Property Funds Association

Design and Distribution Obligations Seminar with Hall & Wilcox

Summary

All property funds will be impacted by the product **Design and Distribution Obligation**s, which come into effect during October 2021. Our recent **webinar** held in conjunction with Hall & Wilcox was an interesting exploration of what funds might expect. Here are some highlights:

The **UK/EU experience**, via its **Product Governance Regime**, is very similar to the DDO. **Greg Patton** from Hall & Wilcox shared some lessons.

- No need to panic: Funds mainly have a target market already, and just need to get started to formalise the process, commence conversations with distributors, and so on.
- Some investments may choose to distribute to wholesale only, as the DDO only applies to retail products.
- Large penalties for breaches: Mr Patton used UK fund manager Janus Henderson (UK) to illustrate the point. An actively managed Janus Henderson fund became a more passive investment fund yet kept charging similar “active” fees – this was found to be a failure of communication, showed a lack of oversight, and a failure of Henderson’s policies and procedures. Janus Henderson was fined AUD$3.8 million for this breach, following a reduction for early payment.
- In Australia, criminal penalties apply for breaches.

Preparing early is key – Harry New from Hall & Wilcox said the DDO delay to 5 October 2021 is less time than it sounds. **Greg Patton** said the launch date was delayed by 12 months in the UK, but many managers were still scrambling in the days and weeks beforehand. He said several managers who didn’t meet the requirements in time had their distribution turned off overnight.

The **Target Market Determination (TMD)** is key to the DDO, and intends to ensure the right product ends up with the right investor:

- All property funds including existing funds need a TMD – no grandfathering is available.
- Documentation needs to start earlier – managers need to document their target market through the product development process.
- The DDO requirements are ongoing – funds need good monitoring and record-keeping.

Property funds need to consider **Third Party Distributors**, and need steps in place to choose distributors, monitor them, and consider any protections and termination rights.

This may trigger renegotiations for distribution contracts, but such renegotiations can open a can of worms, as agreements have often been in place for a long time and other issues may emerge during the process.

Vince Battaglia from Hall & Wilcox workshopped some practical steps on preparing for the DDO. He walked through a mock-draft which included: disclaimers; class of the retail client; issues such as client risk profile; distribution conditions; review triggers and more. Property funds need to consider how the DDO impacts all other policies. The DDO is new, different, and not just a minor change to the regime. Property funds need to come to grips with a whole new language around product design, including how they design the “choice architecture” for products.

Poll Highlights (Full results on following page)

58% of respondents have started to think about the DDO, and are waiting to see how the industry responds, compared to only 8% of respondents who consider themselves well-prepared for the DDO

When asked if they currently take into account a target market when designing product, respondents answered:

Yes, always – 30%	Yes, but only implicitly – 61%	No, never crosses my mind – 4%	Not sure – 4%

When asked if there is a lot of work in getting ready for the DDO, respondents answered:

Yes – 77%	No – 15%	Not sure – 8%

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Poll Results