

18 March 2020

Product Regulation
Strategic Policy
Australian Securities and Investments Commission
By email product.regulation@asic.gov.au

Dear Sir / Madam,

Product Design and Distribution Obligations – ASIC CP 325 and draft Regulatory Guide

At the release of the Final Report of the Royal Commission last year, the banking industry committed to learning the lessons, fixing the problems and making things right.

One year on from the Royal Commission the banking industry has tougher rules imposed by the Government and regulators, a back to basics approach to banking which is squarely centred on the customer and a renewed focus on fixing culture.

The product design and distribution obligations (DDO) regime stands to complement industry's renewed focus on the customer.

The ABA's position

The banking industry strongly supports the Government acting on the recommendations of the Royal Commission and associated reforms such as those relating to the DDO. However, the regime is complex and implementing it imposes a significant burden on industry. ASIC's Guide is a means by which certainty around the operation of the regime can be increased, and ASIC's expectations made clear.

The draft Guide released by ASIC is a good beginning. If it is to achieve its optimal effect, however, we believe that it could be improved in several respects. We set these out below.

Key points

- ASIC should administer the DDO in a way that minimises duplication and promotes consistency and regulatory efficiency among the various regimes with which it overlaps.
- The Guide should make clear that there may be circumstances in relation to particular sales, where satisfaction of the responsible lending obligations will be enough to satisfy the 'reasonable steps' obligations under the DDO
- The Guide should make clear that a target market determination that aligns with the Code requirements for particular customer segments (i.e. one that describes the target market as being 'eligible customers' under the Code) or, for a product that allows informal overdrafts, that defines a 'negative target market' as being eligible customers under the Code, is sufficient to address the issues of concern around low-income earners and informal overdrafts
- The draft Guide section on the interaction between the DDO and personal advice regimes that suggests that distributors ask "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 product" should be removed.



- To reduce uncertainty and promote consistency, the Guide should provide examples of TMDs for simple products and should expressly recognise that TMDs for simple products like basic deposit products or home lending products can be very broad.
- The Guide should include some examples or guidelines on the form that TMDs should take for various products, including the level of detail ASIC would like to see.
- For bundled products, the Guide should provide:
 - More on how ASIC expects issuers to deal with linked and bundled financial products in general, including non-cash payment and other facilities (such as a home loan (with an offset account).
 - examples to as to how a TMD would be formed for bundled product, especially one where the standalone product/s would have a different TMD.
 - confirmation that, where the legislation does not require that products be treated separately, it is for the issuer to determine whether a separate TMD would be more suitable in each case where products are bundled.
- The section of the draft Guide on diversification should be revised and should include examples to elaborate the point that ASIC seeks to make.
- The reference in the draft Guide to 'choice architecture' should be removed. If it is retained, it should be better defined, and examples provided to further inform issuers of the expectations in this regard.
- While vulnerability is a term used in industry documents such as the Banking Code of Practice, the Guide should make clear that what ASIC intends by the term is consistent with the meaning given to it in the context of the Code and associated ABA Guidelines
- The Guide should address how ASIC expects industry to monitor vulnerable customers in light of privacy and confidentiality concerns.
- The draft Guide should specifically note the exclusion of credit for business purposes.

We would be pleased to discuss any of the issues raised above.

We look forward to continued engagement on this issue with ASIC as the industry prepares for implementation of the DDO regime.

Yours sincerely

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Australian Banking
Association

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers.

We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.



ABA submission on ASIC CP 325 – Product design and distribution obligations and draft Guide on DDO

Key themes

Interaction with other regimes

We note that the product design and distribution obligations (DDO) apply to a wide range of financial products including many that are heavily regulated under other regimes. These include the responsible lending obligations under the National Consumer Credit Protection Act (NCCP Act), the regime for the provision of personal advice under the Corporations Act, and even obligations under the Banking Code of Practice.

We note that ASIC has expressed the view that these various regimes and powers should be regarded as complementary to each other. We agree, but we note that, in practice, the regimes will not complement each other if they are treated as giving rise to conflicting or duplicative obligations. For this reason, in our view, **ASIC should administer the DDO in a way that minimises duplication and promotes consistency and regulatory efficiency among the various regimes.** We make some observations below on the extent to which the draft Guide is consistent with this view.

