

PFA Melbourne Masterclass

Recent ASIC enforcement activity and the major implications
of the first two DDO cases

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Design & distribution obligations

Purpose: to assist consumers to obtain appropriate products and require issuers to distribute those products in a targeted manner

Product Design:
prepare a TMD which describes the **target market** and specifies appropriate distribution conditions

Product Distribution:
take **reasonable steps** to make it likely for the financial product to reach consumers in the target market

Monitoring and Review:
monitor and review outcomes and consider whether **changes** to the TMD are required

ASIC v Firstmac Limited

- Firstmac distributed the High Livez PDS to existing Firstmac term deposit holders
- The TMDs for High Livez and the Firstmac term deposits identified different key attributes of consumers who were likely in the target market for the product
- ASIC alleged (and the Court agreed) that Firstmac failed to take **reasonable steps** that would have resulted in, or would have been reasonably likely to result in, the distribution being consistent with the High Livez TMD

ASIC v American Express Australia Limited

- DJs and AMEX distributed the DJs AMEX credit cards in DJs department stores to retail consumers
- The DJs AMEX credit cards experienced an increase in cancelled application rates
- AMEX failed to review the TMD for the DJs AMEX credit cards in circumstances where it knew, or ought reasonably to have known, that cancelled application rates for those cards were a circumstance that would reasonably suggest that the TMD was no longer appropriate

Key lessons learned

- The obligation to take **reasonable steps** also applies to both the issue of a product and the distribution of the PDS
- Issuers and distributors must continually monitor and review TMDs and act promptly where a review trigger occurs
- DDO training and education is key – call HW Funds!
- DDO is central to ASIC's enforcement focus – compliance failures may lead to an ASIC stop order or a hefty court fine

Thank you