

**Performance Presentation Standards
for
Collective Investment Schemes**



OICU-IOSCO

**Report from the Technical Committee
of the
International Organization of Securities Commissions**

May 2002

INTRODUCTION

This report (“Report”) presents an examination of the standards among the jurisdictions of the members of the Technical Committee Standing Committee on Investment Management (SC5) for the presentation of the performance of collective investment schemes (“CIS”) in advertisements and other marketing materials (“advertisements”).¹ This Report also presents general principles for the presentation of CIS performance information that were developed based upon SC5’s examination of the CIS performance presentation standards (“PPS”).²

Background. In 1999-2000, the IOSCO Emerging Markets Committee (“EMC”) asked its Working Group on Investment Managements (“WG5”) to examine the PPS in the jurisdictions of WG5 members. Based on this work, the EMC publicly released in December 2000 a report entitled Performance Presentation Standards for Collective Investment Schemes (“EMC Report”). The IOSCO Technical Committee mandated its SC5 to continue work in this area by comparing the PPS among SC5 and WG5 members, as well as among SC5 members themselves.

In May 2001, SC5 prepared and circulated to its members a questionnaire that was based on the questionnaire that WG5 had circulated to its members in connection with the EMC Report.³ Both questionnaires focused on, among other things: whether PPS exist, who sets them and whether they are mandatory; periods for presenting the performance information; disclosure of fees and expenses; and whether fees and expenses are reflected in the performance presentations. In its questionnaire, SC5 asked for additional information concerning advertisements. SC5 compared the PPS among SC5 and WG5 members based upon the responses to the questionnaires and other information about CIS performance presentations that was provided by SC5 members. As a result of the comparison, and further discussions among SC5 members, SC5 identified general principles for the presentation of CIS performance information.

Summary. This Report serves as a companion report to the EMC Report. The Report also addresses the role of the CIS regulator with respect to CIS performance

¹ As used in this Report, “advertisements” refers to CIS advertisements that contain CIS performance information, unless otherwise noted. In addition, “performance” refers to the actual performance of a CIS, and thus does not refer to projections of the future performance of a CIS.

² This Report is based on responses to the SC5 May 2001 questionnaire by all 18 of the SC5 jurisdictions that were members of SC5 at that time: Australia, Brazil, Canada, France, Germany, Hong Kong, Italy, Japan, Jersey, Luxembourg, Mexico, the Netherlands, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

³ Unlike the WG5 questionnaire, the SC5 questionnaire did not include questions about the Global Investment Performance Standards that have been formulated by the Association for Investment Management and Research.

presentations, and identifies some general principles for the presentation of CIS performance information. The Report has four sections: (1) the introduction; (2) a comparison of the responses of SC5 and WG5 jurisdictions to the questionnaires and a presentation of the additional information obtained from SC5 jurisdictions; (3) the formulation of general principles for the presentation of CIS performance information in advertisements; and (4) the conclusion and discussion of the way forward for CIS regulators in addressing CIS performance presentations. The appendix to the Report presents in tabular form the results of the SC5 questionnaire.

SC5 also requests industry comment on the issues discussed in the Report. Interested parties are requested to comment by September 30, 2002, in the manner described at the end of this Report.

RESPONSES TO THE QUESTIONNAIRES

The SC5 questionnaire contained many of the same questions posed by the WG5 questionnaire. It also contained additional questions concerning additional restrictions on the contents of advertisements and where investors can obtain information on CIS.

Comparison of SC5 and WG5 Responses

The significant differences and similarities in the responses to the SC5 and WG5 questionnaires are described below.⁴

- PPS exist in most SC5 jurisdictions (67%) and in most WG5 jurisdictions (59%). PPS can be mandated by law or established by rules or guidelines of the government securities regulator (“Regulator”), a self-regulatory organization (“SRO”), a professional association or other group. PPS must be followed in all advertisements in more SC5 jurisdictions (50%) than in responding WG5 jurisdictions (24%).
- It is more common for a Regulator to establish PPS in responding WG5 jurisdictions (53%) than in SC5 jurisdictions (33%). It is more common for an SRO to establish PPS in SC5 jurisdictions (22%) than in responding WG5 jurisdictions (12%). In four SC5 jurisdictions, the Regulator and an SRO together mandate PPS. None of the responding WG5 jurisdictions has this arrangement.