Responsible lending and broker best interest duty

We note that ASIC distinguishes between the responsible lending obligations and the DDO by highlighting the focus of the former as being on the individual and the latter being on the establishment of broader product governance processes. This view is echoed in the statement:

“The reasonable steps obligation under the design and distribution obligations is a ‘process and controls’ obligation to generally distribute to consumers who are in the target market for a product.”¹

In our view, this is not entirely correct. Sometimes the distinction will apply and there will be different considerations under each regime. For example, as the draft Guide notes, the responsible lending obligations are not relevant to an issuer’s decision on how widely to advertise a credit product, whereas the DDO will have a bearing on that question, especially if there is a narrow target market.

However, the regime specifically contemplates that ‘retail product distribution conduct’ can occur in relation to a ‘particular client’, and so the reasonable steps obligations too will be relevant for such a particular circumstance.² The relevance of this is that there may be circumstances in relation to particular sales, where satisfaction of the responsible lending obligations will be enough to satisfy the ‘reasonable steps’ obligations under the DDO. For example, in the context of the distribution of credit products, meeting the responsible lending obligations should ensure distributors do not sell outside the target market, and so should be taken as satisfying the ‘reasonable steps’ requirement for distributors. This should, in our view, be expressly recognised in the Guide.

Similar considerations apply in relation to the extension of the ‘best interest’ duty for mortgage brokers. That is, if a broker meets their best interest duty – is that enough for them to show that they have taken reasonable steps? The Guide should recognise that this is the case.

The Guide should make clear that there may be circumstances in relation to particular sales, where satisfaction of the responsible lending obligations or the broker best interest duty will be enough to satisfy the ‘reasonable steps’ obligations under the DDO

Banking Code of Practice – informal overdrafts

We note that the draft Guide contains an example based on the Royal Commission observations and recommendations on the provision of informal overdrafts for basic bank accounts.

¹ RG 000.189

² Section 994E



The Royal Commission recommended that the issues it identified with respect to informal overdrafts be dealt with by an amendment to the Banking Code of Practice. This recommendation has now been implemented by the ABA with the express approval of ASIC and the ACCC. The ACCC authorisation includes conditions on banks proactively identifying customers who are eligible for accounts which include features such as no informal overdrafts.

ABA members have put systems in place to deal with these new code requirements and ensure that eligible customers under the code have access to a basic account that does not allow informal overdrafts (except where these cannot be prevented). The example used in the draft Guide implies that the DDO requires that banks apply separate or additional considerations to the process of formulating a TMD. In our view, this would be a confusing and inappropriate result.

The Guide should make clear that a target market determination that aligns with the Code requirements (i.e. one that describes the target market as being ‘eligible customers’ under the Code) or, for a product that allows informal overdrafts, that defines a ‘negative target market’ as being eligible customers under the Code, is sufficient to address the issues of concern around low-income earners and informal overdrafts.

Distribution process: Asking specific questions of consumers

The draft Guide notes that in some cases, in order to determine whether a consumer is inside the target market, distributors may need to ask specific questions of a consumer.³ However, this seems inherently contradictory with the statement that:

“A distributor should also not frame its processes in a way that leaves the consumer with the impression that their personal circumstances have been considered.”⁴

In apparent recognition of the inconsistency, the draft Guide suggests solutions, such as distributors:

“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 product.*”⁵

Requiring licensees to put systems in place to hold off on asking specific questions until a client has decided to acquire the product will be difficult in practice and is likely to confuse customers.

The draft Guide on the interaction between the DDO and personal advice regimes that suggests that distributors ask “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 product”⁶ should be removed.

Target market determinations

TMD for simple products

Consistent with the original intention of the Financial System Inquiry, the obligation to make a TMD should be scalable according to the level of complexity of the product. Some products, such as low or no fee basic deposit products, could potentially be suitable for any customer.

To reduce uncertainty and promote consistency, the Guide should provide examples of TMDs for simple products and should expressly recognise that TMs for simple products like basic deposit products or home lending products can be very broad.

TMD templates

We note that ASIC has expressed the intention not to give definitive guidance on the content and form of TMDs, citing the rationale that:

³ RG 000 166

⁴ RG 000.169

⁵ RG 000.169(b)

⁶ RG 000.169



“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.”⁷

We accept that the substantive content of TMDs should not be indiscriminately replicated among issuers. However, in our view, the Guide should include some examples or guidelines on the form that TMDs should take for various products. Some level of standardisation as to form would, as well as providing some assistance to issuers in formulating TMDs, also assist in providing a consistent framework for distributors such as mortgage brokers in understanding and comparing products.

