

FAQS DDO

Design and Distribution Obligations RG274

These FAQs are split into three groupings

1. General Queries
2. Target Market Determination Queries
3. Distribution Queries

GENERAL QUERIES

1. What should be the priority action points for foreign managers at the moment?

Investment Managers and Service Providers please respond to the questions asked of you in the eDM issued 17 March 2021.

2. What is Equity Trustees' biggest concern with the RG274 change?

We acknowledge that implementing this change is a logistical challenge for issuers and distributors.

There are going to be unforeseen complexities arising as we progress through implementation and we will have to return to the intent of the regulations and keep that at the centre of our work.

We also recognise that there will be continued calibration and adjustments between the industry and the regulator over the next few years.

3. Are you planning to engage with every relevant distributor to ensure there are adequate product governance arrangements in place prior to the DDO implementation date?

Yes, we are planning on engaging with relevant distributors via our Investment Managers. We have extended the invitation - via our Working Group members - to their Distributors to help test our approaches prior to full rollout. We have also requested verification of Distributors for all in scope Investment Managers so that we can add them to our engagement strategy for implementation. Please provide this information to DDOIM@eqt.com.au as part of your overall responses.

We have a large number of in scope funds and as part of the project, in conjunction with our Investment Managers we will be reviewing contractual arrangements to ensure they adequately cover off on product governance arrangements. We urge you to also review and seek legal advice on your agreements.



4. How is Equity Trustees planning to deal with reinvestments as they will also be considered 'dealings' and caught by DDO?

We will be reviewing obligations taking a risk-based approach to how we implement the requirements, and reinvestment will be specifically considered, keeping in mind operational requirements.

5. Are Listed Investment Trusts (LITs) in scope for DDO legislation?

Yes, the DDO regime will apply to LITs for any initial public offering, and to any subsequent offer that requires disclosure to retail investors under Part 7.9 of the Corporations Act. The DDO regime does not apply to sales of products on secondary markets – this means that the DDO regime effectively cease to apply if the product is no longer available to consumers by way of a primary or initial offering.

6. Where will TMDs be held and made available - centralised or via asset manager websites?

We have a large volume of in scope funds, meaning a large number of TMDs. We have appointed a TMD vendor, Zeidler who will host our source of truth TMDs and disseminate out to the multiple end points per each Fund as advised by the Investment Manager.

EQT will host the TMD link for each Fund caught by DDO on the Institutional web page / Managed Fund web page whichever is appropriate for the Fund Manager and Fund line.

Where Investment Managers will also host the TMDs, the main thing to keep in mind is to ensure that updates to the TMDs should be reflected across both EQT's and the Investment Managers' website

7. Do promotional materials include social media e.g LinkedIn

Promotional material includes any communication, through any medium in any form, intended to advertise financial products. This could be on television, in promotional fact sheets, on the internet which includes video streaming, webpages, social media and internet discussion sites.

8. How are you ensuring the TMD triggers are realistic for asset/investment managers?

Corporate Trustee Services is undertaking a Working Group approach which includes Investment Managers, and potentially at their invitation Distributors of their products. The Working Groups will discuss and agree a number of potential triggers across the various product types represented. The TMD triggers will then be embedded within the product lifecycle to ensure practicability for all stakeholders prior to full roll out.

9. Do we need to update PDSs?

There is no legal requirement to update PDSs.

The TMD template introduced a granular rating for consumer risk and a section setting out a prospective investor's 'risk and return profile'. However, as long as the statements around risk in the PDS are consistent with the TMD it is not necessary to amend PDSs to incorporate the precise terminology from the TMD.



10. The TMD refers to it being the issuer's TMD. In NZ they take a different approach. How is the IM reflected in the TMD? Are they named? The template doesn't seem to include this.

In Australia whilst the Responsible Entity (RE) is legally considered the Product Issuer, they issue the product on behalf of the Investment Manager who could be considered the "operational product issuer". In much the same way as the PDS and other marketing materials work, we expect the Investment Manager will produce the information, and apply their own branding. The RE will have ultimate approval authority of the document and has a responsibility to ensure it is reasonable and accurate.