⁴ All SC5 members responded to the SC5 questionnaire. In contrast, only about 25% of WG5 members responded to the EMC-WG5 questionnaire (“responding WG5 jurisdictions”). The drafters of the EMC WG5 Report indicated that, in preparing the report, they assumed that a majority of WG5 members that did not respond to the WG5 questionnaire “simply did not have markets sufficiently developed to justify putting in place specialized regulatory standards addressing [PPS] for CIS.”

- A standardized period (or periods) for performance presentations in advertisements is mandated in a majority of SC5 jurisdictions (78%) and responding WG5 jurisdictions (59%).
 - In the SC5 and responding WG5 jurisdictions that mandate a standardized period of performance, an annual period for performance presentation is most commonly required.
 - In some SC5 and responding WG5 jurisdictions that mandate a standardized period of performance, presentation of additional periods of performance, such as for three-, five- or ten-year periods, is required.
 - In most SC5 and responding WG5 jurisdictions that mandate a standardized period or periods for presenting performance, CIS that have existed for a shorter period of time than the jurisdiction's minimum standardized performance period must present their performance for the entire period of their existence in more SC5 jurisdictions (33%) than in responding WG5 jurisdictions (18%).
- CIS volatility information is not required to be included in advertisements in most SC5 jurisdictions (67%) and responding WG5 (94%) jurisdictions. This may be due to the difficulty in formulating a measure of volatility that is readily understood by the average investor. In a number of SC5 jurisdictions (Australia, Canada, Hong Kong, Netherlands, Switzerland, United States), and some responding WG5 jurisdictions, however, performance presentations must include CIS performance information over different specified time periods. These presentations may provide some measure of CIS volatility.
- Performance benchmarks are required to be included in advertisements in a minority of SC5 jurisdictions (28%) and responding WG5 jurisdictions (24%). In the SC5 and responding WG5 jurisdictions that require the use of performance benchmarks, they are more commonly set by the CIS than approved by a Regulator.
- CIS performance presentations must clearly disclose entry fees, as well as any performance and management fees, in all SC5 jurisdictions and all responding WG5 jurisdictions (except one). Changes in these fees must be disclosed to CIS shareholders in most SC5 and responding WG5 jurisdictions.
- The use of firm composites (*i.e.*, aggregated performance information of more than one CIS or other account that is managed by a single CIS operator) in advertisements is not regulated in the vast majority of SC5 and responding WG5 jurisdictions.⁵

⁵ At least one SC5 jurisdiction (Italy) prohibits the use of CIS portfolio composites. In Italy, performance must be presented on a CIS portfolio basis only.

- Disclaimers are required to be included in advertisements in the vast majority of SC5 and responding WG5 jurisdictions. All SC5 jurisdictions require a disclaimer to the effect that “past results do not necessarily predict future results.” 82% of responding WG5 jurisdictions require some kind of disclaimer about performance, 71% of which require a disclaimer that is substantially similar to the one stated above.

Additional Information Obtained from SC5 Jurisdictions

The following information was obtained from SC5 responses to questions that were not part of the EMC-WG5 questionnaire:

- Almost all SC5 jurisdictions prohibit the use of misleading or fraudulent statements or omissions in advertisements, including advertisements that do not contain CIS performance information.
- In some SC5 jurisdictions that mandate a standardized period or periods of performance, CIS also may include other non-standardized performance information in advertisements.⁶
- In every SC5 jurisdiction, a bank may provide investors with information about which CIS to invest in. Only 72% of SC5 jurisdictions permit a CIS to provide such information.
- Some SC5 jurisdictions (Australia, Brazil, Italy, Japan, Spain, United States) require delivery of a prospectus: (a) before an investor makes a purchase, (b) at the time an investor makes a purchase, or (c) before an investor completes a purchase of a CIS.⁷ Some jurisdictions only require that a prospectus be offered or be made available upon request. Some jurisdictions (Spain) also require delivery of the most recent financial reports before an investor makes a purchase

⁶ In the United States and Canada, for example, CIS may supplement the standardized performance information with any other historical measure of CIS performance if such measure reflects all elements of return, is set out in no greater prominence than the standardized performance and identifies the length of and last day of the period for which the performance is measured.

