

## Target market determination: renewing the focus on customer outcomes

The Design and Distribution Obligations (DDO) regime is now well and truly here with the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019 passing in both houses on 3 April 2019 and receiving the Royal Assent on 5 April 2019. ASIC's customer protection toolkit is now strengthened through the product intervention powers, which are effective immediately. The Design and Distribution Obligations are applicable in two years, as of 5 April 2021.

Undoubtedly there are going to be some hurdles along the way as the financial services industry tries to align their product governance lifecycle to the DDO regime, and grapple with what an 'appropriate' target market determination is and what it should consider. Additionally, the data and analytical components of monitoring distribution to the target market pose various challenges.

We must bear in mind the obligations are about having customers at the centre of product design and distribution to enhance the achievement of fair and suitable customer outcomes. This will mean targeting financial products at the right people and attracting the right potential customers.

For those that fail to meet these requirements, there will be hefty consequences, both civil and criminal penalties.

### Targeting under the DDO regime

The principal requirement of the regime centres on a target market determination at the time of creation, distribution and review of a financial product. Hence, the target market requirement has various impacts on the product governance lifecycle, for both the issuer and distributor of the product. The initial determination of a product's target market forms part of the product design phase, and must be completed before distribution. The issuer must provide the target market determination to distributors in advance of them entering into selling or providing a service on the product.

When making a target market determination, the product issuer must take into account all relevant factors to determine whether a product will generally meet the objectives of customers within the target market. The precise relevant factors that need to be considered when making a target market determination are not outlined in the obligations. The legislation states that the target market determination must confirm that the product would likely be consistent with the likely objectives, financial situation and needs of the customer. ASIC has indicated that it is close to being ready to consult on draft guidance to support the industry.



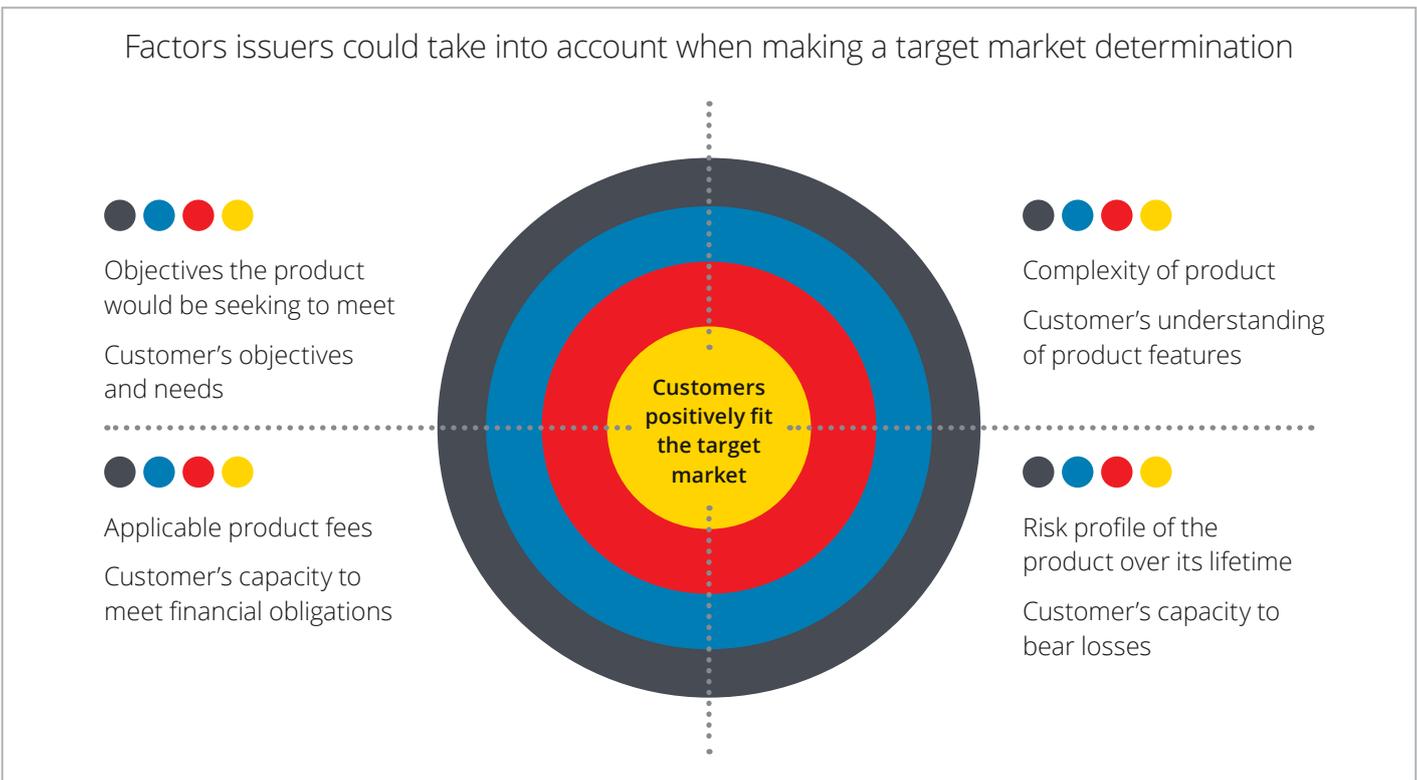
**Further, the obligations require the target market determination to set out:**

- The class of customers that will comprise the product's target market.
- Any conditions or restrictions that relate to the distribution of the product.
- Circumstances that reasonably suggest the determination is no longer appropriate (a review trigger).
- Include reasonable review and reporting periods.
- The type of information that would enable the issuer to promptly identify review triggers or events that may suggest determination is no longer appropriate.

