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ALERT

ASIC continues crackdown on DDO compliance

ASIC's latest round of enforcement action under the design and distribution (DDO) regime confirms product issuers and distributors need to focus on getting their DDO systems and processes right.

This week ASIC issued stop orders against the responsible entities of two major property funds, Australian Residential Property Fund – ResiFund and the Private Property Trust No. 20 – Fawkner Property, based on deficiencies in the funds' target market determinations (TMDs).

WHAT DOES IT MEAN FOR MANAGED FUNDS?

In the lead up to the one-year anniversary of the introduction of DDO, ASIC is on the record as saying it is stepping up surveillance in this area, including in the managed funds sector. Under DDO, product issuers are required to define target markets for their products, having regard to the risks and features of their products. For property funds, this requires issuers to be honest in their assessment of the product's features and the type of consumer for whom their product is likely to be appropriate, and perhaps even more importantly, for whom it is likely to be inappropriate. Having identified those matters, issuers are then required to take reasonable steps when distributing their product which makes it reasonably likely to result in the product reaching consumers in the defined target market (distribution obligation).

When DDO was introduced, we saw some TMDs where the product issuer declared there were 'no distribution conditions'. In our view, this approach is not acceptable because it effectively says the issuer is taking no steps to meet its distribution obligation. In relation to the recent stop orders, ASIC said the distribution conditions in the TMD were inadequate and did not include appropriate distribution conditions to ensure the product was distributed to consumers in the target market. In another case, the TMD did not specify any distribution conditions.

WARNING TO PRODUCT ISSUERS

This action by ASIC serves as a warning to all product issuers to consider their distribution conditions carefully and ensure they are taking at least some steps to make it reasonably likely their distribution practices make it reasonably likely persons outside of the target market are not likely to gain access to products if they are not in the target market.

It is important to ensure your DDO compliance meets the requirements of the law. Every TMD needs to be reviewed periodically, and many issuers will have stated they would review their TMDs within the first 12 months. This increased surveillance activity is a timely reminder to industry to ensure their DDO policy is adequate and is being implemented appropriately.

IS YOUR DDO COMPLIANCE RIGHT?

We can help you with—

- engaging with your compliance plan auditor about how they intend to approach DDO in your schemes' next compliance plan audits
- conducting a desktop audit of your DDO policy and its implementation.

If you need help or have any questions, please reach out to partner [Sean McMahon](#), consultant [Jeunesse Meldrum](#), or a member of our [Funds Management team](#). We can help.

Authors



SEAN MCMAHON

Managing Partner



JEUNESSE MELDRUM

Consultant