

Tel: 020 7066 9346
E-mail: enquiries@fs-cp.org.uk

Natalie Barton
Retail Projects Department
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

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Our ref: WGA/smb

Dear Natalie

Consultation Paper CP183 (Standardising Past Performance)

This is the Consumer Panel's response to CP183.

Overall Approach

The Panel welcomes the FSA's proposals for the standardisation of past performance information in advertisements and other financial promotions. We are particularly pleased that the proposals are supported by the results of consumer research. However there are some areas where we feel that the FSA could go further to protect consumers and these are reflected in our response.

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?

We agree that it is not practical to create a standardised form and presentation of past performance which would be suitable for all investment products. We do not object to the retention of the existing format for standardised information for all products that are not collective investment schemes or unit-linked products, but we would like to see further consumer research in this area with a view to identifying improvements in the future. We support the arguments put forward in the paper for the use of "simple returns" and we believe that these are more likely to be understood by consumers than other options, such as "risk-adjusted returns". We agree that five years' individual annual returns, shown as percentages, will be reasonably clear and that this will be the most appropriate form in which to present the standardised information.

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?

The Panel agrees that firms should not use monetary terms to present past performance information in advertisements directed at the general public and we would like this to be reflected in rules rather than guidance. With regard to the reference in para 3.53 to 'less-sophisticated' consumers, we believe that the vast majority of consumers come into this category.

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

We agree with the FSA's proposed approach. Using the twelve-month period ending with the most recent full month will ensure that advertisements present the most up-to-date performance data possible.

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?

We agree that firms should not be allowed to mention past performance in relation to a product with less than twelve months' performance data. For products with between one and five years' performance data we think that a zero figure or suitable words such as 'not existing in this period' should be given for each of the appropriate years, so that it is clear to consumers that there is limited past performance information available. An explanatory note could be used to explain these words or figures.

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

Given that one of the functions of standardised past performance information is to counterbalance the past performance information produced by firms, it is right that firms should be prevented from using their own information in isolation. But we believe that the standardised data should be given more prominence than any other information about past performance rather than 'no less prominence'.

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

The Panel is disappointed that no effort has been made to quantify the cost and benefits of these proposals to consumers. In addition the costs to industry identified in the Cost Benefit Analysis are not offset by savings that they will enjoy by receiving fewer complaints from consumers who have been misled by one of their advertisements and ultimately fewer instances when they will have to meet the cost of redress. In addition we would expect firms to benefit from more repeat business from consumers who have not been misled.

Draft Rules

The FSA should recognise that many consumers will assume a link between past and future performance. In the Panel's response to CP 132 (the presentation of past performance and bond fund yields in financial promotions) we commented on the use of the past performance warning. We thought that the FSA should draft a number of prescribed warnings, from which firms could choose. It is disappointing that the FSA intends instead to carry forward a 'descriptive' approach, which creates an area of uncertainty and subjectivity and possible consumer detriment. We repeat our view that the warnings should be prescribed.

The Panel supported the FSA's original proposal to introduce a rule banning the use of past performance as the main message in an advert, although the FSA has since decided to tackle this problem by the use of guidance, rather a rule. The Panel has been reassured that the FSA will be able to take action for breach of the clear, fair and not misleading rule by demonstrating a lack of adherence to the guidance on predominance. The Panel would like the FSA to monitor the cases of predominance that are dealt with in this way over the next twelve months, with a view to assessing the benefits to the consumer and to firms of this more flexible, guidance-based approach.

The Panel was also concerned in its response to CP132 that the guidance proposed on the circumstances in which hypothetical past performance could be used was too general and vague. Examples are needed here too.

This links to another fundamental issue. The FSA's restrictive policy on the disclosure of information relating to misleading advertisements and general lack of transparency in the monitoring/enforcement process will mean that neither firms nor consumers will be aware of aspects of past performance data which the FSA regards as problematic or misleading. In deciding against providing examples where promotions are likely to be misleading the FSA is disregarding an opportunity to help both firms and consumers. If the FSA retains this stance, we would like the FSA to use the existing Financial Promotions Bulletin to illustrate more clearly to firms and consumers alike what is and is not considered potentially misleading.

Yours sincerely,



Colin Brown
Chairman
FS Consumer Panel

cc.

FS Consumer Panel can be contacted c/o The
Consumer Panel Secretariat at the FSA

Tel: 0207 066 9346 Fax: 0207 066 9711
Email: enquiries@fs-cp.org.uk
Website: <http://www.fs-cp.org.uk>