Policy Statement

Financial Services Authority

Standardising past performance

Feedback on CP183

December 2003

Contents

This Policy Statement reports on the main issues arising from the consultation on CP183 (Standardising past performance) and publishes final rules.

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1 Executive summary

1.1 Past performance is commonly a feature in financial promotions, particularly when markets are buoyant. But there is some debate about the extent to which consumers can usefully exploit past performance information.

1.2 Our analysis of the evidence available from academic and industry sources and from our own work leads us to believe that both firms and consumers place too much emphasis on past performance information. Past performance is not a useful indicator, for consumers, of future returns.

1.3 In addition, where past performance information is presented selectively – with time periods chosen artfully to show past performance in a good light – the information can be positively misleading.

1.4 We have published two Consultation Papers (CPs) proposing changes to the financial promotions rules and guidance:

- In CP132 (April 2002), we proposed changes to reduce the emphasis given to past performance, strengthen warnings and further reduce the link between past and future performance. These proposals were directed at improving the balance in financial promotions.
- In CP183 (May 2003) we proposed the introduction of standardised information to be included in all financial promotions containing past performance information. The CP also included feedback on the outcome of the CP132 consultation.

This Policy Statement (PS)

1.5 This PS summarises the responses received to CP183 ‘Standardising past performance’, and gives some feedback on the way those responses have informed our policy and rulemaking. The amendments to the Handbook, which have now been made by our Board, are set out in Appendix 1.

1.6 We are grateful for the 45 responses we received. A list of non-confidential respondents is given in Annex 1.

Summary of feedback

Standardisation

1.7 Respondents generally supported the proposals we put forward in CP183. The main proposal, requiring the inclusion of standard past performance information in promotions that refer to past performance, was largely accepted. Our preferred format for the information (discrete annual returns over five years) was also broadly accepted. We have made some small amendments to the text of our rules to clarify their scope and to take account of some technical comments.

1.8 We also proposed that where there is performance information for fewer than five years, firms should give information for as many full years as possible, with a minimum of one year. We had originally proposed that the reporting periods should be on a rolling twelve-month basis, ending with the last full month before the date on which the promotion was deemed compliant with our rules. But we have instead adopted a rolling four-quarterly approach, allowing firms to use data up-to-date only to the most recent quarter-end. We accepted that this was, as respondents suggested, a more proportionate approach.

1.9 We have also revised our rules to state that where there is information for fewer than five years, firms should indicate clearly in the standardised presentation that performance information is not available for the 'missing' years. We agree with the Financial Services Consumer Panel (who suggested this approach) that this will make the information clearer for consumers.

Monetary values

1.10 The aspect of our proposals that generated significant opposition was our guidance on the use of monetary values in financial promotions aimed at the mass market. We suggested that firms should not use past performance expressed in monetary terms for mass market promotions because of the misleading impact of such information on the expectations, understanding and behaviour of many consumers. Respondents thought it strange that we were proposing to restrict the use of information that consumers prefer. There were also questions raised about our use of guidance, rather than a rule, to address our concerns.

1.11 Our Board recognised the significant concerns the industry raised about this proposal, and therefore we will not be implementing the guidance on which we consulted. However, firms may wish to take account of our published consumer research in this area.

Cost benefit analysis

1.12 Although some respondents (largely product provider firms) said their costs would be higher than our average estimates for firms, respondents did not suggest that the costs would be excessively high or that they would not be justified by the benefits of clearer information for consumers.

Transitional arrangements

1.13 Our revised rules and guidance will come into force on 1 June 2004.

CONSUMERS

This paper is of interest to consumers. It discusses issues that are particularly relevant to our consumer protection and public awareness statutory objectives. The rules and guidance set out in this Policy Statement address the risks arising from the misleading use of past performance information in financial promotions. These measures will help to ensure that consumers are presented with well-balanced, accurate and relevant information in financial promotions.

2 Introduction

2.1 Financial firms, like others, look to draw attention to their successes. Equally, consumers are interested to know how products have performed in the past. So past performance information has become a commonplace element in marketing material for financial products. But should past performance influence consumers' buying decisions?

