ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 53

The use of past performance in promotional material

July 2003

Important notice

This Guide is a summary designed to provide the basic information you need. It does not cover all legal issues and is not a substitute for professional legal advice.

Guides inevitably involve some generalisations about the application of the law. Some matters considered have important exceptions or qualifications. The particular circumstances of any conduct (including its context) need to be taken into account when determining exactly how the law applies to that conduct.

Contents

What this Guide is about

This publication provides general guidance to the financial services industry on the appropriate use of past performance information in promotional material.

The standards set out in the Guide will:

(a) assist industry to comply with legal requirements;

(b) encourage fair and efficient competition within industry;

(c) facilitate consumer comparisons between financial services and products; and

(d) enhance consumers' understanding of sound investment principles.

Past performance information is used frequently in investment-related promotional material and it is therefore important that it is used appropriately. This Guide covers a wide range of issues, reflecting the diversity of examples ASIC has encountered in reviewing promotional material over recent years.

On many issues, the Guide reflects documented industry standards from both Australia (especially those of the Investment & Financial Services Association)[1] and overseas jurisdictions. ASIC would encourage industry bodies to refer to these guidelines and adopt them as appropriate.

[1] For example, IFSA Standard No 6 "Fund Performance – Calculation and Presentation of Returns"; IFSA Standard No 10 "Promotional Statements & Advertising". References are to the versions as at June 2002.

Preamble

1. Status of the Guide

1.1 This Guide provides general guidance to the financial services industry for promotions which use past performance information. The Guide covers both issues of legal compliance and issues of good practice.

1.2 The main legal requirements come from the ASIC Act and the Corporations Act. Key obligations include:

(a) ensuring that promotions are not likely to mislead potential investors,[2] and

(b) for holders of an Australian financial services licence, doing all things necessary to ensure that the financial services are provided efficiently, honestly and fairly.[3]

The sections of these guidelines dealing with legal standards (wherever “**misleading**” is mentioned) reflect some of the factors ASIC may take into account when considering enforcement action.

1.3 In addition, the Guide sets out standards of good practice. ASIC encourages industry bodies to refer to these standards and, where appropriate, to mirror them in their own standards or adopt them by cross-reference.

1.4 ASIC will review the Guide periodically.

2. Scope of application

2.1 This Guide applies where past performance information is used in the promotion of a financial product or service (see section 4.3 for the meaning of ‘promotion’).

2.2 This Guide covers promotions which use specific information about past performance or which make more general representations about good or superior performance.

[2] ASIC Act, ss12DA, 12DF(1); Corporations Act, ss1041E, 1041F, 1041H,
[3] Corporations Act, s912A(1)(a).

2.3 Financial products and services that are sometimes promoted with past performance information include:

- managed funds (including superannuation funds);
- margin loans;
- stockmarket tip sheets and investment research software; and
- investment advice services.

2.4 **The Guide covers promotions to potential retail clients.**[4] Care needs to be taken where retail clients are accessing wholesale funds indirectly (eg via master trusts). Industry will need to assess the extent to which the same principles apply to promotions aimed at wholesale clients or financial advisers.

2.4.1 A wholesale fund will be covered by these guidelines if its promotion is aimed (wholly or partially) at retail clients who can invest in it via a master trust or wrap account.

2.5 The Guide does not cover instances of personal investment advice.

2.6 **The Guide does not cover the contents of formal offer documents** (notably "Product Disclosure Statements"). Formal disclosure documents are subject to very specific legal requirements. However, we recognise that many of the same principles apply to these documents.[5]

2.7 The Guide does not apply to the aspects of other communications that have conflicting legal requirements, (eg aspects of superannuation fund annual reports, quarterly statements).[6]

2.7.1 If an annual report contains promotional material with past performance information in addition to the legal requirements, the Guide applies to the promotional material.