⁷ The United Kingdom requires delivery of a Key Features Document before investors complete a purchase, containing information about the aims, risks, commitments and charges for the product. Canada requires delivery of a simplified prospectus within two days of a purchase. Investors may withdraw from the purchase if they exercise this right within two days after they receive the prospectus.

Australia currently requires delivery of a prospectus when an offer of investment is made. Under reforms now underway, the same delivery requirement will apply to a new prospectus-like document called a Product Disclosure Statement.

of a CIS. Other jurisdictions (Mexico) require that contracts with investors stipulate the means through which prospectuses and modifications to those prospectuses will be available to investors as well as the means by which receipt of such documents will be demonstrated.

- Advertisements on the internet are permitted in all SC5 jurisdictions, although three SC5 jurisdictions do not allow advertisements to be made on television.
- In SC5 jurisdictions, the CIS operator is most commonly held responsible for the accuracy of the contents of advertisements.

Additionally, in six SC5 jurisdictions (Australia, Canada, Italy, Portugal, Sweden and the United States), PPS include standardized methods to calculate CIS performance (*i.e.*, a formula). The formulas do not, however, make the same assumptions about the treatment of:

Front-end Sales Loads. PPS in Australia, Portugal and Canada do not require the deduction of any front-end sales loads from the gross amount invested.⁸ PPS in the United States require the deduction of the maximum sales load that could be applicable from the gross amount invested. PPS in Italy also require front-end sales loads to be deducted.

Deferred Sales Loads and Redemption Fees. PPS in Canada assume a complete redemption at the end of the performance period, but do not require deduction of redemption fees or deferred sales loads. PPS in Australia and Portugal exclude redemption fees from the computation. PPS in the United States assume a complete redemption at the end of the period and require the deduction of all such non-recurring fees. PPS in Italy require the deduction of deferred sales loads and redemption fees.

Ongoing Fees and Expenses. PPS in the United States, Canada, Italy and Portugal require all ongoing fees and expenses be taken into account and accrued daily. In addition, PPS in the United States and Canada require the deduction of any recurring fee that is charged to all of the shareholder accounts of a CIS.

Reinvestment of Dividends and Distributions. All of the standardized formulas take the reinvestment of dividends and distributions into account, but appear to do so in varied ways. PPS in Canada and the United States assume that all dividends and distributions are reinvested on the reinvestment date. PPS in Portugal assume the reinvestment of income as well as dividends and distributions on the date when the

⁸ PPS in Canada require disclosure that the performance returns do not take into account sales charges that may be paid by investors and therefore reduce the returns for the investors. Although there are no specific statutory requirements, Australia would be likely to regard performance figures as misleading unless the effect of excluding front-end fees from the calculation is disclosed.

CIS's net asset value is reduced due to the distribution. PPS in Sweden assume that dividends are reinvested at the price prevailing on the date of the dividend.

THE FORMULATION OF GENERAL PRINCIPLES FOR THE REGULATION OF CIS PERFORMANCE PRESENTATIONS

Why do investors regard past performance of CIS as important?

In SC5 jurisdictions, many CIS use past performance as a primary marketing tool.⁹ Some CIS advertise aggressively to compete for investors, and some CIS and CIS operators have substantially increased their advertising expenditures in recent years, especially when their performance has been strong.¹⁰ Many advertisements include and prominently feature CIS performance information.

Anecdotal evidence suggests that some investors choose to invest in a CIS primarily based on the CIS's past performance, and without necessarily reviewing the CIS's prospectus or other information that is available about the CIS. CIS investors may believe that the past performance of a CIS is indicative of the future performance of the CIS, and reflects the ability of the CIS's operator to meet their investment goals.

Why is the regulation of the presentation of CIS performance important?

