



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

11th March 2020

Product Regulation
Strategic Policy
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001
Email: product.regulation@asic.gov.au

Dear Sir / Madam

ASIC CP325 Consultation on product design and distribution obligations

The Financial Planning Association of Australia¹ (FPA) welcomes the opportunity to provide feedback on ASIC's consultation on product design and distribution obligations.

The FPA supports ASIC's principles-based approach as it allows organisations to adopt a suitable and proportionate approach to reporting and compliance. In our response, the FPA answered questions that asked about information sharing and reporting obligations around target market determinations. The FPA strongly believes that through the existing regulation of personal advice, consumers are protected from being recommended unsuitable financial products. We believe these protections should be extended to other distributors of financial products.

In assessing the appropriateness of target market determinations, there are opportunities to optimise the reporting obligations of distributors, such that does not duplicate existing requirements or create excessive administration.

The FPA would welcome the opportunity to discuss with ASIC the issues raised in our submission. If you have any questions, please contact me at ben.marshan@fpa.com.au or 02 9220 4500, or on policy@fpa.com.au.

Yours sincerely

Ben Marshan CFP^(R), LRS

Head of Policy and Professional Standards
Financial Planning Association of Australia

¹ The Financial Planning Association (FPA) has more than 12,919 members and affiliates of whom 10,618 are practising financial planners and 5,540 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Graham McDonald, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.



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C10 Specifying required information from distributors and reporting periods

C10 Q1

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

FPA Response to C10 Q1

There is confusion where the responsibility to ensure the information is current and useful for the issuer to determine whether the TMD remains appropriate.

The FPA supports a principle based and non-prescriptive manner would best suit the regime as there are a variety of products and distributors captured under the regime.

Specifically, there are two issues that would hinder the reporting obligations for issuers:

1. It is uncommon in the current environment for distribution contracts to be entered into between issuers and distributors. Traditionally this helped product manufacturers identify who was recommending their products, however this rarely occurs now. Thus, product manufacturers cannot monitor that distributors of their products oblige to the DDO reporting regime.
2. In the absence of a contract, there is no obligation for a distributor, such as a financial planner, to provide information. As a result, it means distributors are not a known group who can be approached to source information for issuers.

Thus, a more appropriate channel to obtain specific information from distributors or product users would be during the application process. This provides the necessary identification, and transfer of information from the primary source directly to the issuer to evaluate against their target market determination.



C10 Q3

RG 000.139 Information from a distributor that may be necessary to enable an issuer to identify whether a target market determination should be reviewed could include:

FPA Response to C10Q3

The FPA provide the following feedback on the proposed information required to review target market determination:

(a) complaints data;

- These should only be required when a complaint is received, as opposed to reporting on a regular basis or 'reporting period' set by the issuer. Thus, the process could be integrated into the distributor company's IDR process flow and be provided to a product issuer within the 45-day timeframe for IDR obligations.
- Similarly, EDR and AFCA complaint systems have publicly available information that shows how many complaints are made against product types. This provides an opportunity to consolidate the necessary information issuers and distributors need to keep and who they should report complaint data to, and how they can be used.

(b) consumer feedback (including on the performance of the product);

- Issuers should seek their own consumer feedback and not require this from distributors.

(c) requests for information from consumers.

- Similarly, to complaints data, application forms can also be a tool to provide the information from consumers to issuers on the appropriateness of their target market determination. This puts feedback straight to the issuer as opposed through a secondary source which is prone to misinformation, mis interpretation, data quality and strenuous resource use from the distributor.

(d) percentage of sales to consumers who are not in the target market.

- Product manufacturers should be able to obtain this through their own information/database. Nonetheless, this supports the consideration of using application forms as a means to capture data and assess appropriateness of target market determination.

(e) samples of recorded sales calls.

- We foresee this to be a privacy issue and should be carefully considered about how it is implemented. I.e. consumer privacy rights should take precedence over product quality review.

(f) conversion rates;

- We do not believe this provides value in assessing whether the target market is appropriate, particularly as financial planners compare several products in complying with their BID obligations.



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(g) volume of sales; and

- This should be clear to issues based on the number of investors/members and funds under management without additional information being required from distributors.