[4] Corporations Act, s761G
[5] Comparable principles from ASIC Policy Statement 168 are discussed at para 5.1
[6] see, for example Corporation Act s1017DA(2) and Regulation 7.9.37(1) (j)

3. Guidelines and commentary

3.1 The function of each section in the Guide is indicated by the font style.

3.2 **Guidelines** are in plain font, like this. They may relate to compliance with legal requirements (wherever "**misleading**" is discussed) or to good practice standards.

3.2.1 **Commentary** is in indented grey font, like this. It may be used to explain the implications of requirements, to give examples or to indicate possible means of compliance. Commentary is designed to expand on a particular subject, not to necessarily cover all possible situations.

4. Definitions

4.1 "Misleading" is used to include "likely to be misleading". In many instances the law makes no distinction between material which actually misleads and material which is likely to mislead.

4.2 "Promoter" is used to refer to the entity responsible for the promotion of a financial product or service. The relevant entity can be a natural person, a body corporate, a partnership or a trust (including the trustee of the trust).[7] It should be remembered that a licensed entity is responsible for financial promotions communicated by its appointed representatives.

4.3 "Promotion", in the context of these guidelines:

(a) is restricted to a communication which uses past performance information to promote a financial product or service;

(b) means any statement (including advertising) intended, or which would reasonably give the impression that it was intended, to induce a person to acquire, hold or vary a financial product or service;

(c) covers a communication by any medium, for example:

- advertising via magazines, newspapers, radio, television or websites;
- product brochures and promotional fact sheets;
- direct mail (eg by post, facsimile or email);

[7] See Corporations Act, s64A

- telemarketing activities (eg telephone calls made by call centres);
- written correspondence, emails and telephone calls;
- client newsletters;
- sales aids;
- presentations to groups of individuals; and
- tip-sheets;

(d) does not include personal advice to individuals. This is covered by more specific legal obligations.

4.3.1 The Guidelines do not apply to material that is not promotional, such as a factual quarterly member statement (see also sections 2.6 & 2.7).

The Guidelines

5. Good disclosure principles

5.1 To aid audience understanding and reduce the chance of information being **misleading**:

(a) information should be relevant;

(b) information should be clear, concise and effective;

(c) important information should catch the consumer's attention; and

(d) information should be in a format that makes it easy for consumers to compare financial products and services.

5.1.1 These are some of the "Good Disclosure Principles" from ASIC Policy Statement 168. Although PS168 is about mandatory disclosure documents (Product Disclosure Statements), these particular principles are also applicable to promotional material.

5.1.2 If there is doubt about whether promotional material will be suitable for its audience, promoters are encouraged to conduct consumer testing or use a format that has already been consumer tested.

6. General considerations

6.1 Compliance with these specific guidelines does not preclude all potential liability for **misleading conduct**. It may be necessary to disclose information beyond what is suggested by the guidelines (or stop the promotion) in order to avoid misleading potential investors.

6.1.1 For example, it may be necessary to disclose any special circumstances that substantially reduce the relevance of past performance information to likely future performance.
eg The past performance of a Ruritanian bond fund may be misleading if it was not disclosed that the Ruritanian government had just stopped all debt repayments.
eg The past performance of a standard equity fund may be misleading if it was not disclosed that the fund had changed to be a geared or hedge fund.

6.1.2 Compliance with industry standards or common practice, while generally desirable, does not, of itself, necessarily guarantee legal compliance.

6.2 The use of past performance information in promotions may be **misleading** unless it:

(a) takes account of the limitations of the particular communication medium; and

(b) is provided in a manner that is suitable for the full range of its audience.

6.2.1 The communication medium can affect both the opportunity to present information in detail and the audience's ability to comprehend information. For example, broadcast media (such as TV or radio) do not allow material to be to viewed at the audience's own pace or to be reviewed. Material that is acceptable in one medium may be misleading in another.

6.2.2 Close attention needs to be given to the variety within the audience. Information suitable for an industry audience or sophisticated investors may be unsuitable for an average retail audience. Promotions need to consider the least sophisticated audience segment that will view the promotion.
A promotion may contain material that is only understood by part of the audience, so long as the simpler parts of the material, taken alone, do not mislead the less sophisticated part of the audience.

