

Design and distribution obligations by Issuers and Distributors to retail investors

Operating from 5 October 2021 a new DDO regime (**DDO**) - Design and distribution obligations apply to issuers and distributors of financial products that are offered to retail clients. The DDO regime does not apply to wholesale investors.

ASIC Regulatory Guide 274 *Product Design and Distribution Obligations for Issuers and Distributors*, explains the requirements and our obligations. For further details see:

<https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-274-product-design-and-distribution-obligations/>

How does the DDO relate to retail investors?

The DDO is to assist retail investors obtain financial products that meet their likely objectives, financial situation and needs by requiring Issuers (such as Investor Signals) to consider the kind of investors that their products are likely to be appropriate for during the life cycle of the product, and to design and distribute those products in a way that reduces the risk of products being sold outside the intended target market.

What are Issuers and Distributors required to do?

The new DDO require:

- Issuers to design financial products that are consistent with the likely objectives, financial situation and needs of the consumers for whom they are intended (the target market), and take reasonable steps to ensure investors outside the target market are unlikely to acquire a product; and
- Distributors must take reasonable steps to distribute financial products to the target market. Distributors (including personal advice Distributors) are also required to report complaints, significant dealings and information specified by the Issuers.

Who is a Distributor?

A Distributor includes:

- An AFSL holder and its authorised representatives (Investor Signals is an authorised representative of Advisor Plus Pty Ltd which holds the AFSL and has appointed Investor Signals as a corporate authorised representative); or
- any person who engages in 'retail product distribution conduct' such as dealing in a financial product, giving a disclosure document (for example a Product Disclosure Document (**PDS**)) and/or providing financial product advice.

What obligations does an Issuer have to retail investors?

The Issuer must:

- not distribute a product to a retail client unless a Target Market Determination (TMD) is available
- stop distributing products if the TMD is no longer appropriate to the retail client
- take reasonable steps to ensure that the distribution of the product aligns with the TMD
- ensure that marketing and promotional materials are consistent with the TMD as well as complying with the anti-hawking provisions in the Corporations Act 2001 (Cth) that apply to retail clients
- collect, store and give distribution information to AdvisorPlus. The Distributor must keep complete and accurate records and store them for at least seven years.
- notify AdvisorPlus of 'significant dealings' that are not consistent with the TMD within 10 business of any dealings
- report any client complaints relating to the DDO regime to AdvisorPlus when they arise or within 10 business days of the annual reporting period for nil complaints.

What obligations does a Distributor have to retail investors?

Distributors must consider the following obligations when providing personal advice:

- whether the providing of personal advice falls under the definition of 'excluded conduct'
- the '**reasonable steps**' obligation does not apply to a Distributor who provides personal advice to a retail client, where the financial adviser is complying with 'best interests' duty
- whether to stop distributing products if the client is outside the target market unless the financial adviser can show that under the 'best interests' duty, it is still appropriate.

What is meant by 'reasonable steps'?

There is no definition of 'reasonable steps' in the legislation, however it will depend on factors including the financial product and the TMD. Distributors must consider all relevant factors in assessing what reasonable steps need to be taken in the circumstances, including:

- risk: the likelihood of the distribution not being consistent with the TMD;
- harm: the nature and degree of harm that might result from the financial product being issued otherwise than in accordance with the TMD; and
- mitigation steps: steps that can be taken to eliminate and minimise the likelihood of the distribution being inconsistent with the TMD and the harm that might result.

What obligations does Investor Signals have to AdvisorPlus as AFSL holder?

- to collect, store and give distribution information to AdvisorPlus
- keep complete and accurate records which are stored for a minimum of seven years
- notify any '**significant dealings**' outside the TMD to AdvisorPlus within 10 business days
- report any client complaints relating to the DDO regime to AdvisorPlus when they arise or, if there are nil complaints, within 10 business days of the annual reporting period.

What is meant by 'significant dealings'?

There is no definition of a 'significant dealing' in the legislation. Issuers and Distributors must determine on a case-by-case basis. As a Distributor when deciding whether a dealing is significant, Investor Signals should consider, for example:

- whether there is a substantial amount of distribution occurring outside target market.
- Whether the distribution is outside target market likely to cause significant consumer harm.

What is a TMD?

A TMD is a document that must:

- be in writing
- describe the class of consumers that comprises the target market for the product (target market).
- specify any conditions and restrictions on distribution (distribution conditions)
- specify events and circumstances that would reasonably suggest the TMD is no longer appropriate (review triggers)
- specify when the first review of the TMD must occur
- specify reasonable maximum review periods
- specify when the Distributor should give the Issuer information about the number of complaints (including nil complaints) about the product (reporting period)
- specify the kinds of information that the Distributor must report to the Issuer and how frequently.

Where can you find the TMD?

Investor Signals is an Issuer of interests in a financial product Investor Signals Global Investment Fund which is a managed investment scheme) and is required to make the TMD publicly available. It can be found on Investor Signals website.

How often does Investor Signals review the TMD?

TMDs are reviewed within the review period set out in the TMD. Investor Signals has an annual review cycle, or earlier if a review trigger is met.

Is a TMD different from a PDS?

A PDS is a document that contains information about the product, including any significant benefits or risks, as well as the fees and costs.

A TMD is a governance document that contains information about the class of investor that the product is intended for. It is not considered a disclosure document.

What obligations does Investor Signals have as an authorised representative?

As an Issuer, Investor Signals must:

- prepare a TMD and make the TMD publicly available
- create, publish and regularly review the TMD and its continued appropriateness for the PDS
- take **reasonable steps** (see above definition) to ensure that distribution is consistent with the TMD
- identify and monitor for certain events, known as review triggers, to ensure the TMD remains appropriate
- review the TMD periodically and within 10 business days if Investor Signals know that a review trigger has occurred
- keep records of the TMD, as well as any associated reviews and decisions.

What obligations does AdvisorPlus have as the AFSL holder

As AFSL holder, AdvisorPlus must:

- notify ASIC within 10 business days of any **significant dealings** (see above definition) outside of the TMD
- ensure that Investor Signals keeps records of the TMD, as well as any associated reviews and decisions
- ensure that Investor Signals reports to AdvisorPlus whether any review triggers have occurred within 10 business days of their occurrence
- ensure that Investor Signals reports to AdvisorPlus