decide that a target market determination may no longer be appropriate; and
- (b) the reporting period for the information the distributor must provide to the issuer about the number of complaints about the financial product.

See draft RG 000 at RG 000.135–RG 000.142.

*Your feedback*

C10Q1 Do you have any comments on our guidance on the issuer's obligation to specify information it requires from its distributors?

C10Q2 What existing information collected by distributors would be relevant to an issuer's consideration of the ongoing appropriateness of its target market determination?

C10Q3 In addition to the information set out at RG 000.139, are there other types of information an issuer should collect from distributors? If so, please describe the type of information you think would be relevant.

C10Q4 What potential effects on competition may occur as a result of the issuer's right to set the information the distributor must provide?

C10Q5 Do you have any comments on our guidance on the issuer's obligation to specify the reporting period in relation to the number of complaints?

**Rationale**

- 98 We are not proposing to set out in our guidance:
- (a) standard information that an issuer should collect from distributors; or
  - (b) standard reporting periods for a distributor to report on the number of complaints.

- 99 The FSI envisaged that industry would supplement the principles-based design and distribution obligations with appropriate standards for different classes of financial products. Given the range and breadth of products to which the regime applies, we consider that standardisation of information collection is better driven by industry, segmented by product class where appropriate.

Note: See [FSI final report](#), Recommendation 21.

- 100 We do not propose to provide specific guidance on the arrangements that should be made between issuers and distributors. These are commercial matters that issuers and distributors can determine among themselves. However, we may consider providing guidance on specific aspects of the relationship to promote consumer or competition outcomes.

## Conducting a review of a target market determination

### Proposal

**c11** We propose to give guidance that, in reviewing a target market determination, we expect the issuer will take into account all available information on its financial product, using multiple data sources.

See draft RG 000 at RG 000.143–RG 000.145.

#### *Your feedback*

C11Q1 Do you consider our guidance on the types of information issuers should have regard to (described at RG 000.143) to be useful? If not, why not?

C11Q2 In addition to the data sources described in draft RG 000 at RG 000.143(a)–RG 000.143(d), are there other sources of information that you think an issuer should take into account in reviewing a target market determination?

C11Q3 Do you have any other comments on our guidance on conducting a review of a target market determination?

### Rationale

- 101 The design and distribution obligations require an issuer to review the target market determination to ensure that it remains appropriate. We consider an issuer is best placed to determine the most appropriate and effective review process for its particular financial product and its existing systems and processes.
- 102 The design and distribution obligations apply to broad classes of financial products and to different issuers and business models. This means that different or additional considerations will be relevant for different products.

## Notifying ASIC of ‘significant dealings’

- 103 An issuer must notify ASIC of a significant dealing (except excluded dealings) in a financial product that is not consistent with the product’s target market determination.

### Proposal

**c12** We propose to provide guidance that the factors an issuer should consider when determining whether there has been a significant dealing in a financial product that is not consistent with the product’s target market determination include:

- (a) the proportion of consumers who are not in the target market acquiring the financial product;
- (b) the actual or potential harm to consumers; and



- (c) the nature and extent of the inconsistency of distribution with the target market determination.

See draft RG 000 at RG 000.147–RG 000.148.

*Your feedback*

C12Q1 Are there any additional factors that issuers should consider? If yes, please provide details.

## Rationale

- 104 The Corporations Act does not define the term ‘significant dealing’. An issuer must determine whether or not a dealing is ‘significant’ based on the circumstances of each case.
- 105 The factors in proposal C12(a)–C12(c) are informed by:
- (a) the factors set out in s994E(5) that are relevant to the reasonable steps obligation, including the nature and degree of harm that might result from an issue or regulated sale of the financial product:
    - (i) to retail clients who are not in the target market; or
    - (ii) that is inconsistent with the determination; and
  - (b) the matters set out in s1023E(1) that we are required to take into account when considering whether a financial product has resulted in, or will or is likely to result in, significant detriment to retail clients for the purposes of ASIC’s product intervention power under Pt 7.9A, including:
    - (i) the nature and extent of the detriment;
    - (ii) the actual or potential financial loss to retail clients resulting from the product; and
    - (iii) the impact that the detriment has had, or will or is likely to have, on retail clients.

## D Proposed guidance on obligations for distributors

### Key points

We are proposing to provide guidance for distributors on:

- how the ‘reasonable steps’ obligation applies to distributors (see paragraphs 106–114);
- how a distributor may form a reasonable view on whether a consumer is in the target market (see paragraphs 115–125);
- the interaction of the design and distribution obligations with the responsible lending obligations (see paragraphs 126–128); and
- a distributor’s obligation to retain and to provide certain information to the issuer (see paragraphs 129–130).

### Taking ‘reasonable steps’: Distributors

- 106 Distributors generally interact directly with consumers. A distributor can be:
- (a) an intermediary between the issuer of a financial product and the consumer; or
  - (b) the issuer itself, when the issuer deals directly with consumers.
- 107 Separately to the issuer’s reasonable steps obligation discussed in Section C of this paper, a distributor must take reasonable steps that will, or are reasonably likely to, result in distribution consistent with the target market determination for the financial product (reasonable steps obligation): see s994E(3). Failure to comply with this obligation is an offence and may also attract civil penalties.