6.2.3 In determining whether a promotion is misleading, the promoter's intent may not be a relevant factor. A promotion that is not intended to be misleading may still be "misleading" or "likely to mislead" as an objective fact. Such conduct may give rise to a strict liability offence.

6.3 Omission of information may be **misleading** if it leads people to an incorrect conclusion, due to their existing specific knowledge (or lack of it) and general understanding.

6.3.1 This applies to all guidelines.

6.4 A promotion can be **misleading** even if later information corrects a wrong impression created by the promotion.

6.4.1 Each promotion needs to be judged on its own. The fact that a consumer must receive a mandatory offer document (with more detailed information) before investing does not prevent an earlier promotion from being misleading. However, any actual subsequent correction may reduce the actual loss suffered by a consumer.

6.4.2 Where a promotion contains an apparent statement of fact, it is good practice for the promoter to have evidence in its possession that the statement is true.

6.5 A promotion can be **misleading** if it uses a methodology to calculate performance information that is inconsistent with:

(a) the method used in the formal offer document, or

(b) the actual performance of the product or service.

7. Imbalanced information

7.1 It may be **misleading** to accentuate the potential benefits of a financial product or service without also giving a fair indication of any significant disadvantages that the audience would not be aware of.

7.1.1 This is a general principle. Other provisions in Section 7 give more detail on common imbalance issues relating to the use of past performance information.

7.2 A promotion may be misleading if it highlights the potential for higher returns without giving a fair indication of any significant additional risk factors that the audience would not be aware of.

7.2.1 For example, if a fund differed from most peers because of a gearing strategy, an unusual hedging arrangement or an unusual foreign exchange exposure, it may be necessary to note this in the promotion.

7.3 Where past performance information is used to support a claim about an entity's skill or good performance (overall or in a particular sector), it may be **misleading** to use past performance selectively so as to exaggerate the entity's success or disguise its lack of success.

7.3.1 The issue is whether the underlying facts support the broad implication. For example:

"ABC is achieving excellent returns for its clients. For instance, the ABC Australian Share Fund has five-year returns of 18% p.a., 3% p.a. above the sector median."

This promotion would be misleading if most of ABC's funds had five-year returns below sector medians.

7.4 A promotion using past performance information has a greater risk of being **misleading** if it does not identify the nature of the product or service being promoted and the audience does not already know.

7.4.1 If some members of the audience do not know the nature of the product or service, they cannot use prior knowledge about its characteristics and may misinterpret information provided.

7.4.2 For example, an advertisement may say "*Our 11% returns shows you get great returns and low risk with Gumzoo!*". This may be misleading if the audience does not know what type of investment Gumzoo is (mortgage trust, term deposit, sharemarket fund, etc) and the ad does not give any indication.

7.5 Promoters are encouraged to not give disproportionate prominence to past performance in promotions for a product or service.

7.5.1 The prominence of past performance information in a promotion can be compared with the weight that might be given to past performance by a knowledgeable investor when selecting a product or service of that kind.

7.5.2 This good practice guideline is included because many people hold unrealistic beliefs about the predictive power of past performance for individual products or services. In addition, past performance should never be the sole factor considered when selecting a product or service.

7.5.3 The pertinent issue is the appropriate balance of prominence between relevant factors. A disproportionate emphasis on past performance may undermine public understanding about making sound investment decisions.

7.5.4 Layout affects the prominence of material. In getting a balance in prominence, promoters need to consider that pictures, graphs and tables may have greater impact than text. The size and position of text may also be relevant.

8. Implications about future returns

8.1 A promotion with information about past performance has a greater risk of being **misleading** if it is presented:

(a) in a manner that implies it constitutes a projection illustrating the likely future value of an investment; or

(b) in a way that creates the impression that substantially the same returns will be achieved in the future.