The Guide should include some examples or guidelines on the form that TMDs should take for various products and the level of detail ASIC expects to see in them.

Target market determinations for bundled products

We note that the draft Guide contains some observations on the treatment of bundled products. In particular:

“When a single product has multiple elements that are offered as a package or bundle (e.g. an investment facility that provides exposure to both shares and debentures), the issuer must make a target market determination that considers the entire product. When multiple products are ‘packaged’ or ‘bundled’ by an issuer, a target market determination must be made for each separate product. We do not consider this prevents an issuer continuing to offer the product as a package or bundle.”⁸

The draft Guide also notes that the effect of the Act is that some products that form part of a bundle will need to be treated as separate products (single contracts of insurance that provide more than one form of cover, for example).⁹

There are circumstances, however, where the expectations in relation to bundled products are not clear. For example, where one financial product, particularly a non-cash payment facility is linked to or bundled with another financial product which together forms a single financial product (because they are part of the one arrangement) - are issuers required or expected to treat these products as individual financial products under the RG and related DDO legislation? Or where there is the option for a client to choose one without the other and the facilities are not likely to be considered part of the one arrangement (per ASIC RG 185.62) and there may be two or more separate financial products (even if more than one component is in fact acquired), how does ASIC expect issues to treat these under the DDO legislation and RG?

The Guide should provide:

(a) more on how ASIC expects issuers to deal with linked and bundled financial products in general, including non-cash payment facilities and other facilities (such as a home loan (with an offset account)).

(b) examples to as to how a TMD would be formed for bundled product, especially one where the standalone product/s would have a different TMD.

(c) confirmation that, where the legislation does not require that products be treated separately, it is for the issuer to determine whether a separate TMD would be more suitable in each case where products are bundled.

Without such additions to the Guide, it is possible that interpreting and applying these obligations may lead to unintended consequences across financial institutions.

⁷ CP 325, para 60.

⁸ RG 000.103

⁹ Note to RG 000.103



Diversification

The draft Guide section on diversification is, in its current form, not of much assistance to the industry. The first of the two paragraphs on this (RG 000.78) makes a broad statement about the need for issuers to manage risks of products being sold to investors who do not have a diversified portfolio. In the absence of elaboration, this point is not very useful.

The second paragraph (RG 000.79) states that the sale of ‘inherently flawed’ financial products, even within a diversified portfolio, is not appropriate. Again, this seems obvious and the point that the draft seeks to make by including this statement is unclear.

The section of the draft Guide on diversification should be revised and should include examples to elaborate the point that ASIC seeks to make in this regard.

‘choice architecture’ & ‘vulnerabilities’

We note that the draft Guide expresses an expectation that an issuer should consider, at the product design stage, the ‘choice architecture’ of its product to ensure consistency with the target market.¹⁰ ‘Choice architecture’ is not a well-defined term. The definition offered in the draft is so broad as to offer issuers little practical guidance and will be difficult to implement in a consistent way:

“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.”¹¹

In our view it is unreasonable to expect issuers to take account of subjective concepts such as ‘notice and unnoticed’ features in an environment. The use of the term ‘choice architecture’ should not be used in the Guide unless it is better defined.

The reference in the draft Guide to ‘choice architecture’ should be removed. If it is retained, it should be better defined, and examples provided to further inform issuers of the expectations in this regard.

The draft Guide also draws on the concept of ‘vulnerability’, advising that issuers and distributors consider ‘consumer vulnerabilities’. Again, what is intended to be covered by the term vulnerability in this context is loosely and broadly defined to include ‘a consumer’s personal circumstances and the specific influence or impact of features in a product’s choice architecture’¹².

The draft Guide should make clear that the concept of vulnerability is intended to align with the term as used in other industry contexts such as the Banking Code of Practice.

In addition, the Guide should address how ASIC expects industry to monitor vulnerable customers in light of privacy and confidentiality concerns. For example, licensees cannot simply collect information on vulnerability from the customer and flag their account, so how is a product issuer to monitor these behaviours at an aggregated product level?

While vulnerability is a term used in industry documents such as the Banking Code of Practice, the draft Guide should make clear that what it intends by the term is consistent with the meaning given to it in the context of the Code and associated ABA Guidelines.

The Guide should address how ASIC expects industry to monitor vulnerable customers in light of privacy and confidentiality concerns.