11. Are the working groups only Investment Managers?

At this moment yes. We have asked our Working Group Investment Managers to bring any stakeholders in their product lifecycle into these sessions who they believe will increase the effectiveness of testing any triggers or conditions created. At a minimum we would like this to extend to the Distributor platforms associated with each IM.

12. Are we planning on engaging with any third-party vendors to manage data?

EQT Corporate Trustee Services has appointed Zeidler to undertake the TMD creation, storage, review, publishing and distribution activities. This vendor is well known to Investment Managers being the same vendor utilised for compliance plan activities.

13. How will implementation work for Investment Managers who are also Distributors?

Corporate Trustee Services will work with the Investment Manager(s) to ensure product governance and review triggers are in place. This may include amendments to the existing IMA.

14. Will you be engaging counsel to sign off on the DDO approach?

Corporate Trustee Services has engaged external legal services. Legal opinion and guidance will relate to Corporate Trustee Services and how we will be required to implement the requirements in our role as Product Issuer. Key milestones are embedded within the project plan to seek legal opinions at various points during the implementation.

We recommend that you also seek your own legal advice and guidance.

15. Are you requesting an independent review of their DDO approach and implementation?

Corporate Trustee Services is working with HIVE legal throughout the entire implementation process in line with Project milestones.

16. Will application forms need to be changed?

Yes, minimal changes. We have shared with our Service Providers and are in the process of gaining feedback relating to implementation.

17. Do you think DDO obligations need to be reflected within existing platform agreements?

We are still working through this element and will provide an update in due course.

18. Is ASIC involved in the review process of the DDO implementation?

ASIC have advised the industry they will not approve TMD templates. They are aware of the FSC standard template and recognise the benefits of standardisation.



19. What penalties exist if we do not meet the 5 October deadline, or implement something deemed ineffective?

Each stakeholder will have different obligations under DDO depending on their role. Corporate Trustee Services recommend seeking advice that will take in to account your individual circumstances.

20. How different is this from MIFID-related disclosure requirements?

In the Investment Manager space there are a lot of similarities. Equity Trustees has had some experience with the MIFID regime through its UK and Irish subsidiaries.

There is a lot of commonality with the need to articulate target markets and focus on consumer groups, and monitoring is very similar. The Australian regime goes further in scope as it also covers some superannuation and insurance products.

21. There is a focus on TMD but there are other equally important elements such as the distribution conditions, what data point is required from distributors, etc. Will Equity Trustees be looking to standardise these items, or would you expect it to differ depending on the fund type/IM requirements?

Yes, there is more to DDO than just the TMD. Distribution conditions and how they may change, or impact current processes is factored into phases two and three of our project – Test, Implement and Support. We are speaking with platforms already about what information is currently collected or can be collected and reported.

According to the discussions we have had so far it seems that the Distribution Platforms are thinking along same lines – keeping it streamlined and using existing data points as much as possible.

We are aiming for a standardised approach as much as possible. We do understand that there will be different distribution conditions and reporting requirements for different products. This will be considered as part of our working group approach during both the Test and Implement and Support phases. It is also why we have grouped our working group members with similar products together to assist us to come up with common approaches where possible.

22. I understand not all platforms will be adopting the FSC template. Does Equity Trustees expect that to be a concern and if so, how does Equity Trustees plan to address that disconnect?

There is no compunction to adopt the FSC template or any template. The difficulty is that the less standardisation we have, the harder it is, especially for distributors as they will then have to manage multiple methodologies and will face increased complexity whilst trying to manage the DDO obligations

We view the FSC template as a conduit for the multiple industry voices contributing to its development and one that will be widely known (and therefore easier to use) by virtue of the number of people using it.

23. Promotional material in relation to products must describe the target market or specify where the TMD is available. Will there be a standard disclaimer that investment managers may use in promotional materials?