8.1.1 For example, using a verb in the present continuous tense can imply ongoing conduct and that past performance will continue (eg "*we outperform the share index*").

8.2 A promotion with information about past performance has a greater risk of being **misleading** unless it draws attention (unambiguously and without reservation) to the fact that past performance will not necessarily be repeated.

8.2.1 A warning is necessary because people in the audience may hold an unrealistic belief about the predictive power of past performance information.

8.2.2 This warning should be presented legibly or audibly (or both) in the main part of the promotion and in close proximity to the past performance information. It should:

- be on the same page;
- be in a font size that is easily read and/or in speech that is easily understood; and
- not be buried amongst other text.

8.2.3 Possible wording for a future performance warning includes:

- *"Past performance is not a reliable indicator of future performance.*"
- *"Investments can go up and down. Past performance is not necessarily indicative of future performance."*

8.2.4 A warning is likely to be ineffective if it:

- might be interpreted as implying a likelihood (though no guarantee) that past performance will be repeated (unless such an implication can be substantiated); or
- does not adequately bring the audience's attention to the issue.

8.2.5 Examples that are less likely to be effective include:

- *"Past performance is not a guarantee of future performance."*
- *"Future returns may vary."*

8.3 It may be **misleading** to imply that reliance on simple past performance figures would be a good way to select a financial product or service.

8.3.1 Promotions have a higher risk of being misleading if they focus on past performance as a sole or dominant method of selecting a financial product or service.

8.3.2 The issue here is an implication about the significance of simple past performance figures, without any reference to how the returns were achieved or their relevance to future circumstances.

8.3.3 If a promotion implies that some aspect of past performance should be the sole or dominant method of selecting a financial product or service, the promoter should have evidence to substantiate the implication.

9. Time periods

9.1 A promotion may be **misleading** if it uses past performance information from:

(a) an inappropriate or irrelevant investment period;

(b) an inappropriately short time period; or

(c) inconsistent time periods which show better performance by the selection of periods.

9.2 If a promotion contains past performance information, it should include information relating to a relevant and sufficient period (or periods) of past performance to give a balanced indication of past performance.

9.2.1 What is a “sufficient period” to give a balanced indication of past performance will depend on a range of factors, such as:

- the usual holding period for such an investment;
- the volatility of performance in the asset class;
- the volatility of performance in the particular investment; and
- the sensitivity of the investment’s performance to different market conditions.

9.3 A promotion which refers to past performance should include past performance information for standardised periods:

(a) the single figure for the per annum return over the previous five years; or

(b) the single figure for the per annum return for the whole period the investment has been available (if less than five years).

9.3.1 Where a reference to past performance includes performance rankings, the rankings should be disclosed over the same standardised period(s).

9.3.2 In this context, “year” means 12 months, not a calendar year or a financial year.

9.3.3 If the performance history is less than 5 years, the return for the whole history should be shown and the period stated.

- e.g. the fund has returned 8.0% in the year to June 2003 and 5.9%p.a. over the life of the fund (50 months).

9.3.4 Note that the mere use of a return figure for the standardised period does not provide immunity from being misleading (see especially 9.2). There may be other important performance or contextual factors that mean:

- past returns are of less than usual relevance to future prospects, and
- the audience would not be aware of these factors.

The promoter has the option of not mentioning performance or giving enough information to avoid being misleading.

9.4 Performance information for standardised periods should be at least as prominent as other performance information.

9.4.1 Non-misleading past performance information can be given for other periods, as long as the figures for standardised periods are also given, and are at least as prominent.

9.5 Information for standardised periods is not relevant for cash-type investments, where it is adequate to give performance information for the most recent period.

9.5.1 For cash-type investments with a fluctuating rate, the "current rate" is an annualised return based on a minimum seven-day average.

9.5.2 A cash management trust is an example of a cash-type investment.

9.6 For investments that have been in existence for less than one year, using such a short performance period to promote the investment would usually be inappropriate and may be **misleading** (cash-type investments excluded). An exception is reports aimed at existing clients of the product or service (and/or their advisers) that are clearly for information purposes and not promotional purposes.