Guidance from the European Securities and Markets Authority (ESMA) on the Markets in Financial Instruments Directive (MiFID II) regime provides some direction for making a target market determination. ESMA guidelines enhance the existing product governance framework by prescribing categories in making a target market assessment. These include:

- Customer type as per the MiFIDII client categorisation
- Knowledge and experience that the target market should have
- Ability to bear losses
- Risk tolerance and risk/reward profile
- Objectives and needs
- Identifying the product's negative target market i.e. identification of customers that would be incompatible with the product.

When making a target market determination, the full customer segment should be taken for the given product. However, a target market determination needs to be at a sufficiently granular level to correctly identify customers. Overall the target market determination for a product should take into account the nature of the product and customer circumstances.



### Nature of the product:

- **Complexity of product** – more complex products require more factors for issuers to consider when making a target market determination, while less detail would be needed for simpler and common products.
- **Applicable product fees** – the cost of the product at the time of sale and over its lifetime.
- **Risk profile over the product's lifetime** – risk and reward profile of the product and ability to access product features over its lifetime.
- **Investment objectives the product would be seeking to meet** – purpose of the product and whether this product would continue to meet objectives if the operating environment changes.

### Customer circumstances:

- **Understanding of the product features** – customer demographics, customer type, and the level of knowledge, education and experience the customers should have about the product type and the product features.
- **Capacity to meet financial obligations** – the extent to which customers would be able to afford the product, their income and assets, and the value of the product.
- **Capacity to bear loss** – customers' attitude to loss and consideration of their risk appetite.
- **Investment needs and objectives** – the product should be compatible with the expectations of the target market for the life of the product or a set period of the product's lifecycle, and consider factors such as accessibility and ability to exit.

In defining and establishing a target market determination, an issuer would generally consider the above factors while keeping the customer at the centre. These elements can be tested by using both qualitative and quantitative elements such as ethnographic research, market insights and industry trends. Making target market determinations for existing products will not only allow the use of retrospective customer data to define a target market in line with the DDO regime, it will help validate newly designed approaches of developing a target market determination. It is imperative to regularly refine the target market determination or review it in the event of a review trigger. This will allow customers to remain at the core.

### How can we support you with making a target market determination?

Deloitte can support you in assessing the impacts of the DDO regime and implementing the relevant DDO requirements, including defining the target market.

#### Target market determination approach:

- 1 Based on your product governance lifecycle, DDO requirements and the product portfolio, we can develop a tailored target market determination methodology leveraging the existing Deloitte target market assessment methodology.
- 2 We can support you in defining your target market in line with requirements and better practices, use of product and customer data, and distribution strategy.
- 3 We can test and challenge your target market determination and help incorporate it into the product governance lifecycle.

### Contacts



**Rosalyn Teskey**

Partner

Phone: +61 3 9671 6473

Email address: rteskey@deloitte.com.au



**Cheryl Fernandes**

Director

Phone: +61 3 9671 6574

Email address: chefernandes@deloitte.com.au



**Bhrajna Kalaiya**

Manager

Phone: +61 3 9671 5633

Email address: bkalaiya@deloitte.com.au

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities. DTTL (also referred to as “Deloitte Global”) and each of its member firms and their affiliated entities are legally separate and independent entities. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 286,000 people make an impact that matters at [www.deloitte.com](http://www.deloitte.com).

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities provide services in Australia, Brunei Darussalam, Cambodia, East Timor, Federated States of Micronesia, Guam, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, New Zealand, Palau, Papua New Guinea, Singapore, Thailand, The Marshall Islands, The Northern Mariana Islands, The People’s Republic of China (incl. Hong Kong SAR and Macau SAR), The Philippines and Vietnam, in each of which operations are conducted by separate and independent legal entities.

In Australia, the Deloitte Network member is the Australian partnership of Deloitte Touche Tohmatsu. As one of Australia’s leading professional services firms, Deloitte Touche Tohmatsu and its affiliates provide audit, tax, consulting, and financial advisory services through approximately 8000 people across the country. Focused on the creation of value and growth, and known as an employer of choice for innovative human resources programs, we are dedicated to helping our clients and our people excel. For more information, please visit our web site at <https://www2.deloitte.com/au/en.html>.

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Touche Tohmatsu Limited.

© 2019 Deloitte Touche Tohmatsu.