

Past performance

We publish industry updates on issues or trends that we identify through our routine monitoring of financial promotions compliance. The aim of these publications is to capture emerging concerns and, where necessary, to clarify our expectations of firms.

These updates are meant to help you understand the rules better, but they are no substitute for referring to the rules themselves. You should always ensure that the promotions you produce comply with all the relevant rules and guidance.

We are aware from monitoring financial promotions that there are some misconceptions about how to apply our past performance rules and the past performance requirements. Here we attempt to clarify some of those misconceptions.

When do the past performance rules apply?

The past performance rules in COBS 4.6.2R apply when information contains an indication of past performance for:

- relevant business – such as the business of arranging, advising or managing an investment – for example, a promotion containing information about a fund manager's previous performance; or
- a relevant investment – such as a share or a collective investment; or
- a financial index.

Firms will also have to consider whether:

- the communication is promotional or non-promotional; and
- if it relates to MiFID or non-MiFID business.

Further information can be found in our FAQs:
<http://www.fsa.gov.uk/pages/Doing/Regulated/newcob/faqs/comms2.shtml>.

The past performance rules are media-neutral and their application is not affected by the method chosen to communicate a promotion – for example, by telephone, in writing or online.

For non-MiFID business, our past-performance requirements apply to promotional communications – they would not normally apply to a communication that merely informs or educates. Whether a communication is promotional will depend on its content and, in some instances, how it is communicated. For example, in most circumstances, a press release that contains past performance information would be considered information-only – however, if that press release was linked to a promotional page on a firm's website, it would normally be considered a promotional communication, as the past performance information is used to encourage the investor to act.

Prominence of past-performance information

Under COBS 4.6.2R (1), a promotional communication must not lead on past performance. This includes both hard data, e.g. specific statistics/returns, and general comments, e.g. opinions about past performance.

Presenting past-performance information (including simulated past performance)

We have seen some instances where past performance information is based on periods of less than 12 months. To comply with COBS 4.6.2R (2), past performance information must be based on and show complete 12-month periods. Therefore, if figures are only available for a nine-month period, compliance with this rule is impossible, so actual past performance cannot be shown at all.

Some firms include both simulated and actual past-performance data within the same communication.

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Where this is the case, a firm must comply with both COBS 4.6.2 and COBS 4.6.6. To meet the fair, clear and not misleading requirement, the two types of performance must also be clearly marked and clearly identifiable.

Comparisons with other products or offerings

We have noticed instances where firms have highlighted their performance by comparing it to other products or offerings. Regardless of whether a communication is promotional or non-promotional, comparative information must be meaningful and presented in a fair and balanced way.¹ For example, comparing a historical return of a savings account with an investment product is unlikely to be meaningful due to key differences between the two types of products.

Conclusions and next steps

The past-performance requirements are an important part of our financial promotions regime and we expect firms to demonstrate a clear understanding of our expectations.

We can take action against firms who do not comply with the past-performance requirements, picked up through our routine monitoring or thematic reviews.

Further information about our financial promotions expectations can be found on our website at www.fsa.gov.uk/Pages/Doing/Regulated/Promo/index.shtml

¹ MiFID firms also need to comply with additional comparative information requirements as set out in COBS 4.5.6R (b).