9.7 Regular publications such as a periodic fact sheet may contain the latest month, quarter or year-to-date figure, provided such figures are clearly for information purposes and are not displayed more prominently than other figures.

9.7.1 See para 4.3 on the scope of these guidelines. Publications that are not considered promotions are outside the scope of these guidelines.

10. Out of date figures

10.1 Promotional material has a greater risk of being **misleading** if:

(a) it does not use the most recent information available; and

(b) subsequent available information is inconsistent with the information used or means it has reduced relevance.

10.1.1 For example, relevance may be reduced if a fund's performance has deteriorated compared to similar products and services or relevant benchmarks.

10.2 Promotional material should use up to date performance data.

10.2.1 "Up to date" means the most recent data that is available at the last practical opportunity to update the material in the verification and publication process.

10.2.2 Using up to date data:

- reduces the risk of a promotion being misleading, and
- assists comparison by consumers.

10.3 When an investment sector commonly uses a particular performance reporting period, past performance information should be current to the most recent end date for which information is available.

10.3.1 The end of the calendar month is the usual end date for retail managed funds.

10.4 In easily updated media (such as daily, weekly or monthly print media, the internet, broadcast media and direct mail advertisements) performance data would not be considered 'up to date' if more than three months had elapsed since the end date being used.

10.4.1 For example, if performance was calculated monthly, 30 December figures would not be 'up to date' in a newspaper advertisement in April. The latest available figures should be used.

10.4.2 For funds which only calculate returns annually or bi-annually (such as some superannuation funds), the most recent end date may be many months ago. It is good practice to only use performance data in promotions when it is 'up to date' (ie no more than 3 months old).

10.4.3 The verification and production process for promotional material should be designed so that performance figures can be easily updated (either before the first publication or during repeated publication).

10.5 Promotions should not contain any statement of fact that the promoter has reason to believe is likely to become untrue while the promotion is still in use.

10.6 Where past performance information is used in a publication with a long circulation period (e.g. an advertisement in an investor annual magazine), the promotion should:

(a) prominently display the end date for the performance figures, and

(b) show how current performance information can be obtained, where relevant (e.g. from a web site address).

10.7 Promotions should show the dates or period that the past performance information relates to.

10.7.1 The following are examples of how performance information may be related to a period or time:

- % pa for five years to 30 September 2003
- % pa for life of fund (12 years to 30 September 2003)
- % pa for life of fund (1 January 2002 to 30 September 2003)

11. "Non-actual" past performance figures

11.1 To the extent that actual past performance information for a product or service does not exist, promotions can only contain "non-actual" information where the result will not be **misleading**.

11.1.1 "Non-actual" performance covers a broad range of data. Terms used include "hypothetical", "indicative", "simulated" or "modelled" past performance.

11.1.2 This has been a major problem area for misleading promotional material. Promoters are warned to exercise extreme care on this issue.

11.1.3 Whether the use of non-actual performance is misleading will depend on all the circumstances, including how it is presented, the assumptions behind the data and the audience. Other paragraphs in section 11 deal with some specific aspects.

11.1.4 Overall, the following are the only scenarios where it is clear that non-actual performance <u>may</u> be able to be used in a non-misleading way (given appropriate presentation):

- where a new fund is identical to an existing fund, except for different fees (eg a new retail fund will invest in an existing wholesale fund);
- where the new fund will mirror an index.

11.2 "Non-actual" performance information will be **misleading** if its true status is not clearly disclosed.

11.2.1 Terms used include "hypothetical", "indicative", "simulated" or "modelled" past performance. These terms and concepts will be unfamiliar to many people outside the industry. For a consumer audience, care would be needed to ensure people are not misled about the significance of the figures.

11.2.2 In particular, the term “indicative” is not recommended, as some people may assume it means indicative of future returns.