2.2 Considerable research and academic analysis have been carried out to determine whether past performance information is predictive of future returns. Some recent pieces of work, including our own Occasional Paper 9[1] and Bacon and Woodrow's work for the FSA on comparative tables[2], suggest that information about past performance is not a useful indicator (at least, not for consumers) of future performance. So, although we continue to permit the use of past performance messages in marketing literature, we remain sceptical about its value in consumers' decision-making.

The Task Force on Past Performance

2.3 Our work on past performance has arisen principally in response to the findings of our independent Task Force on past performance, set up in 2000. The Task Force published its findings in September 2001[3]; they highlighted several problems with the use of past performance information, of which the most significant were:

- past performance is often used to suggest future returns;
- financial promotions contain excessive small print, including a past performance warning, which is disliked by consumers;
- selective time periods are often used to make past performance information look particularly attractive. A mandatory five-year figure is very often lost in small print; and

1 *Past imperfect? The performance of UK equity managed funds* August 2000

2 Comparative Tables Report prepared for the FSA. Bacon and Woodrow September 1999

3 *Change needed says Task Force on Past Performance* FSA Press Notice 126/2001 26 September 2001

- financial promotions can foster unrealistic expectations and may lead consumers to invest inappropriately in higher risk funds.

2.4 Much of our subsequent work on past performance has been aimed at addressing the issues highlighted by the Task Force.

Proposals to date – Consultation Papers 132 and 183

2.5 We have published two Consultation Papers (CPs) proposing changes to the financial promotion rules on the use of past performance information.

2.6 CP132 was published in April 2002. In it, we proposed a number of changes to the regulatory regime aimed at improving balance in financial promotions and reducing the emphasis that is given to past performance information. We proposed stronger warnings to accompany the information, an explicit rule to prevent any linking of past and future performance, and guidance to take the focus away from past performance and encourage more balanced advertising.

2.7 We published details of the responses we received on CP132 and gave feedback on them in CP183. We also highlighted how we intended to adjust the CP132 rules in the light of the responses. So those rules are not discussed further in this paper, and the final 'made' rules are in Appendix 1.

2.8 But the CP132 measures did not address our concerns about the way that past performance information can be 'cherry-picked' and presented selectively, which can result in information that is not only unhelpful, but is positively misleading.

2.9 Our CP183 proposals attempted to deal with that problem by setting out standard information that firms would be required to include in any financial promotion that mentions past performance. This paper gives feedback on the outcome of that consultation and sets out final rules and guidance our Board has made.

Structure of this paper

2.10 In this Policy Statement:

- Chapter 3 summarises the responses to the proposals set out in CP183, gives feedback on those responses and sets out our intended policy approach;
- Annex 1 contains a full list of all respondents to CP183 who did not ask for confidentiality; and
- Appendix 1 sets out our revised rules and guidance, which have now been made by our Board.

3 Feedback on responses to CP183

Introduction

3.1 This chapter summarises the responses we received to the questions we asked in CP183 and gives feedback on the points raised.

3.2 We received 45 responses to CP183 and are grateful to those who took the time to let us have their comments.

3.3 There was broad support for most of our proposals. So we will implement most of them without significant adjustment. In this chapter we highlight the main issues raised about each of the specific questions posed in the consultation. We also indicate where we have made changes to the proposals set out in CP183.

Standardisation

3.4 We proposed that standardised past performance information should be included in all financial promotions that refer to a product's past performance. Our purpose in proposing this was to prevent 'cherry-picking' – the practice of selecting specific extracts of past performance information to show a product in a good light. This practice can be positively misleading and to date has been dealt with under our 'clear, fair and not misleading' rule. But to have to challenge individually firms' choice of data is an inefficient way of addressing the problem, particularly in periods where the market is buoyant and more firms seek to focus on short-term successes of particular investment products. We believe that the most efficient and effective approach is to require all past performance information to be accompanied by a set of objective, standardised, data.