Products that are not subject to the obligations

Credit provided for the purposes of a business

¹⁰ RG 000.47

¹¹ *ibid.*

¹² RG 000.55



We note that neither CP 325, nor the draft Guide, refer to the exclusion from the regime of 'credit provided for business purposes' as provided for in 7.8A.04 of the Corporations Regulations 2001. In our view, the draft Guide should note this exclusion.

The draft Guide should specifically note the exclusion of credit for business purposes.

Answers to questions in CP 325

Product governance framework

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?

B2Q1 Is our guidance on the consumer-centric approach issuers and distributors should take to deliver good consumer outcomes useful?

We agree generally with ASIC's prescription for a consumer-centric approach. As outlined above, we believe that the Guide could be clearer in relation to potential overlap with regimes such as the Banking Code of Practice (particularly in relation to the overlap with requirements around informal overdrafts for example) and in relation to the concept of vulnerability.

Target Market Determinations

Identifying and describing a target market

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

As outlined above, in our view, ASIC should provide templates for the form of TMDs for different products. ASIC's concern regarding a 'one size fits all' approach could be avoided if TMD templates were limited to outlining the general form which TMDs should take, and not the detailed content. This approach would help ensure consistency and make it easier for distributors and consumers to understand TMDs from different issuers.

The Guide should also provide some examples of TMDs for different products, especially for simple products, in order to elaborate on its expectations around a scalable approach for the DDOs.

The Guide should include some examples or guidelines on the form that TMDs should take for various products and the level of detail ASIC expects to see in them.

C2Q1, Is our guidance on the approach to identifying the target market for new products and continuing products useful?

There is still some uncertainty among members around the treatment of roll-overs. For example, in relation to term deposit rollovers, no new PDS would be issued, but a new certificate of investment would be available. It would be helpful if the Guide clarified whether, in such circumstances, the product would be treated as a "new product", therefore requiring a TMD.

C2Q2 What additional matters, if any, do you consider to be relevant?

See above under key themes.

C3Q1 Do you have any comments on our approach to guidance on identifying and describing the target market?

See above under key themes.



Diversification

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

As outlined above, this section should be revised.

Consumer understanding

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?

Yes. Consumer understanding is not the sole consideration in this respect.

Considering the 'negative target market'

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?

Yes.

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

Yes.

Product-specific issues

C7Q2 Do you agree with our guidance on the application of the target market determination obligation to IDPS?

If a product is only accessible on a platform that is only accessible by financial advisers, the TMD may be much less relevant as the financial adviser will access the consumers' individual circumstances and objectives.

C7Q3 Do you agree with our guidance on how a target market determination should be approached for a bundled product? If not, why not?

We broadly agree with the Guide, subject to the matters raised under Key Themes, above.

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.

It would be useful to have more examples of product customisation. Examples would help demonstrate the relevant threshold for concluding that the class of consumers is different as a result of the customisation. This goes to the question of how granular the "class of consumers" is.

E.g. Term deposits can have:

- different terms, between 1 month and 5 years
- interest re-invested or paid into their account
- interest paid monthly or at maturity

Home loans can:

- be interest only for a number of years,
- be for a term that is less than or more than 30-years
- have fixed interest for 1 to 5 years"

Taking reasonable steps in relation to distribution: Issuers

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

A question that concerns issuers regarding the 'reasonable steps' obligation on them relates to the level of monitoring that is expected. While the level of monitoring currently performed on relationship-managed customers would align with the DDO requirements, the level of monitoring that ASIC expects from issuers in relation to non-relationship-managed customers is unclear. Elaboration on this would be welcome.

Reviewing the target market determination

Specifying review triggers and reasonable maximum review periods

C9Q1 Do you have any comments on our guidance on setting appropriate review triggers and maximum review periods?

In response to Proposal C9, Q1 – How specific do the review triggers need to be? For instance, there may be significant economic events that could determine whether a financial product would be appropriate to offer (i.e. reverse mortgages stopped being offered due to market forces at the time). Should review triggers extend to such circumstances?

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?

In terms of example 12 – Insurance - some review triggers (e.g. claims ratio for insurance) need to be considered 'through the cycle' which can be 5-7 years. The Guide should clarify whether this should be taken into consideration by the issuer when determining review periods.

Specifying required information from distributors and reporting periods

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

Is there an expectation as to how distributors will make a record of financial products that are sold outside the TMD? Given the compliance timeframe and information requirement set out in RG 000.139, this reporting requirement to issuers will prove challenging to reasonably meet.

