

# Design and Distribution Policy

**Butler McIntyre Investments Ltd**

ACN 091 407 046

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# 1 General overview

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## 1.1 Introduction

This policy describes the product governance arrangements for Butler McIntyre Investments Ltd ACN 091 407 046 (**Issuer**) as issuer and distributor of the Butler McIntyre Mortgage Fund ARSN 094 635 720 (**Fund**) to ensure compliance with the design and distribution obligations (**DDO**) in Pt 7.8A of the *Corporations Act 2001* (Cth),<sup>1</sup> and the guidance in ASIC Regulatory Guide 274 Product design and distribution obligations (**RG 274**).

Part 7.8A of the *Corporations Act 2001* (Cth) requires issuers of products for which a PDS or disclosure document is required to identify the class of investors for whom their products are appropriate, and to direct distribution to that target market, through a target market determination (**TMD**). It also imposes obligations on the Fund's distributors to ensure that they distribute the Fund to those in the target market.

## 1.2 Document history

The history of changes made to this document is shown below.

Version	Date	Summary of Changes	Policy Owner
1.0	20 <sup>th</sup> November, 2024	Creation of Policy	Compliance Officer

## 1.3 Purpose

This policy sets out the design and distribution obligations framework.

## 1.4 Objectives and scope

This document outlines the design and distribution obligation arrangements that have been adopted with the following objectives:

- (a) encourage and facilitate the improvement of product design and distribution of interests in the Fund (being the financial product);
- (b) provide investors with a concise document to assist with making informed decisions about the Fund;
- (c) outline the Issuer's obligations as issuer of the Fund; and
- (d) outline the obligations and expectations of those who distribute the Fund.

The Compliance Officer is responsible for the implementation, monitoring, review and update of this policy and procedure. The Compliance Officer will review this policy annually and advise the Issuer's board of directors (**Board**) of any recommendations for changes.

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<sup>1</sup> All references to sections are to the *Corporations Act 2001* (Cth) unless otherwise stated.

## 1.5 Roles and responsibilities

Role	Responsibilities
Compliance officer	<ul style="list-style-type: none"><li>• This policy is owned by the Compliance Officer and approved by the Board.</li><li>• The Compliance Officer is responsible for reviewing this policy annually.</li><li>• The Compliance Officer will obtain Board approval before implementing any amendments.</li></ul>
The Board	<ul style="list-style-type: none"><li>• Where required, the Board will seek legal advice on the appropriateness and adequacy of the DDO framework and policy.</li><li>• The Board will ensure the Compliance Officer is implementing the procedures required by this policy.</li><li>• The Board will review the recommendations made by the Compliance Officer in their annual review of this policy.</li></ul>
All staff	<ul style="list-style-type: none"><li>• All staff will be required to understand and implement the product governance arrangements in this policy.</li></ul>

## 2 Product Governance

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### 2.1 Scope of DDO

The DDO imposes requirements at the following stages of developing and distributing a financial product:

- (a) product design (s994B);
- (b) product distribution (s994E(3)); and
- (c) monitoring and review (s994C).

The Issuer's implementation of the DDO framework for the Fund seeks to assist retail investors obtain an appropriate product that is likely to meet their financial needs and objectives.

### 2.2 Product Design

In this stage, the Issuer will take an investor-centric approach to designing the Fund by:

- (a) applying existing knowledge and experience about how investors are influenced in order to achieve the objectives of DDO; and
- (b) considering investor vulnerabilities and how these vulnerabilities may increase the risk that investors are sold products that do not meet their objectives, financial situation and needs.

The Issuer's product design and approval system for the Fund involves the following steps:

- (a) establishing a target market by assessing the Fund (including its key attributes) and the investor objectives, financial situation and needs for which the Fund is likely to be appropriate;

- (b) reviewing existing distribution arrangements and directly engaging with distributors (being the certain of the Issuer's personnel only) to determine whether it is reasonable to conclude that the Fund is likely to be distributed to its target market;
- (c) product testing and performing 'stress tests' in both normal market conditions and market stress;
- (d) where the Fund is not likely to be consistent with the objectives, financial situation and needs of the target market, or where its method of distribution is likely to result in sales of the Fund outside its target market:
  - (i) consider redesigning the Fund;
  - (ii) set distribution conditions and restrictions in line with the identified target market; or
  - (iii) cease distribution of the Fund,
- (e) determining how investor outcomes will be measured and monitored over time; and
- (f) documenting the processes taken and the decisions made with respect to each of the steps above.