11.3 Where the non-actual performance information relies on another existing product or service, there is a greater risk of it being **misleading** unless the same entity (or entities) are responsible for achieving the performance in both the promoted product or service and the existing product or service.

11.3.1 Where achieving performance requires skill, it may be misleading to make an implicit assumption that the entity could have achieved the same performance as another entity has actually achieved in the past.

11.3.2 Where the intent is to show the historical performance of an asset class or category of investments, this may be best shown by an index or the median returns for all managers in the category (labelled as such).

11.4 “Non-actual” performance information may be **misleading** if:

(a) it does not accurately represent how the investment would have performed if it had existed in the past; or

(b) the calculation involves selections, adjustments or assumptions where a favourable result may have been achieved by using the benefit of hindsight; or

(c) the calculation involves significant assumptions that do not necessarily reflect how the investment would have performed if it had existed; or

(d) the calculation involves significant selections, adjustments or assumptions that may not apply in the future, or

(e) the assumptions and adjustments used to produce the information are not readily available to the audience or unlikely to be understood by the audience.

11.4.1 Many people in a target audience are likely to assume that non-actual past performance information is an accurate reflection of how the investment would have performed if it had existed in the past. If this assumption is wrong, the promotion is likely to be misleading.

11.4.2 Depending on the investment, the following factors may involve selection with the benefit of hindsight:

- selection of external investment manager(s) (where discretionary);
- asset allocation; or
- adjustments to the mandate that was actually in place during the relevant period.

11.4.3 If a mathematical model has been created with the benefit of hindsight, "back-tested" data may give a misleading impression of the fund manager's ability to choose a strategy that will succeed in the future.

11.4.4 The methodology for calculating the past performance should be readily available (eg in a Product Disclosure Statement and website). However, where people may be misled without this information, it should be sufficiently summarised in the promotional material itself.

11.5 Non-actual past performance that is not based entirely on other existing investments has an even greater risk of being **misleading** and should not be used in promotional material for a retail audience.

The exception is where a modelled investment strategy follows a rigid and predetermined mathematical process (such as index matching), and where prices on the relevant markets are unlikely to have been influenced by the operation of such an investment.

11.5.1 The data covered by this section are usually referred to as "hypothetical", "simulated", "modelled" or "back-tested" past performance.

11.5.2 The only scenario where it is clear that the exception may apply is where the new fund will mirror an index (see 11.1.4).

11.6 When presenting past performance information, actual fund returns should not be blurred with non-actual returns. Once an investment has an actual history, any non-actual returns should be clearly separated from the actual returns and adequately explained.

11.6.1 Merely attaching footnotes or similar to distinguish non-actual from actual returns within a table is unlikely to be effective in alerting the audience to the distinction. The following is one acceptable method to distinguish between actual and non-actual performance.

Example:
The XYZ Retail Fund has been operating since January 2001. To give a longer term view of our performance in this asset class, we have shown longer returns for the XYZ Wholesale Fund. The Wholesale Fund has identical investments, and we have adjusted returns to reflect fee differences.

	1 year	***3 year***	***5 year***	***10 year***
XYZ Retail Fund	*9%*	*-*	*-*	*-*
XYZ Wholesale Fund	*-*	*11.5%*	*7%*	*12%*

Figures are % pa up to 30 September 2003

12. Treatment of fees

12.1 The use of gross returns may be **misleading**.

12.1.1 Potential investors are interested in the true returns they receive, ie returns after fees ('net returns'). Many potential investors would assume that returns quoted in promotions are net returns. Also, the use of figures calculated in different ways restricts comparison between products and services from different entities.

12.1.2 In the past, gross returns have sometimes been used to compare investment performance to an index. This practice is discouraged as:

- it may mislead some members of the audience about real returns;
- it reduces comparability between performance information from different sources; and
- it distorts the comparison between active and passive managers by ignoring the higher investment management fees on actively managed funds.