The regulation of the presentation of CIS performance information in advertisements is important for a number of reasons. As noted above, some CIS use past performance as a primary marketing tool, and CIS performance advertising appears to have increased in recent years. In addition, some investors appear to consider past performance to be a very important, if not the most important, factor when choosing to

⁹ In SC5 jurisdictions, investors may obtain performance and other information about CIS from numerous institutions (including banks, broker-dealers, and the CIS itself). Most SC5 jurisdictions permit (but do not necessarily require) CIS and/or market intermediaries to make CIS performance information available to investors through, among other things, direct mail, in-person meetings, internet, television, newspapers, magazines and radio (although not all SC5 jurisdictions allow advertisements in all of these media). Some SC5 jurisdictions require CIS performance information to be disclosed to investors, by requiring its inclusion in the CIS's prospectus or simplified prospectus (Australia, Canada, Portugal, Sweden, Italy, United States) and/or annual CIS financial statements (Spain, Sweden, United States).

¹⁰ CIS in the United States reportedly spent 22% more on advertising in 2000 (a year in which many CIS achieved strong performance) than in 1999. Robert D. Hershey, Jr., *Ad Spending Grows for Funds*, The New York Times, April 22, 2001, at Section 3. In contrast, in 2001 (a year in which far fewer CIS achieved strong performance), CIS in the United States reportedly spent 25% less on advertising than in 2000. Colin Dodds, *Fund Ad Spending Plunged 25% in 2001*, www.ignites.com, February 20, 2002.

invest in CIS. Investors may be misled by CIS performance information in advertisements if it is calculated inaccurately or if it is presented in a manner that does not otherwise accurately reflect the performance of the CIS for the period or periods presented. Investors also may be misled if they cannot meaningfully compare the performance claims of CIS.

Investors may be misled by CIS performance information that focuses on the periods during which the CIS produced its best returns, and that excludes periods during which the CIS did not perform as well. In addition, CIS investors may be misled by performance information that inaccurately suggests that the performance of the CIS was better than the performance of “the market,” relevant performance benchmarks or of other CIS in general. Investors also may be misled by CIS performance presentations that inaccurately suggest that they reflect the current or future performance of the CIS, rather than their historical performance. Further, investors may be misled by CIS performance information that is calculated without deducting the fees and expenses that are associated with an investment in a CIS, or that is not accompanied by prominent disclosure that such fees and expenses are charged by the CIS and will reduce the actual performance of the CIS and the returns to the investors. Finally, if CIS performance information is not presented in a standardized manner, CIS investors may not be able to make meaningful comparisons of the performance claims of different CIS, and thus may be less able to make fully informed investment decisions.

The Role of the Regulator

General. The Regulator should seek to ensure that CIS performance presentations do not mislead investors. The Regulator may do so by taking steps to ensure that CIS performance presentations are accurate, presented fairly, complete and understandable (*e.g.*, performance is accurately calculated and accompanied by any disclosure that is necessary to ensure that the presentations are not misleading).

Regulators in SC5 jurisdictions follow different approaches in attempting to ensure that investors are not misled by CIS performance information. Almost all SC5 jurisdictions generally prohibit the use of misleading or fraudulent statements or omissions in advertisements, including advertisements that do not contain CIS performance information. Some SC5 jurisdictions also rely on PPS to specifically regulate the use of CIS performance information.

The Regulator also should seek to ensure that investors can make meaningful comparisons of CIS performance information. Some SC5 jurisdictions facilitate the ability of CIS investors to make meaningful comparisons of the performance of different CIS by requiring the use of standardized performance calculation formulas, standardized time periods, and performance benchmarks.

PPS. PPS are rules or guidelines for the calculation and presentation of CIS performance information. PPS may address the following areas, among others: (1) standardized formulas for calculating performance; (2) the treatment of fees and expenses

in calculating CIS performance; (3) standardized time periods for presenting performance information (including a minimum period for presenting the information); (4) the use of performance benchmarks to compare CIS performance; and (5) the use of disclaimers. As described briefly below, each of these PPS may protect CIS investors from being misled by CIS performance information in different ways. Many of the PPS also promote CIS investors' ability to compare meaningfully the performance of different CIS.

Standardized Formulas. Standardized formulas for the calculation of CIS performance information promote investors' ability to compare CIS performance presentations and may prevent misleading performance claims by CIS. In the absence of such formulas, CIS can advertise different types of performance data that are calculated in different ways, which can make it difficult for investors to compare performance claims among CIS. Some calculation methods may distort a CIS's performance. In addition, in the absence of standardized formulas, CIS performance information may mislead investors even if that information is accompanied by explanatory disclosures about the calculation methods used by the CIS.