### **2.3 Product Distribution**

After the Fund has been designed, the Issuer will ensure that its processes and controls for distribution, reduce the risk that the Fund will not be consistent with the likely objectives, financial situation and needs of the investors who acquire interests in the Fund.

### **2.4 Monitoring and review**

The Issuer will monitor and review the Fund's performance on a regular basis and whenever circumstances indicate that its TMD may no longer be appropriate, taking into consideration:

- (a) information available to the Issuer about how investors in the target market are using the Fund or similar products in the market;
- (b) actual investor outcomes by analysing the Fund's performance, value and transaction data; and
- (c) using this information to further develop the Fund's product design and ongoing review processes, particularly in relation to meeting the appropriateness requirement.

Distributors (being certain of the Issuer's personnel) are required to report regularly to the Issuer via the Compliance Officer in relation to:

- (d) complaints data;
- (e) any 'significant dealings' outside the target market; and
- (f) any other reporting obligations, for example, transaction data.

If the Issuer determines that the TMD is no longer appropriate, the Issuer will cease to distribute the Fund until such time as an appropriate TMD is made publicly available by the Issuer.

### 3 Issuer Obligations

#### 3.1 Overview of Issuer obligations

Obligation	Description
<b>Prepare a TMD</b>	<p>The Issuer must prepare the Fund's TMD and meet the following content requirements:</p> <ul style="list-style-type: none"> <li>describe the class of investors that comprises the target market for the Fund (s994B(5)(b));</li> <li>specify the distribution restrictions and conditions (s994B(5)(c));</li> <li>specify review triggers that indicate when the TMD is no longer appropriate (s994B(5)(d));</li> <li>specify when the first review and subsequent reviews of the TMD will occur (s994B(5)(e) – (f)); and</li> <li>specify the kinds of information a distributor must report to the Issuer, and relevant timeframes and frequencies (s994B(5)(g) – (h)).</li> </ul>
<b>Publicly available TMD</b>	The Issuer must ensure that the TMD is available to the public free of charge before the Fund is distributed (s994B(9)).
<b>Reasonable steps in relation to distribution</b>	The Issuer must take reasonable steps that will, or are reasonably likely to, result in a distribution being consistent with the TMD (s994E(1)).
<b>Review of TMD</b>	<p>The Issuer must review the TMD within 10 business days if it knows, or ought reasonably know, that a review trigger, or an event or circumstance that reasonably suggests that the TMD is no longer appropriate, has occurred (s994C).</p> <p>The Issuer must also review the TMD periodically as set out in the TMD to ensure that it remains appropriate.</p>
<b>Notify ASIC of 'significant dealing'</b>	If the Issuer becomes aware of a significant dealing in the Fund that is not consistent with the TMD, it must notify ASIC within 10 business days (s994G)
<b>Recording keeping</b>	<p>The Issuer must keep complete and accurate records of:</p> <ul style="list-style-type: none"> <li>the decisions made in relation to the TMDs, and associated reviews, including the reasons for those decisions (including the data underlying those decisions) (s994F(1) and (3)); and</li> <li>distribution information (to the extent that the Issuer engages in distribution) (s994F(2)).</li> </ul>

The above table is an outline of the general obligations that Issuer must satisfy when preparing a TMD for the Fund.

The obligations that require further consideration are detailed below.

### 3.2 Preparing a TMD

The TMD is a written document that describes the class of investors that comprises the target market for a product, and outlines matters relevant to the Fund's distribution and review.

The TMD must satisfy:

- (a) the content requirements (see table above and s994B(5)); and
- (b) the appropriateness requirements, in that it must be reasonable to conclude that, if the Fund were to be issued or sold in a regulated sale:
  - (i) to a retail investor in accordance with the distribution conditions – it would be likely that the retail client is in the target market s994B(8)(a); and
  - (ii) to a retail investor in the target market – it would likely be consistent with the likely objectives, financial situation and needs of the retail investor s944B(8)(b).