### Factors relevant to our administration of the reasonable steps obligation

#### Proposal

- D1 We propose to give high-level guidance on the reasonable steps obligation for distributors of financial products by setting out our view on factors that may be relevant to this obligation, including:
- (a) the distribution method(s) used;
  - (b) compliance with distribution conditions;
  - (c) the marketing and promotional materials circulated by the distributor;

- (d) the effectiveness of the distributor's product governance framework;
- (e) the steps taken to eliminate or appropriately manage the risk that incentives for staff or contractors may influence behaviours that could result in distribution being inconsistent with the target market determination;
- (f) whether reliance on existing information about the consumer is appropriate;
- (g) whether the distributor has given staff involved in distribution operations sufficient training; and
- (h) how the distributor forms a reasonable view that a consumer is reasonably likely to be in the target market.

See draft RG 000 at RG 000.154–RG 000.163 and Table 5.

#### *Your feedback*

D1Q1 Do you agree with the factors listed in Table 5 of draft RG 000 that we will take into account when considering whether a distributor has met the reasonable steps obligation? If not, why not?

D1Q2 What additional factors, if any, do you consider should be included in Table 5 of draft RG 000?

#### **Rationale**

- 108 The obligation on a distributor to take reasonable steps requires an assessment of what steps are reasonable in the circumstances. Consistent with the risk management approach adopted by the law, this assessment will take into account the scale, sector and distribution method employed in the distributor's business model: see [Revised Explanatory Memorandum](#), paragraph 1.97.
- 109 Our proposed guidance on the reasonable steps obligation for distributors is high-level and principles-based, which is consistent with our general approach to guidance on the design and distribution obligations. It does not provide prescriptive or industry-specific guidance. We consider that distributors are best placed, given their knowledge and experience of their business model and industry, to consider the appropriate approach.
- 110 However, in order to assist distributors, we have sought to set out in draft RG 000 the factors we will consider in our administration of the reasonable steps obligation for distributors. In considering which factors will be relevant, we have taken into account our regulatory experience and the focus of the law on managing the risk of harm in distribution. We consider that these factors are likely to be relevant across many sectors of the regulated population.

## Renewal of general insurance policies

### Proposal

- D2** We propose to include an example to illustrate, at the time of renewal for general insurance policies, how insurers (in their role as distributor) can approach the reasonable steps obligation to ensure that the renewal process results in outcomes that are consistent with the target market determination. Our guidance suggests that, at the time of renewal, an insurer should:
- (a) analyse information it holds, such as:
    - (i) information it gathered when the customer initially acquired the product; and
    - (ii) updated details that have been provided, or through claims that have subsequently occurred; and
  - (b) consider a number of factors, including the likelihood that a class of consumers is no longer in the target market for the policy.

When an insurer assesses that it is likely that a consumer is no longer in the target market for an insurance policy, this should not result in an insurer declining to offer a renewal of the policy without contacting the consumer.

See Example 14 of draft RG 000.

#### *Your feedback*

D2Q1 Do you have any comments on our proposed guidance for distributors in Example 14 of draft RG 000?

D2Q2 What other steps or controls, if any, do you consider would be appropriate for a distributor to consider what reasonable steps should be taken at renewal?

### Rationale

- 111 Many general insurance policies renew on an annual or periodic basis. This will constitute a new 'issue' of the product under the design and distribution obligations, meaning that the reasonable steps obligation will apply at the point of renewal. This means that some consideration of whether the consumer remains in the target market at each renewal may be required.
- 112 The focus of the design and distribution obligations on new issues means that, when a financial product renews, issuers and distributors will need to consider what controls they will apply to determining whether the consumer remains within the target market. We do not propose to provide tailored guidance on how the reasonable steps obligation should be met for products that are issued or renewed periodically.
- 113 However, we have sought to provide useful guidance for industry by setting out an example to illustrate how the reasonable steps obligation can be

approached in this context. Distributors should consider the underlying approach set out in Example 14 of draft RG 000 for relevance to their own circumstances.

- 114 We consider that industry is best placed, given its knowledge and experience of its financial products and how consumers are reached, to consider the appropriate approach to the reasonable steps obligation at renewal.

## Reasonable view on whether a consumer is reasonably likely to be in the target market

### Asking additional, specific questions of consumers

- 115 The law provides that distributors are not taken to have failed to take reasonable steps merely because a consumer who is not in the target market for the financial product acquires the product: see s994E(4). We interpret this to mean that the reasonable steps obligation is focused on a distributor having effective systems and processes in place to enable it to form a reasonable view on whether a consumer is reasonably likely to be in the target market for a product.
- 116 In most cases, we expect a distributor should be able to obtain sufficient information about a consumer from its existing sales processes to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a financial product.
- 117 Although a distributor may express an opinion that the consumer is in the target market for a financial product, it should not frame its processes in a way that influences the consumer, including by suggesting, through express recommendations or explicit statements of opinion, that the product is suitable for the consumer.