3.5 CP183 explained the possible alternatives for the form and presentation of standardised information. We looked at several different approaches and ultimately proposed an approach based on discrete yearly returns over five years, expressed as a percentage. We suggested this approach because our research and policy analysis told us that:

- consumers generally interpret correctly figures presented in this way;
- the presentation is not excessively persuasive and does not give rise to unrealistic expectations; and
- the range of figures give some impression of volatility.

3.6 But we recognised that this approach would not be appropriate for all products, particularly those subject to 'smoothing' of performance. So we proposed that the new approach should apply only to collective investment schemes or unit-linked products. All other products should continue to apply the current rules for standardised information – that is, the firm should show five years' cumulative performance (unless the product has a fixed term that is not five years, in which case it should give the cumulative performance for the product term).

3.7 We asked:

> Q1: Do you agree with our chosen style of presentation for standardised past performance information? If not, which style of presentation would you select and why?
>
> Q2: Do you agree with the distinction we draw between the different classes of product?

3.8 Respondents recognised that standardisation would address the issue of 'cherry-picking'. Most supported our preferred method of showing past performance. They agreed that using discrete annual returns highlights the volatility of returns, and reflects more clearly a fund's performance over time than cumulative returns.

3.9 There were some concerns expressed about our proposed format. One firm questioned whether the format was contradictory to the idea that equity investments are long-term investments. There were a couple of suggestions that an additional annualised return or total return over five years would provide a useful extra piece of information. A few also observed that past performance would become the focus of a promotion if it included standardised information plus additional past performance information.

Our response: we proposed discrete annual returns because our research told us that they generally provided a balanced and understandable message, and did not obscure volatility. But we were conscious of the need not to overbalance an advertisement with our mandatory data. This is why we did not add a further cumulative indicator (in contrast with our proposals for longer documents, consulted on in CP170), or extend the discrete returns beyond a five-year set. And our standardisation proposals do not prevent firms including further information, such as a cumulative figure, in their financial promotions if they wish.

Benchmarks

3.10 Several respondents also mentioned the use of benchmarks. They were generally in favour of their use, suggesting they helped provide context for consumers. Some respondents requested additional guidance on the use of benchmarks. One respondent suggested that we stipulate the use of a particular benchmark.

Our response: we do not intend to stipulate a benchmark or provide additional guidance on the use of benchmarks. Previous research, particularly into the use of past performance information for longer documents[4], has shown that benchmarks make past performance information appear more 'persuasive'. The research suggested that they increase the influence of past performance data over a consumer's decision, whether the fund's past performance information is shown exceeding, or failing to match, the benchmark.

We have published our research findings which show that deposit-based benchmarks are not necessarily appropriate for equity-based products. This is because they are not a like-for-like comparison and because they can act to persuade consumers that the equity product is better, without them fully understanding that potential higher returns are achieved at the cost of greater risk. We already have a rule in place (COB 3.8.4) that sets standards for the way comparisons may be drawn in financial promotions.

Scope

3.11 Most respondents agreed with the distinction we proposed to draw between the different classes of products. Those who were not entirely in agreement largely sought clarification for particular types of products or suggested some technical alteration to the distinction or the way the rule was drafted.

3.12 The main queries raised in response to this question asked for clarification on the position for unit-linked pension products. They also sought clarification of the classes of with-profits products covered, including a request to clarify whether both conventional and unitised with-profits would be caught.

Our response: we have altered the wording of our rules so that it is clearer that both conventional and unitised with-profits are excluded from the discrete annual returns approach, and that unitised pension products are included.

4 Consumer Research 21 "Standardisation of past performance" May 2003

The use of monetary terms to present past performance

3.13 We conducted two separate research projects into consumer understanding and use of past performance information, looking first at the material when presented in longer documents (such as product information) and then in 'advertisement-style' financial promotions[5].

3.14 In both cases, our research found that consumers react strongly to past performance information presented in monetary terms (eg 'if you had invested £x ten years ago, it would be worth £y now'). They gravitate towards such information, find it attractive and easy to assimilate, and when it is combined with past performance presented in alternative formats, tend to ignore that other information (irrespective of whether graphs, tables or textual formats are applied) in favour of the monetary information.