To satisfy the appropriateness requirements, the TMD must include sufficient information to reasonably conclude that:

- (a) the Fund, including its key attributes, is likely to be consistent with the likely objectives, financial situations and needs of retail investors in the target market; and
- (b) the distribution conditions make it likely that the retail clients who acquire interests in the Fund will be in the target market.

To meet the appropriateness requirements, the Issuer will ensure that the Fund, including its key attributes, is critically assessed as being consistent with the likely objectives, financial situation and needs of investors in the identified target market. This appropriateness requirement is an objective assessment and does not require the Issuer to have knowledge about individual investors (RG 274.65).

The following critical assessment questions from Table 3 in RG 274 will be used by the Issuer to conduct the appropriateness requirement assessment.

<b>Purpose</b>	<ul style="list-style-type: none"><li>• What is the purpose of the Fund?</li><li>• Is it fit for purpose?</li><li>• Does the Fund (including its key attributes) fulfil a well-founded need for consumers in the target market?</li><li>• Does the Fund include features or attributes that are inconsistent with the objectives, financial situation or needs of consumers in the target market?</li><li>• Does the Fund (including its key attributes) benefit the consumers in the target market?</li><li>• What indicators of risk affect the product and do the risk profiles of consumers in the target market align with the actual risks of the Fund?</li><li>• What is the investment timeframe and are there any restrictions on withdrawal rights?</li></ul>
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<b>Past outcomes</b>	<ul style="list-style-type: none"> <li>• Has the Fund (including its key attributes) resulted in good outcomes for consumers in the target market in the past?</li> <li>• Did it deliver what was promised?</li> <li>• Who has benefited from this Fund or this type of product in the past?</li> <li>• Did the Fund meet the needs of those to whom it was distributed?</li> <li>• What does the data show were the ongoing benefits, risks and outcomes for consumers?</li> </ul>
<b>Likely future outcomes</b>	<ul style="list-style-type: none"> <li>• How is the Fund likely to perform in the hands of the consumers in the target market?</li> <li>• Is the Fund likely to deliver what is promised?</li> </ul>
<b>Refinement of target market and/or product</b>	<ul style="list-style-type: none"> <li>• Does the Fund need to be redesigned or changed to be suitable for consumers in the target market?</li> <li>• Does the target market need to be narrowed?</li> </ul>

### 3.3 Determining the target market

#### ***Objectives, financial situation and needs***

An Issuer's TMD must take in to account the intended target market's objectives, financial situation and needs.

Unlike personal advice, the DDO does not require an Issuer to assess the suitability of a product for the circumstances of individual investors. Instead, the obligations require Issuers to develop a product that is likely to be consistent with the objectives, financial situation and needs of the class of investors to whom the product will be distributed (RG 274.71).

To identify common objectives, financial situations and needs, the Issuer may consider characteristics such as income level, savings, employment status, and general life stage (RG 274.74 – 75).

To determine an appropriate target market, the Issuer must describe the target market using objective parameters and sufficient granularity, while avoiding any ambiguous language or imprecise terms.

#### ***Key attributes***

In determining the class of investors, consideration of the key attributes of a product is important, as it can affect whether the product is consistent with the objectives, financial situation and needs of the target market.

The key attributes of a product may include for example, eligibility criteria, different product variations offered, and any inherent risks of a product.

### 3.4 Issuer's distribution obligations

#### ***Specify distribution conditions***

The Issuer of the Fund, will specify the distribution parameters in the TMD by outlining the appropriate conditions and restrictions, and provide an explanation to why these conditions and



restrictions will make it more likely that investors who acquire interests in the Fund are in the target market.

For instance, a product with a broader target market may have less distribution conditions and restrictions than a product that has a narrower target market (RG 274.98).

In determining whether the distribution conditions will make it likely that investors who acquire interests in the Fund will be in the target market, the Issuer will critically assess how its distribution conditions will limit or extend the class of investors the Fund will reach (RG 274.101).