### Proposal

- D3 We propose to provide guidance:
- (a) that, in most cases, a distributor should have sufficient information about a consumer through its existing sales processes to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a financial product;
  - (b) that the ways a distributor's processes could assist it to form a reasonable view that a consumer is reasonably likely to be in the target market for a financial product include:
    - (i) the inclusion of 'knockout questions' within application processes;
    - (ii) analysis of data held on the consumer or a class of consumers; and

- (iii) in some cases, asking the consumer direct questions to determine whether they are reasonably likely to be in the target market (see draft RG 000 at RG 000.168(a)–RG 000.168(c)); and
- (c) on the steps that a distributor can take to reduce the likelihood that a consumer will be left with the impression that their personal circumstances have been considered, including:
  - (i) not having a relevant provider (i.e. an individual authorised to give personal advice to consumers on relevant financial products) involved in the distribution process to ask specific questions of a consumer and communicate the view that the consumer is in the target market to the consumer; and
  - (ii) only asking specific questions of a consumer (when required) in the later stages of the sales process after the consumer has already made the decision to acquire the financial product (see draft RG 000 at RG 000.169(a)–RG 000.169(b)).

#### *Your feedback*

- D3Q1 Do you agree that, in most cases, a distributor would have sufficient information about a consumer through its existing sales processes to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a financial product?
- D3Q2 What data do you consider would help distributors reasonably conclude that a consumer is reasonably likely to be in the target market for a financial product?
- D3Q3 Do you consider our guidance should identify (in draft RG 000 at RG 000.168) other ways that a distributor's sales processes can assist it to form a reasonable view that a consumer is reasonably likely to be in the target market for a financial product? What other approaches can be taken?
- D3Q4 Do you have any comments on our proposed guidance (in draft RG 000 at RG 000.169) on how a distributor could reduce the likelihood of leaving a consumer with the impression that their personal circumstances have been considered?

#### **Rationale**

- 118 To meet its reasonable steps obligation, a distributor must take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the target market determination for the financial product.
- 119 We expect that, in most cases, a distributor should have sufficient information about a consumer through its existing sales processes to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a product. However, in some circumstances, and given particular distribution methods, a distributor may consider it necessary for

compliance with the reasonable steps obligation to ask specific questions to assess whether an individual consumer is reasonably likely to be within the target market.

120 In outlining our guidance on some of the ways in which a distributor may approach this assessment, we have taken into account the broad objectives of the design and distribution obligations.

### Consumers outside the target market

121 We consider that the systems and processes implemented by issuers and distributors mean it should be less likely that consumers will find themselves actively seeking to acquire financial products that are not consistent with their likely objectives, financial situation and needs. However, in the event that a distributor becomes aware that a consumer outside the target market for a product is seeking to acquire that product, the distributor must have regard to its reasonable steps obligation.

#### Proposal

**D4** We propose to provide guidance that the reasonable steps a distributor should take when selling a financial product to consumers who are outside the target market for the product depends on the circumstances of the interaction, the nature and degree of harm that might result, and the steps that can be taken to mitigate the harm.

See draft RG 000 at RG 000.170–RG 000.175.

#### *Your feedback*

D4Q1 Do you have any comments on our proposed guidance on the content of the reasonable steps obligation in these circumstances?

D4Q2 Are there any specific methods that you consider our guidance should identify for distributors seeking to meet the reasonable steps obligation in the context of interacting with consumers who are outside the target market for a financial product?

#### Rationale

122 A distributor must comply with the reasonable steps obligation in the event that it becomes aware that it is interacting with a consumer who is outside the target market for a financial product. Our guidance seeks to provide some clarity in relation to the way in which distributors should approach these situations.

## Interaction with personal advice obligations

- 123 A financial adviser is a distributor under the design and distribution regime. If a financial adviser provides compliant personal advice to a consumer in relation to a financial product, the advice will be tailored to the consumer's individual circumstances.
- 124 When providing personal advice, and implementing the advice, the adviser is not required to take reasonable steps that will, or are reasonably likely to, result in distribution of a financial product being consistent with the target market determination: see the definition of 'excluded conduct' in s994A and 994E(3). Financial advisers providing personal advice are under legal obligations to take into account the consumer's personal circumstances and provide advice in the consumer's best interests.

### Proposal

- D5** We propose to provide guidance that a target market determination for a financial product should be considered by a financial adviser in providing the advice and meeting their best interests duty.

See draft RG 000 at RG 000.180–RG 000.183.

#### *Your feedback*

- D5Q1 Do you agree that a target market determination for a financial product should be considered by a financial adviser in providing the advice and meeting their best interests duty? If not, please explain.

### Rationale

- 125 The law provides that the reasonable steps obligation does not apply to a financial adviser when the adviser is providing personal advice, or implementing the advice. We consider that some guidance for financial advisers and distributors is useful for industry to understand our view on the relevance of the target market determination to the provision of personal advice.