While we understand that ASIC is adopting a principles-based approach to implementing the legislative framework, it would be useful if further guidance is provided which may assist industry in developing standard forms of reporting between issuers and distributors. A standard format for reporting would greatly assist issuers and distributors in designing and implementing systems changes which would be necessary to support the required reporting in a consistent manner.

A lack of standardisation in relation to reporting requirements and timeframes will potentially have inefficient and duplicative results. For example, a broker with 45 lenders will have to comply with 45 different reporting requirements with separate time periods.

One issue of concern to industry is around data privacy. It is possible that information sharing obligations under DDO will prompt non-compliance events of data privacy breaches under the Privacy Act (Cth) or EU's General Data Protection Regulation (GDPR), jointly or severally. This is something that ASIC should consider in specifying data sharing requirements in the Guide.



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

We have set out the below examples of the existing information collected that would be relevant to an issuer's consideration of the ongoing appropriateness of its TMD. Each scenario below should consider the percentage of consumers that:

- Have higher fees higher than expected;
- Do not meet bonus interest conditions;
- Are outside targeted segments;
- Have lower than expected loan sizes;
- Have overly long or short tenure on product; and
- Are on evergreen financial products and not receiving any reviews/contact.

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.

Additional information could potentially include complaints data, geographical, portfolio data financial metrics such as performance to budget, nature and quantum of sales and incentive programs including the impact of 'specials' such as for Christmas etc.

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

In the absence of a consistent industry approach, related parties may have a benefit in the design and implementation of reporting requirements. The system changes that may be required to support the distributor reporting requirements may negatively impact on smaller distributors that are not part of a larger group with limited access to the infrastructure and/or resources to comply with the data requirements.

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?

Yes, we recommend setting a minimum reporting period frequency (i.e. quarterly), in relation to the number of complaints.

Conducting a review of a target market determination

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

The Guide could clarify whether it refers to the results of the initial testing to determine whether they remain accurate, or whether the expectation is that testing is required again on review.

For point (d) If a consumer has determined that a product has delivered a positive outcome, but an external party has deemed otherwise, would this suffice as grounds for conducting a review? For example, if all customers of a transaction product said they get 'good value' out of a product, but a newspaper article said otherwise, would the issuer need to conduct a review?

Proposed guidance on obligations for distributors

Taking 'reasonable steps': Distributors

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?

As outlined above, the Guide should make clear that there will be instances where compliance with regimes such as the responsible lending obligations, best interests duty, or Banking Code commitments

should be taken as satisfying reasonable steps obligations under the DDO, albeit that this will not always be the case.

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

Asking additional, specific questions of consumers

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?

The examples in the draft Guide seem to be framed around a larger distributor. Many members deal with large but also smaller counterparties so the need for a proportionate solution that does not negatively impact on competition / innovation will be important. The Guide should clarify this.

D3Q4 Do you have any comments on our proposed Guide (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?

See above under Key Themes.

Consumers outside the target market

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

Some elaboration on the point around reporting of significant dealings would be helpful. Presumably it is not the intention that, if an distributor takes reasonable steps to prevent an individual consumer outside the target market from acquiring a product, but the consumer insists on acquiring it, this is unlikely to be reportable to the issuer. That could be made clear in the Guide.

Interaction with personal advice obligations

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.

Yes. The TMD is one of a range of relevant factors that a financial adviser should have regard to.

Interaction with responsible lending obligations

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 Guide? Please explain.

See the discussion of this issue above under Key Themes.

Provision of information to issuers

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?

Consideration should be given toward standardising the type of information required to be obtained by Issuers from the Distributors. For example, consistent data points or timeframes for similar or like for like product types. In the absence of this, distributors may receive many requests for data/information all in differing formats and requirements and the process will become extremely time consuming and onerous, particularly for distribution channels that may support the same type of product across owner by multiple issuers.

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?

We agree with ASIC's position that specific guidance not be provided on the relationship between the issuer and distributor regarding information exchange. Less prescription will allow both the issuer and distributor to design the terms of their arrangement with a level of discretion and autonomy – noting it will be in the best interests of both parties to appropriately design a mutual agreement.

It would be useful, however, if the Guide contained examples - for instance on the relationship between a bank and broker. Additional guidance on this subject matter will allow both parties to formalise a distribution agreement that sets out the reporting requirements the issuer will need from the distributor in order for the issuer to assess and determine whether the TMD is and remains appropriate. Such guidance will contribute to the fulfilment of this regime's policy objective, that is, to reduce the risk of products being sold to consumers that are not consistent with their likely objectives, financial situation and needs.