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*This document is draft guidance in relation to the meaning of '**significant dealing**' for the purposes of the Design and Distribution Obligations (**DDO**) under the Corporations Act 2001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 Whether a business uses this draft guidance, in whole or in part, is a decision for each business.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.

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:

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		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