## Interaction with responsible lending obligations

- 126 While the responsible lending obligations and the design and distribution obligations are distinct regimes, they are complementary. We consider that issuers and distributors may find synergies in developing compliance practices for the two regimes, particularly in relation to the responsible lending requirements to:
- (a) make reasonable inquiries about a particular consumer's financial situation and the consumer's requirements and objectives in relation to the particular credit contract or consumer lease in question; and
  - (b) take reasonable steps to verify the consumer's financial situation.



## Proposal

- D6** We propose to provide additional guidance on aspects of the interaction between the responsible lending obligations and the design and distribution obligations, including that:
- (a) information gathered as part of the responsible lending obligations may help the distributor form a reasonable view on whether the consumer is reasonably likely to be in the target market for a product; and
  - (b) the reasonable steps obligation does not require further steps to be taken by a distributor when assessing, for responsible lending purposes, whether the consumer can comply with their financial obligations under the contract.

See draft RG 000 at RG 000.184–RG 000.189.

### *Your feedback*

- D6Q1 Do you have any comments on our proposed guidance on using information gathered for the purpose of meeting responsible lending obligations in order to assist a distributor to form a reasonable view on whether a consumer is reasonably likely to be in a target market for a financial product?
- D6Q2 Are there any further issues you consider are raised by the interaction of the two regimes that should be dealt with in our guidance? Please explain.

## Rationale

- 127 The responsible lending framework is intended to reduce the potential for individual consumers to suffer hardship as a result of inappropriate lending. The focus on the individual consumer and the transactional nature of responsible lending are quite different from the design and distribution obligations.
- 128 However, we consider that there is scope for issuers and distributors to adopt compliance practices that are common to aspects of both regimes. We have sought to outline in our guidance where these practices might arise, as well as to provide clarity about where the requirements under the two regimes differ.

## Provision of information to issuers

- 129 A distributor must report information on its distribution to the issuer. A distributor must report to issuers in writing on:
- (a) whether it received complaints about the financial product during a specified reporting period and, if so, the number of complaints received;

- (b) all information it acquired during a specified reporting period that is of the kind specified by the issuer in the target market determination under s994B(5)(h)(i); and
- (c) a significant dealing in the financial product that is not consistent with the target market determination (see s994F(4)–(6)).

### Proposal

- D7** We do not propose to provide specific guidance on the practical aspects of the relationship between the issuer and the distributor regarding information exchange.

#### *Your feedback*

**D7Q1** Do you think it would be useful to provide guidance on the following arrangements between the issuer and the distributor:

- (a) whether there is a need for information requirements to be set out in an agreement between the issuer and the distributor;
- (b) the format of information exchange; and
- (c) the mode of delivery and communication of information?

If so, what considerations are relevant to these factors?

**D7Q2** Are there other considerations that need to be taken into account in the collection and exchange of information between an issuer and a distributor?

### Rationale

- 130 We do not propose to provide guidance on the arrangements between issuers and distributors. These are commercial matters that issuers and distributors can determine among themselves. However, following feedback on this paper, we may consider providing guidance on specific aspects of the relationship to promote consumer or competition outcomes.

## E Proposed guidance on our administration of the design and distribution obligations

### Key points

This section sets out our proposed approach to:

- providing guidance on the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations (see paragraphs 131–133); and
- granting relief from the design and distribution obligations when we have granted disclosure relief in relation to a financial product (see paragraphs 134–135).

### Factors we will take into account

- 131 ASIC has a discretionary power to provide exemptions from, and modifications to, the design and distribution obligations in Pt 7.8A of the Corporations Act. We have similar powers in relation to other parts of the Corporations Act. These powers are also known as ASIC’s relief powers.

### Proposal

- E1 We propose to give guidance on the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations. These factors include:
- whether the objects of Ch 7 are being promoted, including the provision of suitable financial products to consumers (see s760A(aa));
  - the policy intention underlying the design and distribution obligations to:
    - improve consumer outcomes; and
    - require financial services providers to have a consumer-centric approach to making initial offerings of products to consumers; and
  - Parliament’s intent (as reflected in the law) for these obligations to apply to a broad range of financial products.

See draft RG 000 at RG 000.232.

#### *Your feedback*

- E1Q1 Do you agree with the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations? If not, why not?
- E1Q2 Are there any additional factors that you consider we should take into account?

## Rationale

- 132 The factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations are consistent with our broader policy on applications for relief: see [Regulatory Guide 51 Applications for relief](#) (RG 51).
- 133 When assessing relief applications, we will:
- (a) promote the policy objectives underlying the Corporations Act; and
  - (b) exercise ASIC's powers in accordance with the aims in s1(2) of the ASIC Act (see RG 51 at RG 51.60).

## Interaction with disclosure relief

- 134 In certain circumstances, we may grant relief from the requirement to provide disclosure in relation to financial products.

### Proposal

- E2 We propose to give guidance that, if we grant disclosure relief for a financial product, relief from the design and distribution obligations will not automatically follow. If requested, we will consider whether to grant relief from the design and distribution obligations as a separate matter to our consideration of the disclosure relief.

See draft RG 000 at RG 000.233.