The current distribution conditions for the Fund are set out in the TMD.

***Specify review conditions***

The Issuer of the Fund will determine the review triggers and review periods in the TMD.

In specifying the review triggers, the Issuer will include events and circumstances that would reasonable suggest that:

- (a) the Fund, including its key attributes, is no longer consistent with its target market's likely objectives, financial situation and needs; and
- (b) the distribution conditions no longer make it likely that investors who acquire the Fund are within the target market.

Review triggers that will prompt the Issuer to assess the TMD as no longer appropriate, include:

- (a) whether there are any losses suffered by investors and whether the Fund is still likely to achieve its investment objective over time;
- (b) whether the liquidity of the Fund has changed;
- (c) the fees of the Fund compared to similar types of products;
- (d) a change in relation to taxation implications of the Fund compared to similar products;
- (e) the performance of the Fund relative to its investment objective, appropriate benchmarks (if any) and similar products (e.g. a change in expected performance in light of significant changes in market conditions such as an economic downturn);
- (f) a significant increase in Fund outflows; and
- (g) the nature, number and outcomes of complaints.

Where a review trigger has occurred, the Issuer will review the TMD within 5 business days to assess its appropriateness to the target market.

When conducting a review following a review trigger, the Issuer must document the nature of the review trigger and specific checks relevant to review trigger, event or circumstance.

In addition to the review prompted by a review trigger, the Board, senior management, and the Compliance Officer will also review the TMD at least annually.

The first review of the TMD was on 20<sup>th</sup> November, 2024.

Following the first review date, the TMD will be reviewed **annually**.

### ***Specify reporting information***

The Issuer will specify in the TMD the events and circumstances that will require reporting from a distributor.

The Issuer will specify the 'significant dealings' that will prompt a distributor to report to the Issuer. 'Significant dealings' are certain events or circumstances that the Issuer has determined may indicate the TMD is no longer appropriate. 'Significant dealings' will be reported by the Issuer's distributor personnel to the Compliance Officer within 10 business days of becoming aware of the event or circumstance.

The Issuer has determined the following to be 'significant dealings':

- (a) when 5% of investors have acquired interests in the Fund but are not in the target market, including the proportion of investors who are part of a class of investors that have been specifically excluded from the target market, over a 6 month period;
- (b) potential or actual harm to investors, if investors outside the target market acquire interests in the Fund;
- (c) inconsistency of distribution conditions with the TMD; and
- (d) repeated occurrences of investor complaints regarding the Fund.

The Issuer's distributor personnel are required to notify the Compliance Officer of complaints made in relation to the Fund, including the substance of the complaint or any other feedback received. The Issuer's distributor personnel will report to the Compliance Officer on a **monthly** basis.

The Issuer's distributor personnel will also report to the Compliance Officer any other information relevant to the Fund on a **monthly** basis, such as transaction data, and outcomes from sale practices monitoring.

### **3.5 Notifying ASIC of a 'significant dealing'**

The Issuer has an obligation to promptly notify ASIC of a 'significant dealing', and in any event, within 10 business days of becoming aware of the occurrence (s994G).

The Issuer will be considered to be aware of a 'significant dealing' when the Compliance Officer has assessed all the relevant information and is satisfied that the elements in s994G have been met.

When notifying ASIC, the Issuer will include the below information from Table 5 of RG 274.162.

<b>Date(s) of the significant dealing</b>	Include both: <ul style="list-style-type: none"><li>• the date that the significant dealing occurred, or date range during which dealings occurred that taken together are significant; and</li><li>• the date the Issuer became aware of the significant dealing.</li></ul>
<b>Description of the significant dealing</b>	Describe the significant dealing, including why it is not consistent with the TMD.
<b>Why the dealing is significant</b>	Describe why the Issuer considered the dealing to be significant.
<b>How the significant dealing was identified</b>	For example, the significant dealing may have been identified through the Issuer's product governance arrangements, reporting from the distributor, as a result of a consumer complaint or the occurrence of a review trigger.