Standardized formulas require all CIS to make the same assumptions when calculating their performance, rather than permitting CIS to make assumptions that may inflate their performance (*e.g.*, some formulas require the deduction of front-end sales loads from the gross amount invested, so that CIS cannot "inflate" performance by not taking into account these sales charges).¹¹ Standardized formulas also may prescribe the method of performance calculation that is most appropriate for certain types of CIS. For example, CIS that invest primarily in equities may be required to present their total returns, while CIS that invest primarily in fixed-income securities may be required to present both their total returns¹² and their yields.¹³

¹¹ Only six SC5 jurisdictions have standardized formulas for calculating performance.

¹² A CIS's total return generally is the sum of all of its earnings plus any changes in the value of assets, reduced by all expenses accrued during a measuring period.

¹³ A CIS's yield generally is a historical figure typically computed by dividing net investment income per share during a recent short period of time by a public offering price and annualizing the result. A CIS's yield typically does not measure changes in the value of principal.

Yield presentations by CIS may create the misleading impression that investors can expect to receive this rate of return from the CIS in the future; their use also may lead investors to confuse the "yields" of a CIS, which reflect historical returns, with yields of fixed-income securities, which reflect a promised rate of return by the issuer of the securities. In addition, fixed-income CIS may be more suited to advertisements of yield than equity CIS because fixed-income CIS tend to distribute, in the form of dividends, the income received on their portfolio securities evenly throughout a given period. In contrast, equity CIS tend to distribute, in the form of dividends, the dividend income that they receive on their

Fees and Expenses. Fees and expenses associated with an investment in a CIS may have a significant impact on the actual returns that are experienced by CIS investors. The PPS in many jurisdictions address whether CIS performance calculations must reflect the impact of fees and expenses, regardless of whether those PPS also require the use of standardized formulas for calculating CIS performance. Such PPS promote comparability among CIS and help to prevent CIS from advertising inflated CIS performance.

Standardized Time Periods. PPS may specify the use of standardized time periods for presenting performance information. Such PPS require all CIS to use the same time periods when presenting their performance information (e.g., 1-, 5- and 10-year performance as of the most recently completed calendar quarter). Such PPS also may prevent a CIS from advertising its performance in the best possible light, *i.e.*, by focusing exclusively on a period during which the CIS achieved its best performance without disclosing, for instance, a more recent period in which the CIS performed poorly. Standardized time periods also promote comparability among CIS. PPS that require or recommend the use of standardized time periods also help to demonstrate to investors the volatility of a CIS over time, as well as the relative volatility of different CIS over time.

Use of Performance Benchmarks. PPS that require a CIS to compare its performance to that of a relevant performance benchmark enable investors to more readily compare the CIS's performance to that of the overall market (or a relevant portion of the market).¹⁴ That comparison may assist investors in determining whether a CIS's performance is generally more attributable to a rise or fall in the overall market (or a relevant portion of the market), or to the investment acumen, or lack thereof, of the CIS operator.

Use of Disclaimers. Disclaimers can be effective tools for communicating information to investors and may help prevent investors from being misled by CIS performance information. PPS that require CIS performance presentations to include disclaimers may readily provide CIS investors with information to assess the risks generally associated with an investment in a CIS or specific risks associated with different types of CIS. Disclaimers that are prominently displayed, rather than placed in

portfolio securities around calendar quarters (including year end). Equity CIS that advertise an annualized yield based on income received in a period that included a dividend distribution date would typically include yield figures that could be unrepresentatively high.

¹⁴ Performance benchmarks can be useful, but they should be CIS neutral (*i.e.*, not administered by an organization that is an affiliated person of the CIS, its operator or principal underwriter, unless the index is widely recognized and used), particularly if CIS are permitted to choose the performance benchmarks to which their performance is compared.

footnotes or small type font, are more effective in informing investors of the risks associated with investing in CIS. Almost all SC5 members require CIS performance presentations to include a disclaimer to the effect that past performance is not indicative of future results. This type of disclaimer helps to ensure that investors realize that CIS performance claims represent historic data, and do not constitute guarantees or projections of future performance.