#### *Your feedback*

- E2Q1 Do you agree with our proposed approach to providing relief from the design and distribution obligations when disclosure relief has been granted in relation to a financial product? If not, why not?

## Rationale

- 135 We are proposing that we will not automatically provide relief from the design and distribution obligations when we grant disclosure relief in relation to a financial product. This reflects the separate underlying policy rationales of the disclosure regime and the design and distribution obligations.

## F Regulatory and financial impact

- 136 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will:
- (a) help issuers and distributors understand what is required to comply with their design and distribution obligations; and
  - (b) help issuers and distributors implement appropriate measures (including by adapting existing practices) to ensure they:
    - (i) design and distribute products that are likely to be consistent with the likely objectives, financial situation and needs of consumers; and
    - (ii) target products to those consumers who would benefit from them, to improve consumer outcomes.

- 137 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
  - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
  - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

- 138 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

- 139 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
  - (b) the likely effect on competition; and
  - (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

## List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to give guidance that a robust product governance framework that fulfils the objectives of the design and distribution regime should:</p> <ul style="list-style-type: none"> <li>(a) focus on the identified target market across the lifecycle of the financial product;</li> <li>(b) be designed to reduce the risk of products being sold to consumers that are not consistent with their likely objectives, financial situation and needs; and</li> <li>(c) be documented, fully implemented, monitored and reported on, and regularly reviewed to ensure that it is up to date.</li> </ul> <p>See draft RG 000 at RG 000.30–RG 000.43.</p>	<p>B1Q1 Is our guidance on a robust product governance framework useful? What additional matters, if any, do you think are important in ensuring that a product governance framework will be effective and support compliance with the design and distribution obligations?</p>
<p>B2 We propose to give guidance that issuers and distributors should not take advantage of behavioural biases or factors that can impede consumer outcomes. In addition, issuers and distributors should consider consumer vulnerabilities and how these vulnerabilities may increase the risk that products sold to consumers do not meet their needs and lead to poor consumer outcomes.</p> <p>See draft RG 000 at RG 000.52–RG 000.56.</p>	<p>B2Q1 Is our guidance on the consumer-centric approach issuers and distributors should take to deliver good consumer outcomes useful?</p> <p>B2Q2 What additional matters, if any, do you consider to be relevant?</p>
<p>C1 We propose to provide guidance that what amounts to an appropriate target market determination can differ, depending on the type and particular characteristics of the financial product to be issued, the intended distribution approach and the issuer's product governance framework.</p> <p>See draft RG 000 at RG 000.64–RG 000.65.</p>	<p>C1Q1 Do you agree with our approach to guidance on the form and content of a target market determination? If not, why not?</p>

Proposal	Your feedback
<p>C2 We propose to provide guidance that, generally speaking:</p> <p>(a) for new products—issuers should identify the target market and design financial products that are likely to be consistent with the likely objectives, financial situation and needs of consumers in that target market; and</p> <p>(b) for continuing products—issuers should still critically assess the product (and its features) and identify the target market under the design and distribution obligations by reference to the likely objectives, financial situation and needs of consumers for whom the product would likely be consistent. If issuers already have processes directed towards these purposes, they should check that the processes meet the detailed requirements of the legislation.</p> <p>See draft RG 000 at RG 000.62–RG 000.65.</p>	<p>C2Q1 Is our guidance on the approach to identifying the target market for new products and continuing products useful?</p> <p>C2Q2 What additional matters, if any, do you consider to be relevant?</p>
<p>C3 While we do not propose to give any definitive formulation of how a target market should be described in a target market determination, we propose to give guidance that explains the process and key considerations for identifying and describing the target market by reference to examples across different product sectors.</p> <p>See draft RG 000 at RG 000.66–RG 000.89.</p>	<p>C3Q1 Do you have any comments on our approach to guidance on identifying and describing the target market?</p> <p>C3Q2 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.66–RG 000.89:</p> <p>(a) Example 1: Credit cards;</p> <p>(b) Example 2: Reverse mortgages;</p> <p>(c) Example 3: Cash options in superannuation;</p> <p>(d) Example 4: Consumer credit insurance;</p> <p>(e) Example 5: Low-value products; and</p> <p>(f) Example 6: Basic banking products?</p> <p>C3Q3 What additional matters, if any, do you consider to be relevant?</p>
<p>C4 We propose to give guidance that when an issuer considers it appropriate to contemplate consumers in the target market acquiring the financial product as part of a diversified portfolio, the reasonable steps obligation will require the issuer to manage the risk of the product being sold to consumers who do not have a diversified portfolio.</p> <p>See draft RG 000 at RG 000.78–RG 000.79.</p>	<p>C4Q1 Do you have any comments on our proposed guidance for issuers considering the role of diversification as it relates to their identification of the target market?</p>