12.2 Returns should be net of fees to the greatest extent practicable.

12.3 Where the fee level is variable, the maximum fee should be deducted.

12.4 Where it would be misleading or impracticable to deduct some fees, the existence of undeducted fees should be prominently disclosed.

12.5 Where practicable, the size of undeducted fees should also be disclosed.

12.5.1 Disclosure of key undeducted fees (in $ or % terms) can be concise:

- the actual fee (eg "These returns are after deduction of ongoing fees. A 4% fee also applies on the initial investment.")
- the range of fees (eg "Quoted returns do not take account of the entry fee of 2–4%.")
- the maximum fee (eg "These returns are after deduction of ongoing fees. A fee of up to 4% also applies on all contributions.")

12.6 Where a product or service is offered with multiple fee options, it may be **misleading** to only give returns for the option that shows the highest net returns.

12.6.1 For example, a fund's five-year net returns may be 10% pa for the entry fee option and 9.6% pa for the nil-entry fee option. Acceptable alternatives for quoting net returns are:

- give returns for both options;

- only give returns for the option with the lower net returns; or
- give returns for the option with the lower net returns, and disclose the returns for the other option in a footnote.

12.7 Where a scenario is given for a specific investment period, it may be **misleading** to not deduct entry and exit fees.

12.7.1 The following is an example of this special case:

"If you had placed $10,000 in the XYZ Fund in 1985, it would be worth $740,000 today."

Such a scenario should be calculated on the basis that the hypothetical investor had bought the investment at the start date and sold it at the end date. The appropriate methodology would include:

- all relevant fees should be deducted, including entry, annual, exit and performance fees;
- returns should be calculated on an "offer to bid" or "entry price to exit price" basis; and
- current fees should be applied, even if different fees existed over the relevant period.

13. Information on risk

13.1 It is good practice to inform potential investors about the level of risk in various investments, where practical.

13.1.1 It is recognised that communicating information about volatility and other risks is not an easy task. There are many possible methods, including:

- a qualitative comparison with other investments (eg "returns are likely to vary up and down more than the average sharemarket fund");
- a graph of returns from the investment over a substantial period (preferably also showing the relevant benchmark);
- a bar chart or table showing separate figures for each calendar year (this gives an indication of the range of historical returns);
- a scatter graph showing return and standard deviation of comparable investments (preferably also showing the sector mean or index); or
- graphic presentation showing the location of different investment types on a risk/return continuum.

13.1.2 Whether a technique (or any technique) is appropriate will depend on the communication medium and the audience that may view the promotion. It may be possible to use a two tier approach. A short, simple message on risk should be widely understood. Additional, more complex information on risk may be used to benefit the more sophisticated part of the audience, so long as it does not mislead any other part of the audience.

13.1.3 ASIC encourages industry associations to develop standardised ways to communicate the risk of an investment. Risk may be relative to other investments in the asset class or relative to other forms of investment (such as cash).

13.2 A promotion has a greater risk of being **misleading** if it compares the returns of an investment or asset class with those of a significantly lower risk investment or asset class without disclosing the difference in risk.

14.4.1 Overall returns are only one aspect of an investment's performance. Risk and volatility may also be important relevant considerations when making comparisons. For example, it may be misleading to compare returns of a mortgage trust with a bank deposit without noting the difference in risk.

13.3 A promotion has a greater likelihood of being **misleading** if:

(a) it does not disclose the product or service's risk level; and

(b) the product or service has an unusually high risk level, or special risk factors that would not be apparent to the audience.

14. Calculations

14.1 Figures should be calculated in accordance with industry standards and common industry practices (unless inconsistent with these guidelines). To aid comparison and avoid **misleading** the audience, divergent methodologies should be avoided.

14.1.1 At the time of writing, relevant standards included:

- IFSA Standard No 6.00 Fund Performance – Calculation and Presentation of Returns (for retail clients)
- IFSA Guidance Note No 1.00 Australian Investment Performance Standards (for wholesale clients).