(h) web analytics (e.g. click data and website paths).

- While, there is potential for insight to be derived, we would advise that specialist knowledge be utilised to ensure the data is collected and interpreted correctly. Arguably, distributors capable of presenting these data are larger and more resourced. Therefore, the final sample of data collected would not be representative of the users of the product.

C10 Q4

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

FPA Response to C10 Q4

The FPA believe there are two risks to competition that negate the consumer protection designed to be implemented by the DDO regime.

1. If the items required to be submitted to issuers become onerous, then distributors may decide that consolidation of product offerings provide the best means to meet these reporting obligations, particularly by advisers. While the requirement to share information is necessary, if there is no standardisation, providing different information to many product issuers is a disincentive to recommend that product. The more confident an adviser is with meeting the reporting obligations of the product, the more likely they would recommend or distribute the product.
2. On the other hand, as outlined through our response to C10Q3, there is a risk that the reporting obligations incentivise distribution of products through advice channels because it will be easier to collect information to assess target market determinations through professionals than ensuring consumers understand the questions being asked directly and completing the information accurately. This has the potential to put inappropriate pressure on financial advisers to distribute specific products by aggressive product manufacturers.

Thus, if product issuers can obtain their data through application forms, it will mitigate these two risks by removing reducing preferences for advice channels distribution. Conversely, financial advisers won't prefer issuers with easier reporting obligations.



C10 Q5

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?

FPA Response to C10 Q5

We support product issuers identifying the number of complaints made about their products is an important piece of information for issuers to consider when deciding that the TMD is still appropriate.

If complaints data is to be used to inform issuers on the appropriateness of the target market determination, then this is most appropriately captured through the IDR process and reporting obligations. As such, the FPA recommends that a notification for product providers should be sent during the IDR timeframes (45 days) where the complaint involves a specific product. We acknowledge ASIC has consulted on IDR timeframe requirements which presents an opportunity to integrate the two data points creating a synergy between data collection (receiving a complaint) and analysis for all end-users².

Following this methodology there will be no additional requirement for a financial adviser to regularly report on all recommended and implemented products they have used across their client base which could number in the thousands. Rather the complaint data is only transferred through to the issuer when an actual complaint has arisen. Thus, if there are no complaints, there would be no reporting obligation for the distributor. Otherwise, the effort to report against the numerous requests made by product manufacturers is unfeasible and unfairly onerous on distributors. As previously mentioned, the problem is also compounded as product issuers cannot identify their distributors. Similarly, if companies are required to report IDR data to ASIC, there's opportunity for this information to be provided to issuers from ASIC's database to reduce the duplication of reporting requirements further.

FPA Recommendation

If the number of complaints is a requirement then there is an opportunity to integrate this reporting framework into the IDR timeframes. That is, when and only when, a complaint has arisen then the product complaint should be reported to the product provider. Alternatively, complaint data can be gathered

² The proposed obligations from **CP311: Update to IDR** states the following where public IDR information is formally being proposed:

Paragraph 12

(b) introduce a new requirement for all financial firms to report IDR data to ASIC in a standardised manner, as determined by ASIC in a legislative instrument;

(c) give ASIC the power to publish financial firms' IDR data at both aggregate and firm level; and

RG 165.199 *Firms should also report on complaints in their annual reports.*

(l) recommendations for improving products or services.



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through ASIC and provided to the issuer via this channel. As such, this should be considered in tandem with ASIC CP311: Update to Internal Dispute Resolution.

D5 Interaction with Personal Advice

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.

FPA Response to D5

The FPA supports the need for advisers to consider the target market determination for a financial product when providing personal advice to meet their 'best interest duty'. Where a recommendation is made outside the target market determination, but in the best interests of the client, we would expect this reasoning is documented, noting it is already a requirement to document the reasoning for making a product recommendation. Further, monitoring and supervisions and complaints processes (both IDR/EDR and single disciplinary body) will pick up where the adviser has inappropriately been ignoring TMDs.

D7 Provision of information to issuers

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.

FPA Response to D7Q1

The FPA supports ASIC's high-level principle approach. Similar to our response to C10Q1, a non-prescriptive, technology-neutral, standardised language should be factors considered across product manufacturers.