Proposal	Your feedback
<p>C5 We propose to give guidance that we do not consider a target market for a product should be predominantly based on consumer understanding of a product.</p> <p>See draft RG 000 at RG 000.80.</p>	<p>C5Q1 Do you agree that consumer understanding of a product does not necessarily equate to the product being likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market? If not, why not?</p>
<p>C6 We propose to provide guidance that in making a target market determination, it will also be useful for the issuer to consider, in addition to the target market, those for whom the financial product is clearly unsuitable (the 'negative target market').</p> <p>See draft RG 000 at RG 000.90–RG 000.92.</p>	<p>C6Q1 Do you agree that it may also be useful for an issuer to describe the negative target market for its financial product? If not, why not?</p> <p>C6Q2 Is our guidance on the role of describing a negative target market adequate and useful? If not, please explain why, giving examples.</p>
<p>C7 We propose to give guidance on how the target market determination applies for certain products when the application of the obligation is not straightforward, including:</p> <ul style="list-style-type: none"> <li>(a) to superannuation and investor directed portfolio services (also known as 'platforms' or 'IDPS');</li> <li>(b) when products are offered and acquired as a 'package' or 'bundle'; and</li> <li>(c) when products are customisable by the consumer at point-of-sale, including through choices or options (e.g. selecting a waiting period for an income protection insurance product).</li> </ul> <p>See draft RG 000 at RG 000.98–RG 000.106 and Examples 7–8.</p>	<p>C7Q1 In relation to our guidance on how a target market determination should be approached for superannuation products, as set out in Example 7:</p> <ul style="list-style-type: none"> <li>(a) Do you agree with our proposed guidance that if investment options are suitable for different groups of members, then the trustee should account for this in undertaking its target market determination for the Choice superannuation product? If not, why not?</li> <li>(b) What factors do you consider relevant to the grouping of investment options in making a target market determination? Why?</li> <li>(c) Do you agree with our proposed guidance to consider insurance as part of the target market determination for a Choice product? If not, why not?</li> <li>(d) How should a trustee take into account insurance in making a target market determination for a Choice product?</li> </ul> <p>C7Q2 Do you agree with our guidance on the application of the target market determination obligation to IDPS?</p> <p>C7Q3 Do you agree with our guidance on how a target market determination should be approached for a bundled product? If not, why not?</p> <p>C7Q4 Do you agree with our proposed approach to the application of the design and distribution obligations to products that can be customised at point-of-sale? If not, why not?</p> <p>C7Q5 Are there any particular options or choices, or types of options or choices, that you consider would affect the product's suitability for a consumer if selected? Please give examples.</p>



Proposal	Your feedback
<p>C8 We propose to give guidance on the reasonable steps obligation for issuers, and set out our view on the factors that may be relevant to the obligation. These factors include:</p> <ul style="list-style-type: none"> <li>(a) the distribution conditions that are specified in the target market determination;</li> <li>(b) the issuer’s marketing and promotional materials;</li> <li>(c) the selection of distributors;</li> <li>(d) the supervision and monitoring of distributors;</li> <li>(e) the issuer’s ability to eliminate or appropriately manage conflicts of interest; and</li> <li>(f) whether issuers have provided distributors with sufficient information to help them ensure that distribution is consistent with the target market determination.</li> </ul> <p>See draft RG 000 at RG 000.107–RG 000.120, Examples 9–11 and Table 3.</p>	<p>C8Q1 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.107–RG 000.120:</p> <ul style="list-style-type: none"> <li>(a) Example 7: Superannuation products;</li> <li>(b) Example 8: Investor directed portfolio services;</li> <li>(c) Example 9: Superannuation;</li> <li>(d) Example 10: Mortgage fund; and</li> <li>(e) Example 11: Listed investment companies?</li> </ul> <p>C8Q2 Do you agree with the factors listed in Table 3 of draft RG 000 that we expect will be relevant when considering whether an issuer has met the reasonable steps obligation? If not, why not?</p> <p>C8Q3 What additional factors, if any, do you consider should be included in Table 3 of draft RG 000?</p>
<p>C9 We do not propose to set out in guidance standard review triggers and maximum review periods for issuers to adopt. Instead, our draft guidance sets out examples to illustrate what review triggers may be appropriate for certain types of financial products.</p> <p>See draft RG 000 at RG 000.127–RG 000.134 and Examples 12–13.</p>	<p>C9Q1 Do you have any comments on our guidance on setting appropriate review triggers and maximum review periods?</p> <p>C9Q2 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.127–RG 000.130:</p> <ul style="list-style-type: none"> <li>(a) Example 12: Insurance; and</li> <li>(b) Example 13: Managed fund?</li> </ul>