14.2 Returns for periods of one year or more should be annualised.

14.3 Returns for periods less than one year should not be annualised. An exception is cash-type investments.

14.3.1 Investment values and distributions can vary considerably, so annualising short-term returns may give a misleading impression.

14.4 A promotion has a greater risk of being **misleading** if it uses a non-standard methodology without clearly disclosing the deviations and their implications.

15. Presentation issues

15.1 A promotion using past performance information may be **misleading** if necessary qualifications, warnings or conditions are not given sufficient prominence or legibility.

15.1.1 Information is unlikely to be received by the audience if it is in small print, within a dense text block, only shown on TV for a brief period or where there is distracting simultaneous content.

15.1.2 It is the promoter's responsibility to ensure essential information comes to the audience's attention. It is not the audience's responsibility to seek it out.

15.2 Complicated or ambiguous graphical presentations have a greater risk of being **misleading** if some members of the audience are likely to draw incorrect impressions from the material.

15.3 Graphs and other diagrams should be to scale, and what is being depicted should be a fair representation of the position with all relevant information provided.

15.4 A linear scale should be used for each axis of bar charts and line graphs. Graphs rotated on an angle or using a logarithmic scale are likely to be **misleading** (unless directed at an audience that is familiar with them).

15.5 Where a graph of past performance is presented, it is good practice to:

(a) use a hypothetical $10,000 investment (unless the minimum investment amount is higher, where $100,000 would be more appropriate);

(b) show the comparative performance of the assumed investment amount in a relevant market sector index (if one exists) or the median for the investment category (if one exists); and

(c) set out key assumptions, such as where the graph:

(i) does not take account of entry and exit fees;

(ii) assumes distributions are reinvested; and

(iii) does not take into account any taxes payable by the investor.

15.6 If returns are calculated in a foreign currency, the promotion has a high risk of being **misleading** unless this is prominently drawn to the reader's attention.

15.7 If returns are calculated in a foreign currency and returns in Australian dollars would be significantly different, it may be **misleading** to neither:

- show the impact of exchange rate variations, nor
- show returns in Australian dollars.

16. Comparisons

16.1 Where promoters use past performance information, they are encouraged to use comparisons with a benchmark or the average for a class of similar products or services.

16.1.1 If a comparison is with an index for a dissimilar class of products or services as a contrast, this point should be clearly communicated if some members of the audience may misunderstand the intent of the comparison.

16.1.2 Where a benchmark is administered by an organisation that is affiliated with the promoted product or service, this benchmark should not be used unless it is widely recognised.

16.2 A comparison of returns has a greater risk of being **misleading** if it is not shown on a current, complete and accurate basis.

16.2.1 Where the past performance of an investment is compared to only a sub-set of comparable investments, the selection of other investments should have a fair and objective basis. For example, it is likely to be misleading to exclude investments that had a better past performance record in terms of return and/or risk.

16.2.2 Some comparisons are produced by external third parties (eg research houses) and only produced at infrequent intervals (e.g. annually). Care should be taken to ensure the comparison is not outdated and therefore potentially misleading (see section 9).

16.2.3 A third party source for comparisons, while generally desirable, is no guarantee of legitimacy. There may be limitations in the original comparison. The way it is used in a promotion may make it misleading.

16.3 Comparisons of returns should clearly explain all factors necessary to ensure the comparison is not **misleading**.

16.4 A promoter should take reasonable steps to ensure that:

(a) the facts on which any comparison or contrast is made are verified, and

(b) any relevant assumptions are disclosed.

16.5 A promotion has a greater risk of being **misleading** if it compares the performance of an investment with any benchmark or investment which is different in terms of:

(a) investment objectives,

(b) types of investments made, or

(c) countries or markets covered,

unless the differences are clearly disclosed.

16.5.1 Where the implications of the differences may not be obvious to the audience, these should also be presented in terms the audience would understand.

16.6 Where a comparison is made for a short period, the limitations of such a comparison should be clearly disclosed.

16.6.1 For equity linked investments, a period under three years would be considered short.

