



**2 May 2016**

CFA Institute  
Global Investment Performance Standards  
915 E. High Street  
Charlottesville  
Virginia 22902  
USA

**BY EMAIL:** [standards@cfainstitute.org](mailto:standards@cfainstitute.org)

Dear CFA Institute

**RE: GUIDANCE STATEMENT ON BROADLY DISTRIBUTED POOLED FUNDS**

The Financial Services Council welcomes the opportunity to make a submission to the CFA Institute as the governing body for the Global Investment Performance Standards.

The Financial Services Council ('FSC') represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than \$2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world.

The FSC welcomes the request for comments by the CFA Institute/GIPS Executive Committee in regards to Exposure Draft of the Guidance Statement on Broadly Distributed Pooled Funds and advocates for greater disclosure in relation to performance of pooled funds, especially when supported by standardised reporting frameworks. We see value in this type of reporting as it promotes transparency and ensures that a minimum level of information is provided to potential pooled fund investors in the absence of local regulatory disclosure requirements.

In Appendix A we outline our comments in response to the invitation to make a submission in response to the exposure draft of the guidance statement on broadly distributed pooled funds.

Please contact me with any questions in relation to this submission on (02) 9299 3022.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jenna Mollross', with a small dot at the end.

**JENNA MOLLROSS**

Policy Manager – Investments & Global Markets

**APPENDIX A**  
**EXPOSURE DRAFT OF THE GUIDANCE STATEMENT ON BROADLY DISTRIBUTED POOLED FUNDS**

**GENERAL COMMENTS**

As the purpose for introduction of the Guidance Statement on Broadly Distributed Pooled Funds ('Guidance Statement') is distinct from its necessity, the FSC recommends that the reasons for its necessary introduction (for example, to provide clarity to managers who would normally provide compliant presentations to prospective institutional investors) be outlined in the Guidance Statement's preamble.

The FSC's understanding, based on the requirements and recommendations contained in the Guidance Statement, is that the purpose of the Guidance Statement is a combination of the following:

1. To provide the necessary clarity to managers that compliant presentations are not required or recommended in the case of broadly distributed pool funds and that the performance of the pooled fund (and not the strategy) is what should be presented to investors.
2. To establish a minimum level of information that should be provided to potential pooled fund investors, in the absence of any specific requirements of local laws and regulations.
3. To clarify the precedence of local laws/regulations over any requirements of GIPS in the case of pooled fund performance.

**Recommendation:** That the Guidance Statement contain a clear statement of purpose in its preamble.

The FSC believes that the Guidance Statement should contain more technical detail and precision regarding the rules. The applicability of compliance with the Guidance Statement should be much more unequivocal and clearly spelled out for users of the GIPS Standards that are applicable.

**Recommendation:** That the Guidance Statement contain more clarity in order to be as transparent as the comparative GIPS Standards in construct.

The FSC notes that, in the context of the Australian jurisdiction, the term 'local laws and regulations' used in the Guidance Statement will include the following regulatory frameworks (as applicable):

1. ASIC Regulatory Guide 168 (Product Disclosure Statements);
2. ASIC Regulatory Guide 53 (use of historical performance);
3. FSC Standard 6; and
4. APRA Reporting Standards SRS 700.0 and SRS 702.0

The FSC believes that the combination of the above mentioned regulations provide sufficient consumer protection. However, we seek further clarity on the status of the 'local laws and regulations' from the perspective of a verifier of the Guidance Statement or GIPS Executive Committee.

The FSC recommends that it be clarified in the Guidance Statement whether the Guidance Statement or the 'local laws and regulations' would prevail in the event of an inconsistency between the two.

**Recommendation:** That the Guidance Statement contain a clear indication as to:  
1. the precedence of any local laws and regulations over this Guidance Statement; and  
2. the requirements to observe the Guidance Statement where local laws and regulations are silent.

## SPECIFIC COMMENTS RE REQUIRED ITEMS

### Risk measures:

The Guidance Statement provides that one of the required items is “An indication of the pooled fund’s risk, as either a qualitative narrative or a quantitative metric, *as mandated by the local regulators*. If the local regulators do not require or prohibit a specific risk measure, the firm may choose the risk measure to present.”

The FSC’s interpretation is that this wording assumes that such a mandated indication exists in the local market. If this is only a requirement where it has been locally mandated, the wording should be amended to make this clear, for example, “if mandated by the local regulator”. In markets where this is not the case, the wording should be amended to indicate that this is a requirement.

In the Australian jurisdiction, the Association of Superannuation Funds of Australia (‘ASFA’), in collaboration with the FSC, has developed a ‘Standard Risk Measure Guidance Paper for Trustees’. The purpose of the Standard Risk Measure is to provide members with a descriptor to assist in comparing investment options (both within and across superannuation funds) utilising a simplified risk measure.

The guidance paper provides for a standardised measure of risk calculated in accordance with the following principles:

1. A forward-looking methodology, defined as the number of negative annual returns which could be expected over any 20 year period;
2. Calculated gross of administration fees but net of investment management fees;
3. Calculated gross of tax (ignoring the impact of franking credits).
4. That process and methodology should be made publicly available on the trustee’s website.

**Recommendation:** That the Guidance Statement provide more clarity as to expectations in regards to risk measure disclosures.

### Alternative time periods:

It is unclear whether alternative time periods may be allowed by the GIPS Standard (unless precluded by local laws and regulations). The FSC is of the view that optional alternative time periods, for example 1 month or 3 months, should be allowed to also be included in the pooled fund returns comparison alongside the mandated one-, three- and five-year annualised returns, even if not required.

**Recommendation:** That the Guidance Statement indicate whether it is allowable to show allow optional alternative time periods in the performance returns comparison. The Guidance Statement should specifically permit disclosure of alternative time periods where these are allowed by local laws and regulations.