Proposal	Your feedback
<p>C10 We propose to give guidance on the issuer's obligation to specify in the target market determination:</p> <ul style="list-style-type: none"> <li>(a) any information that it considers is necessary to require from its distributors in order to promptly decide that a target market determination may no longer be appropriate; and</li> <li>(b) the reporting period for the information the distributor must provide to the issuer about the number of complaints about the financial product.</li> </ul> <p>See draft RG 000 at RG 000.135–RG 000.142.</p>	<p>C10Q1 Do you have any comments on our guidance on the issuer's obligation to specify information it requires from its distributors?</p> <p>C10Q2 What existing information collected by distributors would be relevant to an issuer's consideration of the ongoing appropriateness of its target market determination?</p> <p>C10Q3 In addition to the information set out at RG 000.139, are there other types of information an issuer should collect from distributors? If so, please describe the type of information you think would be relevant.</p> <p>C10Q4 What potential effects on competition may occur as a result of the issuer's right to set the information the distributor must provide?</p> <p>C10Q5 Do you have any comments on our guidance on the issuer's obligation to specify the reporting period in relation to the number of complaints?</p>
<p>C11 We propose to give guidance that, in reviewing a target market determination, we expect the issuer will take into account all available information on its financial product, using multiple data sources.</p> <p>See draft RG 000 at RG 000.143–RG 000.145.</p>	<p>C11Q1 Do you consider our guidance on the types of information issuers should have regard to (described at RG 000.143) to be useful? If not, why not?</p> <p>C11Q2 In addition to the data sources described in draft RG 000 at RG 000.143(a)–RG 000.143(d), are there other sources of information that you think an issuer should take into account in reviewing a target market determination?</p> <p>C11Q3 Do you have any other comments on our guidance on conducting a review of a target market determination?</p>
<p>C12 We propose to provide guidance that the factors an issuer should consider when determining whether there has been a significant dealing in a financial product that is not consistent with the product's target market determination include:</p> <ul style="list-style-type: none"> <li>(a) the proportion of consumers who are not in the target market acquiring the financial product;</li> <li>(b) the actual or potential harm to consumers; and</li> <li>(c) the nature and extent of the inconsistency of distribution with the target market determination.</li> </ul> <p>See draft RG 000 at RG 000.147–RG 000.148.</p>	<p>C12Q1 Are there any additional factors that issuers should consider? If yes, please provide details.</p>

Proposal	Your feedback
<p>D1 We propose to give high-level guidance on the reasonable steps obligation for distributors of financial products by setting out our view on factors that may be relevant to this obligation, including:</p> <ul style="list-style-type: none"> <li>(a) the distribution method(s) used;</li> <li>(b) compliance with distribution conditions;</li> <li>(c) the marketing and promotional materials circulated by the distributor;</li> <li>(d) the effectiveness of the distributor's product governance framework;</li> <li>(e) the steps taken to eliminate or appropriately manage the risk that incentives for staff or contractors may influence behaviours that could result in distribution being inconsistent with the target market determination;</li> <li>(f) whether reliance on existing information about the consumer is appropriate;</li> <li>(g) whether the distributor has given staff involved in distribution operations sufficient training; and</li> <li>(h) how the distributor forms a reasonable view that a consumer is reasonably likely to be in the target market.</li> </ul> <p>See draft RG 000 at RG 000.154–RG 000.163 and Table 5.</p>	<p>D1Q1 Do you agree with the factors listed in Table 5 of draft RG 000 that we will take into account when considering whether a distributor has met the reasonable steps obligation? If not, why not?</p> <p>D1Q2 What additional factors, if any, do you consider should be included in Table 5 of draft RG 000?</p>

Proposal	Your feedback
<p>D2 We propose to include an example to illustrate, at the time of renewal for general insurance policies, how insurers (in their role as distributor) can approach the reasonable steps obligation to ensure that the renewal process results in outcomes that are consistent with the target market determination. Our guidance suggests that, at the time of renewal, an insurer should:</p> <ul style="list-style-type: none"> <li>(a) analyse information it holds, such as: <ul style="list-style-type: none"> <li>(i) information it gathered when the customer initially acquired the product; and</li> <li>(ii) updated details that have been provided, or through claims that have subsequently occurred; and</li> </ul> </li> <li>(b) consider a number of factors, including the likelihood that a class of consumers is no longer in the target market for the policy.</li> </ul> <p>When an insurer assesses that it is likely that a consumer is no longer in the target market for an insurance policy, this should not result in an insurer declining to offer a renewal of the policy without contacting the consumer.</p> <p>See Example 14 of draft RG 000.</p>	<p>D2Q1 Do you have any comments on our proposed guidance for distributors in Example 14 of draft RG 000?</p> <p>D2Q2 What other steps or controls, if any, do you consider would be appropriate for a distributor to consider what reasonable steps should be taken at renewal?</p>