Enforcement of PPS. Some SC5 jurisdictions impose mandatory PPS; others support voluntary PPS that are developed by SROs or other groups. In general, mandatory PPS may be more effective in ensuring that CIS performance presentations are not misleading if they can be enforced by the Regulator. Voluntary PPS also may be effective if competition and other pressures in the market place effectively force CIS to comply with the voluntary standards.¹⁵

To promote compliance with PPS, the Regulator may employ various means. For instance, the Regulator (or SRO) may review the contents of specific advertisements prior to their use to ensure that they contain no false or misleading statements and otherwise comply with PPS. In one SC5 jurisdiction (Spain), a special industry group undertakes to prevent the use of misleading statements or omissions in advertisements, and is empowered to revise or stop any new or ongoing advertising campaign.

Regulators also may be able to inspect any CIS to determine whether the CIS has calculated correctly and actually achieved the performance that it advertises. For instance, in at least one SC5 jurisdiction (United States), CIS are required to maintain records supporting their performance claims, and the Regulator's staff reviews this information during their inspections of CIS. Regulators also may rely on investor complaints about advertisements, and Regulators may review advertisements that appear in various media to determine whether the advertisements comply with PPS or are fraudulent or misleading. Generally, in SC5 jurisdictions, the CIS operator is most likely to be held responsible for the accuracy of the contents of advertisements.

General Principles for the Regulation of the Presentation of CIS Performance Information.

Although SC5 jurisdictions do not take a uniform approach in regulating the presentation of CIS performance information, certain common principles exist. They are listed below:

¹⁵ Even in jurisdictions in which PPS are voluntary, competitive pressures may compel a CIS to represent to investors in performance presentations that it complies with the PPS. In the event that such representations are false, the Regulator may be able to stop the CIS from continuing to make such representations by enforcing prohibitions against the use of false statements in CIS performance presentations.

- CIS performance presentations raise investor protection concerns when CIS performance is calculated inaccurately or presented in a misleading manner.
- Regulators can take different approaches to ensure that investors are not misled by CIS performance presentations. For example:
 - Regulators may enforce a general prohibition against the use of advertisements that contain false or misleading statements about CIS performance.
 - Regulators may adopt or endorse PPS for the calculation and presentation of CIS performance information.
- PPS can help to protect CIS investors from being misled by CIS performance information.
- PPS also can facilitate the ability of CIS investors to compare the performance information of different CIS.
- The Regulator, SRO, a professional organization, or other group can establish PPS.
- PPS can be mandatory or voluntary. Mandatory PPS that are enforceable may be more effective than voluntary PPS, although voluntary PPS may be effective if competitive or other pressures effectively force CIS to comply with the voluntary PPS.
- PPS may vary depending on the type of CIS concerned.
- The need for comprehensive PPS may vary from jurisdiction to jurisdiction, depending on the maturity of the CIS industry in the particular jurisdiction, the current CIS advertising practices and the history of abuses, if any.

CONCLUSION AND DISCUSSION OF THE WAY FORWARD FOR CIS REGULATORS

The presentation of CIS performance information raises important investor protection issues for Regulators. SC5 jurisdictions regulate CIS performance presentations in several ways, and the applicable standards for the presentation of CIS performance vary among SC5 jurisdictions. This Report highlights some of the differences and similarities of current regulation in this area.

Jurisdictions that do not require compliance with PPS may wish to evaluate and consider the effectiveness of voluntary PPS. All jurisdictions also may wish to consider whether existing PPS, whether mandatory or voluntary, are sufficiently comprehensive to

address the investor protection concerns presented by current CIS performance presentation practices.

The Technical Committee welcomes comments on the issues presented in this Report. Information about whether standards for the presentation of CIS performance in SC5 jurisdictions are complete and effective would be particularly helpful. Observations on whether the general principles outlined above are correct and sufficient are also encouraged.

All interested parties are requested to comment **by September 30, 2002**. Comments in English are invited by post, fax or e-mail, addressed as follows:

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Members of the Standing Committee may also ask for comments from members of the CIS trade association in their country. Written comments received will be sent to the IOSCO General Secretariat.