**What steps, if any, have been, or will be, taken in relation to the significant dealing**

Include details as relevant

## 4 Distributor Obligations

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### 4.1 Distributors subject to distributor obligations

Distributors means regulated persons, including:

- (a) AFS licensees and those who are exempt from holding AFS licenses;
- (b) authorised representatives;
- (c) credit licensees and credit representatives;
- (d) issuers and sellers of an 'extended operation financial product' as defined in reg 7.8A.01 of the *Corporations Regulations 2001* (Cth),

that are undertaking retail product distribution conduct, defined in s994A(1), including:

- (a) dealing in a financial product;
- (b) giving a disclosure document in relation to offering a financial product;
- (c) providing a PDS; or
- (d) providing financial product advice.

### 4.2 The Product's distributors

Distribution of the Fund may only be done:

- (a) directly by the Issuer;
- (b) through the Issuer's personnel being the Issuer's 'representatives' within the meaning of s910A.

### 4.3 Distributors providing personal advice

The provision of personal advice is 'excluded conduct' (s994A(1)), which means that the distributor is not required to take reasonable steps that will, or are reasonably likely to, result in distribution of a financial product being consistent with the TMD.

This is because personal advice already involves consideration of the client's individual circumstances and is subject to the best interest obligations under Part 7.7A of the *Corporations Act 2001* (Cth).

Neither the Issuer or its representatives provide personal financial product advice.

### 4.4 Overview of distributor obligations

Obligation	Description
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<b>No distribution without a TMD</b>	Before distributing the Fund, the distributor must be satisfied that: <ul style="list-style-type: none"> <li>• a TMD has been made for the Fund; or</li> <li>• a TMD is not required; or</li> <li>• the distributor is engaging in 'excluded conduct'.</li> </ul> (s994D)
<b>Distribution and reasonable steps</b>	The distributor must take reasonable steps, that will, or are reasonably likely to, result in distribution being consistent with the most recent TMD (unless the distribution is 'excluded conduct'). (s994E(3))
<b>'Significant dealings'</b>	If the distributor becomes aware of a situation or event that indicates the TMD may no longer be appropriate for the Fund, the distributor must notify the Issuer within 10 business days of the 'significant dealing'. (s994F(6))
<b>Record keeping</b>	For the purpose of reporting to the Issuer, the distributor must keep appropriate records in relation to: <ul style="list-style-type: none"> <li>• complaints;</li> <li>• 'significant dealings'; and</li> <li>• any other relevant reporting information.</li> </ul> (s994F(3))

The above table is an outline of the general obligations that distributors have when distributing the Fund to the target market.

The obligations that require further consideration are detailed below.

#### 4.5 Taking reasonable steps in relation to distribution

##### ***Issuer as distributor***

As the Issuer is also a distributor of the Fund, the Issuer has the following obligations when distributing the Fund:

- (a) have effective arrangements to manage the risks identified in its distribution; and
- (b) to take into account all relevant factors in assessing what reasonable steps need to be taken, including:
  - (i) risk – the likelihood of the distribution being inconsistent with the TMD;
  - (ii) harm – the nature and degree of harm that might result from the Fund being distributed otherwise than in accordance with the TMD; and
  - (iii) mitigation steps – steps that can be taken to eliminate or minimise the likelihood of the distribution being inconsistent with the TMD and the harm that might result.

For a comprehensive list of factors that will be relevant to ASIC's administration of the Issuer's reasonable steps obligation in relation to product distribution, see Table 4 in RG 274.146.

##### ***Other distributors***

In addition and only applicable if the Issuer engages third party distributors for the Fund, other distributors have the following obligations when distributing the Fund:

- (a) take reasonable steps that will, or are reasonably likely to, result in distribution of the Fund being consistent with the TMD;
- (b) have robust product governance arrangements in place to help ensure that it complies with its obligations;
- (c) take into account the same factors listed above in part 4.5(b) under the heading 'Issuer as distributor' of this policy; and
- (d) comply with the Issuer's distribution conditions and restrictions.

Complying with the Issuer's distribution conditions in most cases, will not be sufficient to satisfy the distributor's reasonable steps obligation. It will also require the distributor to consider what additional steps are reasonable for it to take in particular circumstances.

