



Guidance on significant dealing for life insurance distributors

This document is draft guidance in relation to the meaning of 'significant dealing' for the purposes of the Design and Distribution Obligations (DDO) under the Corporations Act 2001 (Cth) (the Act). It is a matter for each user of this guidance to consider their individual situation and to comply with the new regime. This template is a draft only, it is not exhaustive and does not necessarily cover all obligations in relation to significant dealing under the DDO regime. Whether a business uses this draft guidance, in whole or in part, is a decision for each business. There is no requirement or expectation that any business uses this document. This draft document does not form legal advice.

Section 994F(6) of the Act requires distributors to notify the issuer if they become aware of a significant dealing in the product that is not consistent with the TMD. The Act does not define when a dealing is 'significant' and distributors have discretion to apply the ordinary meaning of this term.

Dealings outside this TMD may be significant because:

- The dealings represent a material proportion of the overall distribution conduct carried out by the distributor in relation to the product, or
- A single dealing constitutes a transaction which has resulted in, or will or is likely to result in, significant detriment to the consumer (or class of consumer).

In each case, the distributor should have regard to the actual or potential harm to a consumer (which may be indicated by their intended product use, their financial capacity or their ability to claim due to their ineligibility at the time of application).

A distributor may **choose either of the following tests** when considering if a dealing (or group of dealings) outside the TMD is significant.

TEST 1

- **In relation to a single dealing:** the dealing is outside the TMD and at least one of the following has occurred:
 - potential significant detriment (example: customer unable to claim on product) or financial loss to the consumer; or
 - consumer complaint about the product design or distribution; or
 - (for distribution under personal advice) breach of adviser best interest duty relating to distribution of this product.

- **In relation to multiple dealings:** the nature and extent of the inconsistency of distribution with the TMD constitutes more than 25% of the distributor's total retail product distribution conduct in relation to the product over the reporting period.

Note: The reporting period may be linked to the complaints reporting period or independent of this but regardless, should be no more than 12 months. Distributors should consider a shorter reporting period if writing a large volume of business and longer period if writing a small volume.

FSC significant dealings guidance

TEST 2

- one dealing or multiple dealings are determined (or rated) as 'Certain', 'Very likely' or 'Likely' to be significant dealings in the following risk impact matrix:

Deleted: is

		Occurrence			
		Low Isolated case	Medium Recurrence or related to isolated case within the reporting period	Major Multiple or pattern of occurrences within the reporting period	Systemic Widespread occurrence
Consumer harm	Catastrophic risk of harm Actual significant financial loss including consequential loss, or lost opportunity to claim a benefit / obtain suitable insurance.	Likely	Likely	Certain	Certain
	Major risk of harm Actual major financial loss and/or consequential loss.	Likely	Likely	Very likely	Certain
	Moderate risk of harm Actual or potential risk of moderate financial or non-financial loss.	Possible	Possible	Likely	Very likely
	Minor Financial loss limited to less than 5% of the consumer's gross annual income	Unlikely	Possible	Likely	Likely
	Minimal No financial loss.	Unlikely	Unlikely	Possible	Likely

FSC significant dealings guidance

Copyright and disclaimer

© 2021 Financial Services Council Limited ABN 82 080 744 163.

The intellectual property rights in this document, including the copyright in the document, are owned by and retained by the FSC and its licensors.

Users of this document acknowledge and agree that the information contained in this document has been collated and prepared by the FSC for the sole purpose of assisting Members to manage their compliance with Part 7.8A of the Act. The information contained in this document is based on current sources and practice as at 2021. The information contained in this document may need to be updated and revised as new sources of information emerge or practices change over time.

Users should use their own judgment when making use of this material and should carefully evaluate its currency, completeness and relevance for their own purposes as well as the extent to which this material can or should be modified to suit the User's products.

While steps have been taken to ensure the accuracy of the information contained in this document, the FSC does not guarantee, and accepts no legal liability whatsoever or howsoever arising from or connected to, the accuracy, currency, completeness of any material contained in this document (including any liability that may flow directly or indirectly from the modification of the information contained in this document) and makes no warranties as to suitability for you or non-infringement or for compliance with the TMD content requirements under Part 7.8A of the Act.