3.15 But most significantly, when presented with past performance data in monetary terms, the consumers in our research tended to form clearer and stronger expectations about future returns than they did on the basis of other presentations. They ignored, or were not influenced by, the usual warnings, and monetary information was generally more likely to be seen as an indicator of what the consumer would get back. This behaviour was more strongly evidenced as the financial sophistication of the consumer decreased.

3.16 In the light of this, we proposed guidance explaining to firms that when past performance information is presented in monetary terms it is particularly likely to lead consumers to make assumptions about future returns. The draft guidance advised firms to avoid using monetary values in mass marketing unless they had reasonable grounds for believing that a particular presentation would not have this effect.

3.17 We asked:

> Q3: Do you agree that firms should be advised to refrain from using monetary terms to present past performance information in advertisements directed at the mass market? If not, what alternative approach would you suggest to overcome the problems we seek to address through restricting the use of monetary values?

3.18 Respondents raised two key areas of concern – questioning firstly the rationale for our proposal (although the findings of our research were not themselves challenged) and secondly, our choice of regulatory tool (whether it should be a rule or guidance).

3.19 Respondents suggested that it was inconsistent for us to restrict the use of monetary values when research, including our own, showed that consumers

5 Consumer Research 21 "Standardisation of past performance" May 2003

favoured the format. Some argued that we were deliberately requiring information to be given to consumers that they did not understand, which did not seem to be appropriate. Others saw an inconsistency with other regulatory requirements to show information in monetary terms, such as our requirements for tables showing the effect of charges.

3.20 But we received few suggestions for alternative approaches. A few suggested that monetary values be incorporated into the standardised information and presented alongside the discrete annual returns.

Our response: Our Board recognised the industry's concerns about our proposal, and accepted the arguments against adopting guidance on the use of monetary values to show past performance information. We will therefore not implement the guidance on which we consulted. Firms may however wish to look at our published consumer research in this area (Consumer Research 21: *Standardisation of past performance*) to determine whether it has any implications for the way in which they communicate financial promotions.

Rolling years, calendar years or tax years

3.21 We proposed that firms should include information for the most recent five 12-month periods, ending with the last full month preceding the date on which the financial promotion was confirmed compliant with the conduct of business rules (the 'rolling years' approach). But we noted that there were alternative approaches, such as calendar or tax years, that might also work, and invited views from respondents.

Q4: Do you consider the rolling years approach to be the most appropriate? If not, what approach would you prefer and why?

3.22 Most respondents agreed that the rolling years approach would work well because it would provide the most up-to-date information for consumers. But several respondents suggested that firms should be able to disclose information on whichever basis they wanted to, provided that they were clear about the approach they were taking.

3.23 There was some concern over the need for information to be very recently up-to-date. Some respondents expressed a preference for updating on a calendar year basis. Not only would this allow less frequent updating, but it would also allow comparisons between products. One respondent mentioned that the calendar year approach was current industry practice and suggested that it was also the most obviously understandable for consumers. But a number of others who commented on this issue suggested quarterly updating as a more manageable and proportionate alternative.

Our response: for standardisation to work we need to stipulate which approach firms must take – otherwise firms would be able to select the approach which gives the most favourable performance information, which would not address the practice of 'cherry-picking'.

However, we recognise the concerns respondents have raised about the cost of ensuring that the standardised information is kept up-to-date to the last month. We accept that requiring the information to be up-to-date to the last quarter would be more proportionate, and note also that this approach has the advantage of offering more comparability. So, we have amended our rules to reflect that change.

Performance data for fewer than five years

3.24 We proposed that where performance information is available for fewer than five years, a firm should give information for as many full years as are available, with a minimum of one full twelve-month period. This means that where there is performance information available for fewer than twelve months, firms would not be allowed to include past performance information in their financial promotion.

3.25 We asked:

Q5: Do you agree that firms should be required to show at least one twelve-month period of standardised information? If not, what would be the minimum period that you would require, and why?

