



28 August 2024

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To Sarah Morgan,

PROPOSED UPDATES TO REGULATORY GUIDE 274 PRODUCT DESIGN AND DISTRIBUTION OBLIGATIONS

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia¹.

We represent over 150 members, including banks, finance companies, vehicle and equipment finance providers, car rental and fleet providers, and fintechs. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

AFIA appreciates the opportunity to respond to the proposed updates by the Australian Securities and Investments Commission (ASIC) to Regulatory Guide 274 – Product design and distribution obligations (RG 274).

COMMENTS

AFIA supports the core objective within the proposed update, wherein ASIC seeks to clarify that in the development of a Target Market Determination (TMD) for a financial product, and specifically for the TMD

¹ [Australian Finance Industry Association \(afia.asn.au\)](http://afia.asn.au)

to be deemed appropriate as per s994B(8) of the *Corporations Act 2001*², an objective test should be undertaken.

As iterated by ASIC, this requires an objective assessment of the appropriateness of the product for the target market outlined in the TMD and the appropriateness of the distribution conditions outlined in the TMD for directing distribution towards the target market.

We consider this clarification to be beneficial, insofar as a TMD should be deemed appropriate if its contents have been tested objectively, as opposed to its contents being simply prescriptive in nature.

Objectively testing the contents of a TMD ensures consumers remain at the centre of the Design and Distribution Obligations (DDOs) for financial products and that issuers and distributors alike are engaging a consumer-centric approach in fulfilling their respective regulatory obligations.

We note that the updated guidance draws into sharper focus the need for issuers of financial products to undertake critical assessments and considerations of how a product, including its key attributes, is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market.

Furthermore, the updated guidance also clarifies that in the development of appropriate conditions and restrictions on distribution of the financial product, issuers need to objectively test their considerations in relation to why these distribution conditions and restrictions will make it more likely that the consumers who acquire the product are in the target market.

AFIA posits that this clarification will ensure issuers are not simply engaging in a box-checking exercise in the development of TMDs for their respective financial products but are critically assessing from an objective standpoint how the information included in the TMD aligns with both the objectives of the product itself, along with those of the consumers in the designated target market.

AFIA also supports guidance which seeks to encourage issuers to develop and maintain records of its decisions and reasons for its decisions in relation to the appropriateness requirements and posit that this should form a fundamental element of best practise record keeping in the development of TMDs, regardless of whether such information is formally required as part of a TMD.

Notwithstanding the above, AFIA also supports any and all updates proposed by ASIC in relation to changes made to repeal outdated references to now-withdrawn Regulatory Guides (RG 165, 256, 277), along with those updates relating to document name changes.

ADDITIONAL COMMENTARY

² https://www5.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s994b.html

AFIA would also support considerations around the development of a formal definition of the term 'objective assessment', in an effort to reduce the possibility of confusion among issuers and distributors in relation to how such an assessment should be conducted.

This could also be accompanied by additional guidance which seeks to demonstrate, potentially through the use of relevant examples, steps issuers could take in conducting such an assessment.

Should you wish to discuss our submission or require additional information, please contact me via diane.tate@afia.asn.au or on 0421 441 777.

Yours sincerely

Diane Tate
Chief Executive Officer