In addition, the Standing Committee intends to engage in further work on developing best practice standards for the presentation of CIS performance information in advertisements. The Standing Committee views these issues as important ones and looks forward to a continued dialogue with the CIS industry and other interested persons.

APPENDIX

PRESENTATION OF THE RESULTS OF THE TECHNICAL COMMITTEE SC5 SURVEY¹

Part A - Questions that were part of the EMC-WG5 Questionnaire:

Question 1 - Does your jurisdiction have standards for the presentation of performance information in CIS advertisements?

In this question, we assumed that the “yes” responses apply to advertisements that contain performance. The question does not address whether performance information is required to be included in advertisements.

The jurisdictions that answered “other” to this question stated the following:

- Certain advertisements must be submitted for approval by the regulator.

Country	No	Yes			
		Recommended	Some Advert.	All Advert.	Other
Australia		X			
Brazil				X	
Canada				X	
France			X		
Germany		X			
Hong Kong				X	
Italy				X	
Japan		X			
Jersey			X		
Luxembourg					X
Mexico	X				
Netherlands				X	
Portugal				X	
Spain			X ²		
Sweden		X			
Switzerland				X	
UK				X	
US				X	
TOTAL	1	4	3	9	1
%	6%	22%	17%	50%	6%

¹ Please note that due to decimal rounding, some responses may total more than 100%.

² The CIS industry issues standards that are mandatory for members, and the vast majority of CIS management companies are members.

Question 2 - Are changes being considered in this area?

Of the jurisdictions that answered that changes were being considered, Germany indicated that non-mandatory standards may be made mandatory. Mexico indicated that changes in legislation have made it possible for a regulator to create regulations on CIS advertisements, with specific rules relating to the presentation of performance information. The United States indicated that its regulations currently provide that CIS performance advertisements may contain only certain limited information (i.e., the substance of the information must be included in the CIS's statutory prospectus), and that changes are being considered to permit such advertisements to contain additional information.

Country	No	Yes
Australia		X
Brazil	X	
Canada	X	
France	X	
Germany		X
Hong Kong		X
Italy		X
Japan	X	
Jersey		X
Luxembourg	X	
Mexico		X
Netherlands	X	
Portugal	X	
Spain	X	
Sweden	X	
Switzerland	X	
UK		X
US		X
TOTAL	10	8
%	56%	44%

Question 3 - Are Performance Standards set by:

The jurisdictions that checked “other” indicated that:

- In France, a professional association issues guidelines that are approved by the government securities regulator (“Regulator”).
- In Germany, an association of the German investment industry sets standards.
- In The Netherlands, the central bank regulates PPS.

Country	Reg	SRO	Not set	Other
Australia	X	X		
Brazil	X	X		
Canada	X			
France	X			X
Germany				X
Hong Kong	X			
Italy	X			
Japan		X		
Jersey	X			
Luxembourg			X	
Mexico			X	
Netherlands				X
Portugal	X			
Spain	X	X		
Sweden		X		
Switzerland		X		
UK		X		
US	X	X		
TOTAL	10	8	2	3
%	56%	44%	11%	17%

Question 4.1 - CIS operators would prefer to use the period containing the CIS's best performance in their marketing materials. Does your jurisdiction require a standardized period of performance for presentation in CIS advertisements?

Country	No	Yes			
		Prospectus	All that Contain advert.	Certain advert.	Min. Period
Australia		X			5 yr. ³
Brazil			X		3 yr
Canada		X	X		1 yr ⁴
France			X		
Germany	X				
Hong Kong				X	6 mo. ⁵
Italy		X	X		1 yr
Japan			X		3 yr
Jersey	X				
Luxembourg	X				
Mexico	X				
Netherlands			X		3 yr ⁶
Portugal		X	X		1 yr
Spain				X	5 yr
Sweden			X		1 yr
Switzerland			X		1 yr
UK			X		5 yr
US		X	X		1 yr ⁷
TOTAL	4	5	11	2	
%	22%	28%	61%	11%	

³ There is no set minimum period, but typically figures over 5 years are included if the fund has been in operation that long.