Q6: Do you agree that firms should not be allowed to mention past performance in relation to a product with less than twelve months' performance data?

3.26 Most respondents were broadly supportive of these proposals.

3.27 The main concern was that new funds might be put at a disadvantage because they will be less able to use past performance information than existing funds. One respondent argued this was particularly likely to impede innovative investment strategies or management styles because it would be hard to launch new funds.

Our response: we accept that new funds will have little scope to use past performance information in their marketing. But we do not accept that this is unfair or disproportionate. We believe that consumers considering investment products should not be encouraged to focus on short term performance. Past performance information of less than one year's duration is unlikely to be representative of a fund's longer term performance. So, to use it as a basis for promoting the fund is unlikely to be 'clear, fair and not misleading'.

3.28 A small number of firms sought a reduction in the minimum period from twelve to six months. However, few reasons were given for this preference other than their concerns at the restriction of their and others' ability to market a fund on the basis of short-term performance. In contrast, two respondents argued that showing one year's performance was still too short a time-frame and that the period should be increased to two or three years.

Our response: we believe implementing an approach that requires one year's performance is adequate to meet consumers' need for fair and representative information, without being over-restrictive on firms.

3.29 The Financial Services Consumer Panel suggested that we clarify how our rules should be applied for any 12-month periods where past performance information is not available. The Panel suggested that firms should use dashes or an explanation to make clear that performance information is not available for those periods.

Our response: we agree that this clarification will improve consumer understanding and have adjusted our rules and guidance accordingly.

3.30 Some respondent firms mentioned that they liked to include short-term performance information in various fund updates and bulletins intended for a professional audience and that this should be allowed.

3.31 Further clarification was also sought on performance material aimed at existing customers, such as documents that might be available on request. Also, one respondent questioned whether firms would be prevented from directing consumers to independent fund rating and performance data providers where available.

Our response: our guidance and rules are aimed at the retail market and promotions to other professionals will generally be exempt.

Material that is primarily reporting performance statistics to existing customers, rather than inviting or inducing them to buy or sell, is also unlikely to be caught by these new rules and guidance. However, where a communication to existing customers constitutes a financial promotion, then it will have to conform to all the relevant COB rules.

3.32 Several respondents sought clarity on whether reference to a fund manager's general record in the sector would be treated as 'past performance information' under the new proposals.

Our response: we currently allow, and will continue to allow, reference to a fund managers past record, as long as the information is relevant to what is being promoted. However, reference to a fund manager's past record does constitute a past performance message and therefore the inclusion of such information will be subject to the new requirements for the use of past performance information.

3.33 A few respondents raised the issue of the interaction between our CP132 guidance on the use of hypothetical past performance in their response to Question 6, and the proposition in CP183 that no performance information should be shown for funds with less than 12 months' past performance.

Our response: CP132 dealt with the use of hypothetical past performance (where the performance of a product with little or no track record is modelled for a given period using the terms of the product and historical financial information). The proposed guidance indicated those circumstances in which the modelling of past performance was acceptable. But subsequently, our CP183 proposals effectively prohibited the use of any past performance figures when promoting funds that have been in existence for less than one year. This is the position that will apply.

If a firm wishes to supplement existing past performance with hypothetical past performance information, the standardised data will show blanks for those years where there has been no actual performance. This will make it clear that part of the firm's data is hypothetical.

Prominence

3.34 We proposed that our mandatory standardised information should not be given any less prominence in a financial promotion than the firm's own choice of past performance information.

3.35 We asked:

Q7: Do you agree that the standardised data should be given no less prominence than any other piece of information about past performance?

3.36 Most respondents agreed that the standardised data should be given no less prominence than other past performance information; three respondents suggested that the standardised data should be given greater prominence.

Our response: we are satisfied that our proposal that the standardised information should have no less prominence provides an adequate and proportionate level of consumer protection. We think the 'no less prominence' approach, combined with our guidance on the emphasis given to past performance information in financial promotions, will be sufficient to ensure balance in financial promotions.

3.37 There was some concern that interpreting our guidance would involve too much subjective judgment, and several respondents wanted further clarification of the meaning of 'no less prominent'.