Yes, investment managers will have a standard disclaimer to use in promotional material that will specify where the TMD is available and the purpose of the TMD.



24. Do you have a list of platforms who have indicated whether they will accept the FSC TMD template?

We have had a number of discussions with Platform providers and data aggregators and of those all of them are utilising the FSC TMD Template. If we hear of any that are not utilising the FSC TMD Template, we will let our Investment Managers know asap.

25. For Exchange Traded Products (ETPs), are market makers included in the list of service providers required to make a TMD?

No, a market maker will generally not be required to make a TMD for an ETP, this is an obligation of the issuer. The DDO regime will apply if the ETPs are issued or offered directly to a retail client off-market. However, the DDO regime is modified when ETPs are first issued to a regulated person.

26. Is this legislation originating from any other legislation in another country?

It is acknowledged this feels very much like MIFUD II, but appears more prescriptive and going a little deeper in some aspects. In Australia unlike UK and Europe, the regulator hasn't provided a standard template.



TARGET MARKET DETERMINATION COMPLETION QUERIES

27. Are the definitions within the FSC template created by EQT?

No. The definitions as well as the TMD template overall are wholly owned by FSC. The TMD template is a result of a number of working groups from across the Australian Financial industry compiled of members of the FSC.

EQT and in scope IMs are licenced users of this TMD template.

We can provide recommendations to FSC where we feel additional guidance or amendment may be useful to the Consumer or creator of the TMD template, but EQT cannot guarantee these suggestions will be taken onboard by FSC.

28. The TMD table may be green for more than one option however the Target Market Summary only appears to offer one suitable investor "description" scenario – is there any way to square this? Response provided via FSC

The summary can mention more than one investor description where there are multiple green options. If the issuer wishes, they can state some or all of the green options in the summary.

29. It is difficult to judge how much information from the PDS we should put in. Other examples I have seen have included very little information from the PDS, whereas the EQT draft template was more heavily populated. An issue I have with putting too much content from the PDS into the TMD is that if the PDS content changes, then it would potentially trigger needing to update the TMD too – How much information is expected? Response provided via FSC

It is up to issuers to decide.

Putting too much information in a TMD could mean the TMD needs updating more often. This issue needs to be balanced against other issues, including the recommendations or requirements in ASIC's DDO RG relating to describing product attributes.

30. "Consumer's intended product use" could we have "High" here given we do also invest outside the benchmark? Or is "Medium High" the most applicable in your view with the definition as "global equities"? – Response provided via FSC

It is up to issuers to decide. For diversification, issuers may wish to consider whether the typical or 'normal' allocation fits within the relevant definitions.

Note that medium high is no longer in the template and global equities is in "high".

31. What kind of fund would you think qualifies as a 'standalone' 'core component' 'satellite' product use? – Response provided via FSC

Where it is highly diversified. If you have a balanced fund, that could be suitable for standalone use. A hedge fund might be only suitable for satellite. In the middle a diversified global or aus equity fund. Something that is suitable as standalone will also be suitable for core or satellite.



32. If I know a client is outside the target market for a Fund, can I still offer it to that client?

The DDO regime will not be breached where interests in a Fund are issued to a client outside the target market, however, we need to continually review and monitor the volume of applications that we believe are outside of target market to ensure the TMD is appropriate for the Fund. It is not the responsibility of the Investment Manager or Issuer to determine whether a Fund is suitable for the end consumer, only to ensure that the TMD is available to assist investors and advisors in making their own decisions.

33. How do we interpret Consumer's need to withdraw money?

FSC standard template guidance definition below

Issuers should consider in the first instance the redemption request frequency under ordinary circumstances. However, the redemption request frequency is not the only consideration when determining the ability to meet the investor's requirement to access capital. To the extent that the liquidity of the underlying investments or possible liquidity constraints (e.g. ability to stagger or delay redemptions) could impact this, this is to be taken into consideration in completing this section.

