

FSC Guidance Note No. 47

Presentation of Past Performance Information and Visual Promotions

12 September
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FSC Guidance Note No. 47

Presentation of Past Performance Information and Visual Promotions of Returns

Date of this version: 12 September 2022

Application of this Guidance Note: This Guidance Note is applicable to FSC member who are providers of Financial Products and Services.

Where there is a conflict between applicable legislation, regulations, rules and regulator policy and the constitution of a scheme and the principles in this Guidance Note, the principles in this Guidance Note should be applied as far as is practicable.

Main Purpose of this Guidance Note: The main purposes of this Guidance Note are:

- (a) To provide guidance to members in the presentation of past performance information in the promotion of its Financial Products and Service; and
- (b) To provide guidance of these principles to such providers including on their interpretation and application of those practices

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1 Title

- 1.1 This Guidance Note is titled FSC Guidance Note No. 47 "Presentation of Past Performance Information and Visual Promotions".

2 Date of issue

- 2.1 Originally issued as FSC Standard 10 with the same title on 1 December 2000; updated 1 June 2005; updated 21 June 2019.

3 Effective Date

- 3.1 This Guidance Note should be applied in relation to Presentation of Past Performance Information on or after 12 September 2022.

4 Application

- 4.1 This Guidance Note is applicable to FSC members who are providers of Financial Products and Services.
- 4.2 Where there is a conflict between applicable legislation, regulations, rules and regulator policy and the constitution of a scheme, on the one hand, and the principles in this Guidance Note, on the other hand, the principles in this Guidance Note should be applied as far as is practicable.

5 Statement of Purpose

- 5.1 The purpose of this Guidance Note is:
- to provide guidance to members in the presentation of past performance information to be adopted by an FSC member in the promotion of its Financial Products and Services; and
 - to provide guidance in the interpretation and application of the principles in this Guidance Note.

6 Application of Materiality

- 6.1 **Failure by a provider of a Financial Product or Service to adopt or implement this Guidance Note is material if such failure is likely to be misleading or substantially deviates from the good practice guidelines in ASIC Regulatory Guide RG 53 "The Use of Past Performance in Promotional Material" issued July 2003 (RG 53).**
- 6.2 **As a matter of good practice, providers also should have regard to in this context, the following further ASIC Regulatory Guides:**
- 6.2.1 RG 170 "Prospective financial information" issued 1 April 2011; and
- 6.2.2 RG 234 "Advertising financial products and services (including credit): Good practice guidance" issued 15 November 2012.

7 Definitions

- 7.1 In this Guidance Note: "Promotional Statement" means a product disclosure statement (PDS) and any other statement (including advertising) intended, or which would reasonably give the impression that it was intended, to induce a person to, enter into, vary or continue a Financial Product or Service.
- 7.2 "RG 53" has the meaning set out in paragraph 6.1.
- 7.3 The use of industry terms should aim to conform to the definitions of terms as stated by FSC Guidance Note No. 5 "Industry Terms and Definitions" and avoid the use of ambiguous terminology.

8 General Principles

- 8.1 The provider of a Financial Product or Service should, when preparing Promotional Statements, comply with the requirements of RG 53.
- 8.2 When making references to investment performance, the methodology used to calculate the performance should comply with FSC Guidance Note No. 46 “Investment Option Performance – Calculation of Returns”.
- 8.3 Although RG 53 does not cover the content of PDSs, ASIC recognises that many of the same principles apply to PDSs. For the purposes of this Guidance Note a PDS is a Promotional Statement and, as such, RG 53 applies to PDSs.

9 Presentation of Returns

Presentation

- 9.1 When presenting performance, actual fund returns should not be linked with non-actual returns for the purpose of creating a fund history.
 - 9.1.1 As a guide, non-actual performance should only be used on new products where no history exists and only as contemplated in RG 53.
 - 9.1.2 For example, once a fund has a 12-month performance history, performance should only reflect the 1-year actual return. Where non-actual performance for 3-years and 5-years continue to be shown (once a fund has actual history), the non-actual performance should be clearly separated from the actual returns by a separate table and a full explanation attached. (i.e. merely attaching footnotes or similar to the same table presenting modelled returns with actual returns is unacceptable.)
- 9.2 Full disclosure of the methodology used to calculate returns should be made at all times.
 - 9.2.1 Footnoted or end noted comments are satisfactory for this purpose.
- 9.3 The terminology Total Returns, Growth Return and Distribution Return should be used when presenting returns.
 - 9.3.1 When disclosing the methodology used to calculate returns, the terms Total Return, Growth Return and Distribution Return should be used, and corresponding amounts calculated in accordance with FSC Guidance Note No. 46 “Investment Option Performance - Calculation of Returns”.
- 9.4 The minimum level of reporting is for Scheme Operators to report Total Returns.
- 9.5 While Growth and Distribution Returns are optional, they should not be reported in isolation, rather they should be reported along-side each other with the Total Return.
- 9.6 If one of the components of a Distribution was a part return of capital, then Scheme Operators should disclose the amount of capital returned to Scheme Holders.
- 9.7 *Photographs and drawings*
 - 9.7.1 Photographs and drawings of assets used in a Promotional Statement which may be reasonably assumed to be assets of the Financial Product being promoted should only show real assets connected to the Financial Product. Photographs and drawings of public buildings or panoramic views may be used provided that it is clear to a reasonable investor that these do not depict trust assets. If this is not clear, then a disclaimer should be included.
 - 9.7.2 Photographs of the assets of a Financial Product should be the most recent available. If the assets have materially changed their appearance a new photograph should be taken and used.

- 9.7.3 Panoramic photographs of areas in which Financial Product assets are or will be located are permitted provided that the Financial Product's assets or their future location is highlighted in the photograph.
- 9.7.4 Photographs depicting an asset in which the Financial Product owns or is entitled to only a small portion are not permitted unless a statement is included making clear that the Financial Product does not own the entire asset.

9.8 *Additional Guidance to RG 53*

In Section 12 - Treatment of fees, paragraph 12.7 of RG 53 should be interpreted by members such that it is only applicable to specific personalised examples in the form, or nature of the example provided in paragraph 12.7.1 of RG 53. For example, a generic statement or scenario which would not fall within the scope of paragraph 12.7 of RG 53 would be a scenario of performance history over time which did not attempt to reflect an investor's actual experience (i.e. the investment of a particular amount for a specific period, which by its nature would need to take into account the effect of all relevant fees).

In any event, appropriate disclosure of the calculation methodology should be made, including all relevant assumptions.