Our response: firms will be required to exercise judgment when complying with our rules, in the light of our guidance. This is not a new feature of our rules (for example, they already have to do so when deciding if a promotion is 'clear fair and not misleading').

Our less prescriptive approach gives firms more flexibility and discretion when designing financial promotions.

Cost benefit analysis

3.38 Our estimate of the costs involved with this proposal took account of the one-off and on-going costs to both the industry and us. It also considered the likely effects of the proposals on the quality, quantity and variety of products offered and the impact on competition. The proposals will contribute towards our consumer protection statutory objective; specifically, the benefits for consumers include an improvement in the quality of products offered and sold, and an improvement in competition

3.39 We asked:

> Q8: Do you agree with our estimate of the costs and analysis of the benefits of these proposals?

3.40 Most of those who commented on the CP either chose not to comment or did not express strong views about the accuracy of our cost benefit analysis. Where concerns were expressed, they related to:

- the costs involved in having a six-month transitional period (because of the need to reprint brochures that usually have a year-long shelf life);
- the cost of revising web-based performance information; and
- the view that an allowance for systems and IT alterations should have been built into the costs.

3.41 The Financial Services Consumer Panel's comments on the CBA included a suggestion that the costs to industry be offset by the savings firms should enjoy by receiving fewer complaints, and fewer instances of redress. The Consumer Panel would also expect firms to benefits from more repeat business from consumers who have not been misled.

Our response: although there were suggestions from some respondents that the costs would be somewhat higher than we estimated, respondents did not argue that the costs would be so high as to outweigh the benefits or make the proposals unworkable. Those who expected that their costs would be higher also tended to be large product provider firms. Our estimates took account of the fact that there will be other firms whose costs will be lower since estimates were based on an average cost per firm.

Our alteration to the frequency with which standardised information will need to be updated will also help to keep costs down.

In the light of these responses, we think that our conclusion that the benefits of our proposals outweigh the costs of implementation has been justified.

Compatibility with our general duties and our statutory objectives

3.42 We believe that the compatibility statement set out in CP183 still stands, and that our proposals, amended as we have indicated above, represent the most appropriate way to proceed.

List of respondents

Abbey National

The Advertising Association

Advertising Standards Authority

Aegon UK

Andrew Brown Associates

Association of British Insurers

APCIMS

AXA

Barclays Private Clients

Britannic Asset Management

Brooks Macdonald

Canada Life

Consumers Association

David J Miller

F&C Management Limited

Fidelity

Financial Services Consumer Panel

Friends Provident

Hargreaves Lansdown

HBOS

HSBC

ILAG

Investec Fund Managers

Investment Management Association

ISBA

Legal and General

M&G Investments

Marks and Spencer Financial Services

Merrill Lynch

National Association of Pension Funds

Nationwide

Norwich Union

Pinnacle Insurance plc

Prudential

Royal London

Schroders

Scottish Widows

Skandia

Standard Life Assurance Company

Standard Life Investments Limited

The Children's Mutual

Virgin Money

Wesleyan Assurance Society

FINANCIAL PROMOTIONS (Past Performance) Instrument 2003

FINANCIAL PROMOTIONS (PAST PERFORMANCE) INSTRUMENT 2003

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 138 (General rule-making power);

(2) section 145 (Financial promotion rules);

(3) section 156 (General supplementary powers);

(4) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

C. This instrument comes into force on 1 June 2004.

Amendments to the Conduct of Business sourcebook

D. The Conduct of Business sourcebook is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Financial Promotions (Past Performance) Instrument 2003.

By Order of the Board
18 December 2003

Annex

Amendments to the Conduct of Business sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.

…

Non-real time financial promotions: guidance on clear, fair and not misleading

3.8.7 G (1) It cannot be assumed that recipients necessarily have an understanding of the *investment* or service being promoted. <u>The use of terms that are ambiguous, or the targeting of an audience which is unlikely to understand the promotion, are matters which are relevant to an assessment of whether the promotion is 'clear, fair and not misleading'.</u> If a *non-real time financial promotion* is specially designed for a targeted collection of recipients who are reasonably believed to have particular knowledge of the *investment* or service being promoted, this fact should be made clear.