The consumer seeks to invest in a product which permits redemption requests at this frequency (daily, weekly, monthly quarterly, annually or longer) under ordinary circumstances and the issuer is typically able to meet that request within a reasonable period.

34. Under the section in the TMD Consumer's investment objective, how do we interpret Regular Income definition if a Consumer receives variable income? – FSC response

Again, this is for issuer judgement.

The issuer will need to decide whether the variability in income means that income is no longer 'regular'. Low variability means the product is more likely to meet the definition compared to high variability.

A reminder that the amber rating can be useful in these circumstances.

35. Under the section in the TMD Consumer's investment objective, how do we interpret Capital Preservation if a consumer is prepared to accept a % of loss? – FSC response

If customer is willing to accept some loss, then they would most likely be suitable for a product that is rated green for capital preservation.

36. In the TMD template under the Consumer's Risk section, how do we quantify the amount of loss for a Consumer relative to their risk?

We are providing feedback to FSC on this one. We acknowledge that the ability to bear loss over a period of time is one aspect of a Consumer risk appetite. We also acknowledge that providing thresholds of loss as a % maybe viewed as more helpful to a consumer but we also need to avoid providing any general or specific advice.



37. For our advised platforms how are we providing numerical guidance for them in the TMD rather than giving words like 'reasonable'?

We understand that advisors will be asking for more guidance to ensure they understand if a product is in or outside of the identified Target Market. We also are aware that we need to veer away from general or personal advice.

We are continuing to discuss this topic with the FSC who have created the industry standard template and our legal representation to ensure that any guidance we share supports all Investment Managers, Distributors and Advisors alike without breaching legislation relating to advice.

From Michael Potter FSC 17 June 2021

"The FSC are just starting to look at reasonable steps.

This is something we are still thinking about and will likely depend on the transaction and the product. There are steps you can make with the contractual arrangements and monitoring and reporting. "

38. None of our existing Product Disclosure Statements have a risk profile element in them. Do we now have to redraft our PDS to align to the TMD as a future piece of work?

The TMD and PDS should be consistent and the way the product is marketed needs to align to the way the product was designed. As noted in FAQ 9, there is no immediate requirement to update a PDS unless it is inconsistent with the TMD. Future consideration may be given to more closely aligning the terminology used in the PDS to the TMD for ease of interpretation, however this is not a requirement.

39. Do we need to include an additional risk level of Very High for Consumer Risk in the PDS to match consumer risk in the TMD?

See FAQ 38.

40. If you have a fund with a retail and institutional share class, do you need separate TMDs or just one?

Yes, we do recommend separate. The needs of a term investor may well be very different from a retail investor. We don't think this will always be the case – it may well depend on the nature of the Fund and the target market.

41. Where do I find the FSC template guidance?

FSC template guidance is included at the end of the template itself.

42. If you choose to state a negative Target Market can this come back on you?

If you have sold a single product in a negative target market, this wouldn't be considered a significant dealing. However if you are seeing a large number of dealings in the negative target market, this would be viewed as a red flag to check your TMD.

Conversely, this product may be appropriate for a very very small portion of a portfolio. It is recommended to include this type of caveat within your TMD negative target market summary.

Michael Potter 17 June 2021

"If you don't state a negative target market this can also be an issue if there is serious harm caused."



43. If ASIC have made the comment that the TMD is not intended to be a consumer facing document, is it contradictory that the TMDs are to be made available on websites?

The requirement is to be publicly available. The Issuer has a number of options as to how to meet this requirement.

44. Where a fund is deemed to be sold only as part of a balanced portfolio can we create common wording for such funds include in their TMD?

The FSC standard template definitions v1.0 now provide more granular wording see below

Portfolio diversification (for completing the key product attribute section of consumer's intended product use)

Low	Single asset class, single country, low or moderate holdings of securities - e.g. high conviction Aussie equities.
Medium	1-2 asset classes, single country, broad exposure within asset class, e.g. Aussie equities "All Ords".
High	Highly diversified across either asset classes, countries or investment managers, e.g. Australian multi-manager balanced fund or global multi-asset product (or global equities).