#### **4.6 Assessing whether investor is in the target market**

A distributor is not taken to have failed to take reasonable steps merely because an investor who is not in the target market for the Fund acquires an interest in the Fund. However, a distributor must have effective systems in place that are reasonably likely to avoid this situation.

To assist with a distributor's assessment of whether an individual is in the target market, distributors should:

- (a) establish and maintain effective controls to each of the categories identified in Table 6 in RG 274.173;
- (b) analyse data held in relation to the investor or a class of investors, which reasonably leads to the conclusion that they are reasonably likely to be in the target market;
- (c) include 'knockout' questions in the application process, whereby an applicant is considered outside of the target market through providing an answer to a question that is contrary to a central element of the Fund; and
- (d) ask applicants questions or make further enquiries to assist with determining their fit within the target market.

#### **4.7 Investors outside the target market**

If a distributor becomes aware that it is interacting with a potential investor who is outside the target market of the Fund, the distributor will need to take reasonable steps to avoid distributing to the potential investor. These measures include considering:

- (a) the circumstances of the interaction, including the distribution method through which the interaction takes place (whether online, in person, over the phone) and any information or advice provided to the investor on the Fund before this interaction;
- (b) the nature and degree of harm that might result from an interest in the Fund being acquired by the investor (which in these circumstances can be assessed based on the circumstances of the investor in question); and
- (c) the steps that can be taken to eliminate or minimise the likelihood of harm.

A distributor is not prevented from distributing the Fund to an individual outside of the target market, however the distributor will need to assess the potential of causing harm to the investor. Repeated distribution to investors outside the target market may increase the likelihood of harm, or becoming a 'significant dealing', and the distributor would not have met its reasonable steps obligation.

Similarly, if investors outside the target market are regularly seeking access to the Fund, the distributor will need to inform the Issuer. When the Issuer is the distributor, its distributor personnel will inform the Compliance Officer.

#### **4.8 Reporting to the Issuer**

The distributor will notify the Issuer of any 'significant dealings' as soon as the distributor becomes aware of it, and in any event within 10 business days. This is to enable the Issuer, to make timely and appropriate decisions in relation to reviewing the TMD, or notifying ASIC.

The distributor is also required to report on complaints and any other relevant information relating to the Fund on a monthly basis.

When the Issuer is the distributor, its distributor personnel will report to the Compliance Officer.

#### **4.9 Quarterly Checklists**

The distributor will be required to complete a quarterly checklist to ensure distributors are meeting their obligations.

To the extent possible, distributors must be able to substantiate or provide evidence to their responses in the quarterly checklists.

The Compliance Officer will compile and analyse all quarterly checklists upon receipt and report to the Board any trends or issues that may trigger a review of the Fund design and/or of the TMD.

#### **4.10 Marketing and promotion**

All marketing and promotional material must undergo both legal review and compliance check by the Compliance Officer to ensure the material aligns with the TMD and would not make it likely for consumers outside a target market to invest in the Fund.

## **5 Training**

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The Compliance Officer will be responsible for carrying out annual staff training programs on the obligations set out in this policy for all personnel involved in the design and distribution process.

Training programs will be conducted to cover, at the minimum, the following areas:

- (a) regulatory compliance with the design and distribution obligations set out in this policy;
- (b) product knowledge training including knowledge of the Fund's features, risks, and benefits; and
- (c) findings arising out of reviews of any reported 'significant dealings', material complaints, or review triggers.

The Compliance Officer must ensure to document the contents of each training program.

If certain staff personnel do not complete the requisite level of training or does so at a level that is not satisfactory to the Compliance Officer, that staff personnel must immediately cease and be removed from the relevant design or distribution process until they have completed the requisite level of training to the Compliance Officer's satisfaction.

## **6 Monitoring and Review**

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The Compliance Officer will be responsible for reviewing this policy annually and otherwise when there are material changes to the Issuer's obligations, its business or the environment in which it operates.

The Compliance Officer must document its process and findings whenever it undertakes a review of this policy.

The Compliance Officer may engage an external party to review this framework where appropriate.

Any changes recommended by the Compliance Officer as a result of a review, requires approval from the Board.