…

…

3.8.9 G (1) …

(2) …

(3) In giving a fair and adequate explanation of the *investment* or service being promoted *firms* should avoid:

(a) …

(b) …

(c) drawing attention to favourable tax treatment without stating that this might not continue in the future<u>; and</u>

<u>(d) drawing attention to an *investment* or service's past performance, or placing emphasis on past performance, relative to other information given about the product in the *financial promotion*.</u>

…

Specific non-real time financial promotions: past performance

3.8.11 R A *specific non-real time financial promotion* which gives information about the past performance of ~~*specified*~~ a specified *investment*~~*s*~~ or of a *firm* must include:

(1) suitable text which states unambiguously, and without reservation, that past performance should not be seen as an indication of future performance:

(a) ~~that is specifically designed as suitable for the type of *financial promotion* being promoted and its target audience; and~~that is specifically designed for the type of *financial promotion* concerned and its target audience; and

(b) ~~which draws attention to the fact that past performance will not necessarily be repeated~~ which is presented legibly in the main text of the *financial promotion*; and

(2) information relating to a relevant and sufficient period of past performance to provide a fair and balanced indication of the performance.

3.8.12 G (1) The purpose of *COB* 3.8.11R is to:

(a) …

(b) ~~to~~ encourage *firms* to draft warnings which are tailored to fit the design of the *financial promotion* and the audience to which they are primarily directed~~. Therefore~~; so, for example, text used in a warning included in a specialist magazine may not be ~~useful~~ appropriate in a *financial promotion* in the popular press.

(2) Any of the following may mean that a *specific non-real time financial promotion* does not meet the requirement of *COB* 3.8.4 R(1) of being fair, clear and not misleading:

(a) …

…

(e) a comparison with *deposits* without an indication in clear terms, and with equal prominence, that the *investment* does not include the security of capital which is ~~afforded under~~ characteristic of a *deposit* with a *bank* or *building society*.

(3) *Firms* need to take special care when presenting euro-based information as new factors should be taken into account in the calculation ~~and/~~or comparison of the performance of some products. There may be some techniques of presenting past performance data which can no longer be used ~~because when~~ if the factoring in of euro conversion ~~is factored into the calculation it~~ produces a misleading result. *Guidance* cannot deal with all the circumstances in which performance data are used, and it is therefore important for *firms* to look at the end result and the context in which the information is presented to ensure it does not breach *COB* 3.8.4 R(1) (clear, fair and not misleading).

(4) ….

(5) *Firms* are reminded of the *guidance* in *COB* 3.6.4G(2) about ensuring that s*pecific non-real time financial promotions* remain compliant with *COB* 3. To meet *COB* 3.8.11R(2), a *specific non-real time financial promotion* that contains past performance information and is intended for use over a period of time should make clear:

(a) the period of time to which the past performance information relates;

(b) where relevant, the fact that this information may not be current; and

(c) if (b) applies, an explanation of where up-to-date past performance information may be found.

(6) Where a *specific non-real time financial promotion*, such as a brochure or a promotion on the Internet, includes past performance information that is presented over a number of pages, the past performance warning required by *COB* 3.8.11R(1) should be included on each page on which past performance information is presented.

(7) Information about past performance should normally be based on the actual performance of a fund or funds for the entire period. Where past performance information for the actual fund does not exist, a *firm* may only include hypothetical past performance information in the promotion if the result will be clear, fair and not misleading. Past performance information that is based entirely on hypothetical past performance information will be acceptable only where it relates to a fund that is not and has not been actively managed, and where prices on the relevant markets are unlikely to have been influenced by the operation of the fund had it been in existence.

(8) In (7), hypothetical past performance information means information that has been constructed about the performance of a fund during a period for which no actual performance information is available, using the terms of the product and historical financial information. This would not include past performance information that is based on the actual performance of a fund (for example, where the pricing structure or other terms surrounding a product change but the underlying fund remains the same; where an existing fund is merging with another; or where a fund is cloned.)