### Use of actual performance:

If it is envisaged that only actual performance be reported under performance reporting, the Guidance Statement should set-out clearly this requirement.

**Recommendation:** That the Guidance Statement contain a universal requirements for use of actual performance to be applied, consistent with existing GIPS Standards.

## QUESTIONS POSED IN THE EXPOSURE DRAFT

### ***Does your country or region require sales charges and loads to be included in the calculation of the pooled fund returns?***

No, ASIC Regulatory Guide 53 does not specifically require the inclusion of entry and exit fees unless there is a specific dollar based scenario being described; for example, "If you had placed \$10,000 in the XYZ Fund in 1985, it would be worth \$740,000 today". Under the requirements of ASIC Regulatory Guide 53, a dollar-based scenario, like the one above, needs to account for all fees applicable to that investment in calculating the performance.

Likewise, FSC Standard 6 does not require the inclusion of sales charges and loads and neither does APRA Reporting Standard SRS 702.0, nor the proposed Reporting Standard SRS 702.1, require the inclusion of such fees.

### ***Are the explanations of the defined terms sufficiently clear?***

#### Pooled Fund Net/Net Return:

The term 'Net/Net Return' is not a commonly used term in the Australian market, with the typical terminology used being 'net of fees and taxes'. As a consequence, it may cause confusion in our market.

**Recommendation:** That the Guidance Statement provide for clarity in terminology so as to achieve consistency with the local market.

No consideration is made for tax that may be paid directly by the fund. This should be addressed. In the Australian market, pooled funds include superannuation funds and these pay tax. If taxes are deducted within the pooled fund, then it should be clear that this impact is reflected in the performance reporting measure, as guided by local laws and regulations.

**Recommendation:** That the Guidance Statement provide for clarity regarding the position of taxation in performance reporting.

### ***Are there other terms that should be defined?***

The concepts of a Growth Return and Distribution Return (Income Return) should also be defined and included as a recommended item. These measures will give prospective investors a better understanding of how past returns have been generated.

FSC Standard 6 provides the following definitions in relation to the equivalent terms used in the Guidance Statement:

- 'Growth Return' means the percentage change in the Product's Performance Price adjusted for any capital re-organisation (e.g. an issue of bonus units). Note that prior to the distribution date the Performance Price may include a distribution component.
- 'Distribution Return' means the Total Return less the Growth Return. This represents the contribution to Total Return made by the Product's Distributions, which may be of an income or capital nature.

**Recommendation:** That the Guidance Statement apply the above definitions to the terms Growth Return and Distribution Return.

### ***Do you agree that all the required items listed above should be required items?***

Yes.

***Are there any other items that should be required?***

Yes – Growth Return and Distribution Return (Income Return) per the above recommendation.

***Do you agree that a pooled fund net/net return should not reflect the deduction of sales charges and loads? Why or why not?***

Yes, it is market practice to exclude them and it is not required by the regulators in this market. Given the variation in the structure of sales charges and loads, it is very difficult to define an approach that will facilitate comparison amongst pooled funds. Due to the inconsistency in its application within the industry, the FSC recommends that this should be excluded.

***Should the required items be required in official pooled fund documents unless prohibited by local regulators? Why or why not?***

No, there is no need to include the required items in official pooled fund documents, as these documents are updated less frequently, therefore performance may be less current and therefore less useful to investors.

***Should the required items be required in fund-specific marketing material created for prospective pooled fund investors? Why or why not?***

Yes, the FSC recommends including the required items in fund-specific marketing materials, however, regard should be had so as to ensure that disclosure for the required items is flexible enough to avoid conflict with local regulations pertaining to marketing materials.

***If returns reflect the deduction of sales loads, should firms be required to disclose this deduction?***

The FSC agrees that this should be a required disclosure item.

<b>Recommendation:</b> That the disclosure requirements require disclosure as to the existence of sales loads, amount and whether or not they have been reflected in performance figures.
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***Do you agree that including this GIPS pooled fund claim of compliance in the official pooled fund document and in the fund-specific marketing material should be a recommendation? Why or why not?***

The FSC agrees that this statement of compliance should be a recommendation, as this provides a level of assurance to the prospective investor that the fund manager is following industry best practice in relation to investment performance measurement and presentations. However, the FSC believes that this should not be a mandatory requirement.

***Do you agree that the offer of a compliant presentation in the official pooled fund document and the fund-specific marketing material should be neither required nor recommended? Why or why not?***

The FSC submits that the focus should always be on the pooled fund in the retail context, however this should not be a requirement or a recommendation as sufficient disclosure is achieved through existing local industry and regulatory standards. The addition of a compliant presentation would add additional administrative burden on the fund manager for no material benefit to potential investors.

***Do you agree that firms should not be required to provide a compliant presentation to prospective pooled fund investors unless requested to do so by a prospective pooled fund investor? Why or why not?***

The FSC submits that the focus should always be on the pooled fund in the retail context, however this should not be a requirement or a recommendation as sufficient disclosure is achieved through existing local industry and regulatory standards. The addition of a compliant presentation would add additional administrative burden on the fund manager for no material benefit to potential investors.

***In cases where there are direct interactions between a firm and a prospective pooled fund investor, should it be a requirement or a recommendation (or neither) that a compliant presentation be given to the prospective pooled fund investor?***

Neither, as sufficient disclosure is achieved through existing local industry and regulatory standards. The addition of a compliant presentation would add additional administrative burden on the fund manager for no material benefit to potential investors. It is also significant to note that unless the investor is considering a mandate, the level of interaction is not the determining factor. Rather, it is the fact that the investment is in the pooled fund and not the strategy.