Proposal	Your feedback
<p>D3 We propose to provide guidance:</p> <ul style="list-style-type: none"> <li>(a) that, in most cases, a distributor should have sufficient information about a consumer through its existing sales processes to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a financial product;</li> <li>(b) that the ways a distributor's processes could assist it to form a reasonable view that a consumer is reasonably likely to be in the target market for a financial product include: <ul style="list-style-type: none"> <li>(i) the inclusion of 'knockout questions' within application processes;</li> <li>(ii) analysis of data held on the consumer or a class of consumers; and</li> <li>(iii) in some cases, asking the consumer direct questions to determine whether they are reasonably likely to be in the target market (see draft RG 000 at RG 000.168(a)–RG 000.168(c)); and</li> </ul> </li> <li>(c) on the steps that a distributor can take to reduce the likelihood that a consumer will be left with the impression that their personal circumstances have been considered, including: <ul style="list-style-type: none"> <li>(i) not having a relevant provider (i.e. an individual authorised to give personal advice to consumers on relevant financial products) involved in the distribution process to ask specific questions of a consumer and communicate the view that the consumer is in the target market to the consumer; and</li> <li>(ii) only asking specific questions of a consumer (when required) in the later stages of the sales process after the consumer has already made the decision to acquire the financial product (see draft RG 000 at RG 000.169(a)–RG 000.169(b)).</li> </ul> </li> </ul>	<p>D3Q1 Do you agree that, in most cases, a distributor would have sufficient information about a consumer through its existing sales processes to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a financial product?</p> <p>D3Q2 What data do you consider would help distributors reasonably conclude that a consumer is reasonably likely to be in the target market for a financial product?</p> <p>D3Q3 Do you consider our guidance should identify (in draft RG 000 at RG 000.168) other ways that a distributor's sales processes can assist it to form a reasonable view that a consumer is reasonably likely to be in the target market for a financial product? What other approaches can be taken?</p> <p>D3Q4 Do you have any comments on our proposed guidance (in draft RG 000 at RG 000.169) on how a distributor could reduce the likelihood of leaving a consumer with the impression that their personal circumstances have been considered?</p>

Proposal	Your feedback
<p>D4 We propose to provide guidance that the reasonable steps a distributor should take when selling a financial product to consumers who are outside the target market for the product depends on the circumstances of the interaction, the nature and degree of harm that might result, and the steps that can be taken to mitigate the harm.</p> <p>See draft RG 000 at RG 000.170–RG 000.175.</p>	<p>D4Q1 Do you have any comments on our proposed guidance on the content of the reasonable steps obligation in these circumstances?</p> <p>D4Q2 Are there any specific methods that you consider our guidance should identify for distributors seeking to meet the reasonable steps obligation in the context of interacting with consumers who are outside the target market for a financial product?</p>
<p>D5 We propose to provide guidance that a target market determination for a financial product should be considered by a financial adviser in providing the advice and meeting their best interests duty.</p> <p>See draft RG 000 at RG 000.180–RG 000.183.</p>	<p>D5Q1 Do you agree that a target market determination for a financial product should be considered by a financial adviser in providing the advice and meeting their best interests duty? If not, please explain.</p>
<p>D6 We propose to provide additional guidance on aspects of the interaction between the responsible lending obligations and the design and distribution obligations, including that:</p> <p>(a) information gathered as part of the responsible lending obligations may help the distributor form a reasonable view on whether the consumer is reasonably likely to be in the target market for a product; and</p> <p>(b) the reasonable steps obligation does not require further steps to be taken by a distributor when assessing, for responsible lending purposes, whether the consumer can comply with their financial obligations under the contract.</p> <p>See draft RG 000 at RG 000.184–RG 000.189.</p>	<p>D6Q1 Do you have any comments on our proposed guidance on using information gathered for the purpose of meeting responsible lending obligations in order to assist a distributor to form a reasonable view on whether a consumer is reasonably likely to be in a target market for a financial product?</p> <p>D6Q2 Are there any further issues you consider are raised by the interaction of the two regimes that should be dealt with in our guidance? Please explain.</p>

Proposal	Your feedback
<p>D7 We do not propose to provide specific guidance on the practical aspects of the relationship between the issuer and the distributor regarding information exchange.</p>	<p>D7Q1 Do you think it would be useful to provide guidance on the following arrangements between the issuer and the distributor:</p> <ul style="list-style-type: none"> <li>(a) whether there is a need for information requirements to be set out in an agreement between the issuer and the distributor;</li> <li>(b) the format of information exchange; and</li> <li>(c) the mode of delivery and communication of information?</li> </ul> <p>If so, what considerations are relevant to these factors?</p> <p>D7Q2 Are there other considerations that need to be taken into account in the collection and exchange of information between an issuer and a distributor?</p>
<p>E1 We propose to give guidance on the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations. These factors include:</p> <ul style="list-style-type: none"> <li>(a) whether the objects of Ch 7 are being promoted, including the provision of suitable financial products to consumers (see s760A(aa));</li> <li>(b) the policy intention underlying the design and distribution obligations to: <ul style="list-style-type: none"> <li>(i) improve consumer outcomes; and</li> <li>(ii) require financial services providers to have a consumer-centric approach to making initial offerings of products to consumers; and</li> </ul> </li> <li>(c) Parliament's intent (as reflected in the law) for these obligations to apply to a broad range of financial products.</li> </ul> <p>See draft RG 000 at RG 000.232.</p>	<p>E1Q1 Do you agree with the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations? If not, why not?</p> <p>E1Q2 Are there any additional factors that you consider we should take into account?</p>
<p>E2 We propose to give guidance that, if we grant disclosure relief for a financial product, relief from the design and distribution obligations will not automatically follow. If requested, we will consider whether to grant relief from the design and distribution obligations as a separate matter to our consideration of the disclosure relief.</p> <p>See draft RG 000 at RG 000.233.</p>	<p>E2Q1 Do you agree with our proposed approach to providing relief from the design and distribution obligations when disclosure relief has been granted in relation to a financial product? If not, why not?</p>