Standardised past performance information

3.8.13 R ~~A *specific non-real time financial promotion*, which refers to past performance of a *packaged product*, must include information about the performance of the packaged product which covers the previous five years (or the whole period if the *packaged product* has been offered for less than this), ending with the date on which the *firm* confirms compliance with the *rules* in this chapter under *COB* 3.6.1R (or as near as is reasonably practicable).~~

(1) If a firm includes in a *specific non-real time financial promotion* information referring to the past performance of a *packaged product*, it must also include:

(a) in the case of a *scheme*, unit-linked *life policy* or unit-linked *stakeholder pension scheme* (other than a unitised with-profits *life policy* or *stakeholder pension scheme)* past performance information calculated and presented in accordance with *COB* 3.8.13AR; or

(b) in the case of a *packaged product* which is not within (a) that:

(i) does not have a fixed term, the performance over the previous five years (or the whole period if the product has been offered for less than this); or

(ii) has a fixed term, the performance over the whole period of the product term;

ending with the date on which the *firm* confirms compliance with the *rules* in this chapter under *COB* 3.6.1R(or as near as is reasonably practicable).

(2) The information included in accordance with *COB* 3.8.13R(1) should be no less prominent than any other past performance information.

(3) A *specific non-real time financial promotion* must not contain any past performance information, including hypothetical past performance information, unless past performance information exists for the previous twelve months (or where *COB* 3.8.13R(1)(a) applies, for the previous four full quarters).

(4) For the purposes of *COB* 3.8.13R(1)(a), *firms* should use single pricing, or (if this is not available) bid to bid prices, unless the *firm* has reasonable grounds to be satisfied that another basis would better reflect the past performance of the fund.

3.8.13A R Table

Specimen table of disclosure of discrete past performance
This table belongs to *COB* 3.8.13 R.

Percentage growth

[Fund name]	Quarter /Year – Quarter / Year pgr%	Quarter /Year – Quarter/ Year pgr%	Quarter /Year – Quarter/ Year pgr%	Quarter/ Year – Quarter/ Year pgr%	Quarter/ Year – Quarter/ Year pgr%

Notes:
1. The table must show performance information for five (or if performance information for fewer than five is available, all) complete 12-month periods, the most recent of which ends with the last full quarter preceding the date on which the firm confirms compliance with the rules in this chapter under COB 3.6.1R.

2. For products with performance data for less than five 12-month periods firms should clearly indicate that performance data does not exist for the relevant periods.

3. No allowance must be made for tax recoveries on income for *pension contracts*, *individual savings accounts* or *PEPs*.

4. pgr is the percentage growth rate for the year, where:
pgr = ((P1 – P0)/P0)*100 and rounded to the nearest 0.1%, with exact 0.05% rounded to the nearest even 0.1%; and where P0 is the price at the start of the 12-month period and P1 is the price on the same day in the following 12-month period.

5. The prices must allow for any net distributions to be reinvested.

6. The price at P1 must be adjusted for any charges since the date of P0 which are based on a proportion of the fund and are levied by the cancellation of units.

3.8.14 G (1) The information required by *COB* 3.8.13R(1)(b) should be given on:

(a) …

(b) an offer to offer, bid to bid or offer to bid basis (which should be stated) where there is a comparison of performance with an index or with movements in the price of *units*; or

(c) ….

(2) ….

(3) ….

3.8.15 R Information about past performance in a *specific non-real time financial promotion* must not be presented in such a manner as to suggest that:

(1) it constitutes a *projection* illustrating the possible future value of an investment contract or fund; or

(2) similar returns will be achieved in the future.

3.8.16 G In determining whether *COB* 3.8.15R has been satisfied, the *FSA* will take into account:

(1) the way in which the information about past performance has been presented;

(2) how it is positioned in the *financial promotion*; and

(3) the wording which accompanies it.

Paragraph headings, or the positioning of information about past performance and current yields next to each other, can sometimes contribute to an overall impression that past performance and future prospects are linked.

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