45. Where a fund is deemed to be sold only as part of a balanced portfolio do we complete the RAG ratings for the Fund itself or on the balanced portfolio?

The RAG ratings for the Fund itself should be completed.



DISTRIBUTION QUERIES

46. What are platforms going to require from advisors? And how will this flow back to the manufacturer?

The inability to understand the underlying investor is causing a lot of angst. Advisors still have reporting obligations back to the distributor even if they have advised for a person's best interests.

For platforms reporting back to Fund managers, the key question is how platforms can transfer data in an easy format.

47. Under distributing conditions, we couldn't find the selection where funds are available via platforms but can only invest directly if they meet the wholesale investor requirement. Is this something that needs to be included?

This can be included under "other".

48. Distributors are required to provide data to issuers. However, platforms have dealer groups on platforms and there are thousands of individual advisers on their own that use platforms there is a duplication of data. Can issuers rely on obtaining info from platforms to satisfy their obligation complaints and dealings data etc?

Michael Potter response 17 June 2021

- a. Note that the legal obligation sits with the adviser.
- b. Do we think there may be an issue where the platform does not pass information along?
 - i. Yes this is a concern.

49. Retail distribution conduct - If a TMD review trigger occurs, or a TMD is 'out of date' Can non PDS trust related material remain on our website pending an update / review of the TMD? [as this might not constitute 'retail distribution conduct'].

If a review trigger occurs or the TMD is out-of-date, the TMD will need to be reviewed within 10 business days to determine if it is no longer appropriate. Following the review, if the TMD is determined to be no longer appropriate, EQT must not engage in retail product distribution conduct (RPDC) in relation to that product from as soon as practicable (but no later than 10 business days) after they knew or ought to have known that the TMD may be inappropriate; and EQT must also advise the distributor not to engage in RPDC, until the TMD is deemed appropriate again.

The answer to whether non PDS trust related material can stay on the distributor's website or not will need to be determined on a case-by-case basis. The distributor's obligation is limited to RPDC, i.e. those material may remain on their website pending an update and/or review of the TMD, as long as it does not amount to RPDC. In this circumstance, the most relevant RPDC would likely be providing financial product advice in relation to the product to a retail client.

Providing financial product advice includes any piece of communication that is intended , or could reasonably be regarded as being intended, to influence a person in making a decision about a particular financial product; and it is not exempted from the definition of financial product advice. Depending on the nature of the material, a disclaimer to the effect that the distributor is not providing financial product advice and that the investor should consider obtaining independent advice before making a decision can assist to make it clear that the material is not intended to influence a person in making a decision about a particular financial product and that it does not amount to advice. On the other hand, if the material is demonstrably a 'selling document', such a disclaimer is unlikely to be effective.



50. Retail distribution conduct - Does placing a PDS on our website amount to 'retail distribution conduct' by us (i.e.: an EQT investment manager) (i.e. – is that 'giving' a PDS to a retail client?)

Simply placing a PDS on the distributor's website will not be sufficient to amount to 'giving' a PDS, unless the client has agreed to this arrangement for the delivery of disclosure documents. However, care would still need to be taken to avoid other 'retail product distribution conduct', as outlined in FAQ 49

51. Retail distribution conduct - Does the sending of an email with a link to the location of a PDS on our website (i.e.: an EQT investment manager) amount to 'giving a PDS to a retail client'? (i.e. as this would then be 'retail distribution conduct')

Sending an email with a hyperlink to the location of a PDS on a distributor's website will normally not amount to engaging in RPDC. However, if

- a. the client has agreed to receiving disclosure documents in this way; or
- b. the client has not provided consent to this method of delivery of disclosure documents but the email with the hyperlink also includes the right to opt-out of this method (7 days must be given),

then sending just a hyperlink via email which would direct the client to the PDS on the distributor's website WILL satisfy the definition of 'giving' a PDS (and amount to RPDC).

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