⁴ A CIS may present performance only in standard one, three, five and ten year (or since inception if younger than 10 years) periods. A CIS may include other performance so long as the "standard" performance numbers are displayed as prominently as the other performance.

⁵ CIS that have been in existence for one year or more may only show less than one year's performance if: (a) only one less than one-year's figure is quoted; (b) it is of at least three months' duration; (c) it is accompanied by the most recent one-year or three-year figures; and (d) it is presented in the same format and no more prominently than the longer term figure. In addition, performance data in print media advertisements must be no more than two months old. All data should be updated if more recent data are significantly different.

⁶ A minimum of 3 years, or since inception if younger than 3 years.

⁷ A CIS generally may present standardized performance only in quotations of average annual total return for one, five, and ten year periods. If the CIS's registration statement has been in effect less than one, five, or ten years, the time period during which the registration statement has been in effect is substituted. Supplemental performance information is permitted if such performance reflects all elements of return, is set out in no greater prominence than the standardized quotations of total return, and identifies the length of and last day of the period for which the performance is measured.

Question 4.2 - Performance must also be presented (check all that apply/multiple answers allowed):

Please note that this question was answered only by those 14 members who answered “yes” to question 4.1. This represents 78% of the sample.

Country	Periodicity					Format		
	Monthly	Quarterly	Semi-ann.	Ann.	Other	Benchmark	Graph	Table
Australia								
Brazil	X					X		
Canada				X		X ⁸	X	X
France								
Germany								
Hong Kong								
Italy				X		X	X	X
Japan					X			
Jersey								
Luxembourg								
Mexico								
Netherlands				X				
Portugal				X				
Spain		X						X
Sweden			X					
Switzerland			X	X		X		
UK								
US			X ⁹	X		X	X	X
TOTAL	1	1	3	6	1	5	3	4
% (of all juris.)	6%	6%	18%	33%	6%	28%	18%	23%
% (of 14 juris. that responded)	7%	7%	21%	43%	6%	36%	21%	28%

⁸ Benchmark, graphs and tables required only in prospectus.

⁹ Performance information is required to be presented in semi-annual reports to CIS shareholders, but is not required to be compared to a benchmark, or presented through graphs or tables in this context. In their prospectuses, which must be updated annually, CIS are also required to present performance information compared to a benchmark and through graphs and tables.

Question 4.3 - If a CIS exists for a shorter period of time than that described in question 4.1:

Please note that this question was answered only by those members who answered “yes” to question 4.1. Nine of the SC5 jurisdictions addressed this question (64% of the 14 jurisdictions that answered “yes” to question 4.1 and 50% of the total sample).

Country	Not addressed	Not allowed	Disclaimer	Cover Entire Period
Australia	X			
Brazil		X		
Canada		X		
France	X			
Germany				
Hong Kong				
Italy				X
Japan				X
Jersey				
Luxembourg				
Mexico				
Netherlands				X
Portugal			X	
Spain		X		
Sweden	X			
Switzerland				X
UK				X
US				X
TOTAL	3	3	1	6
% (of all juris.)	17%	17%	6%	33%
% (of 9 juris. that responded)	33%	33%	11%	67%

Question 4.4 - Often, when a CIS begins its operations with a small amount of assets, it is capable of achieving outstanding results that may not continue when the CIS actually begins marketing operations. How is this issue addressed in your jurisdiction?

Please note that this question was answered only by those members who answered “yes” to question 4.1. Ten of the SC5 jurisdictions addressed this question (71% of the 14 that answered “yes” to question 4.1 and 55% of the total sample).

Country	Not addressed	Minimum period	Disclaimer
Australia	X		
Brazil		6 mo.	
Canada		1 yr.	
France	X		
Germany			
Hong Kong		6 mo.	
Italy		6 mo.	
Japan		6 mo.	X
Jersey			
Luxembourg			
Mexico			
Netherlands	X		X ¹⁰
Portugal		6 mo.	
Spain		1 yr. ¹¹	
Sweden	X ¹²		
Switzerland		1 yr.	
UK			X
US	X		
TOTAL	5	8	3
% (of all juris.)	28%	44%	17%
% (of 10 juris. that responded)	50%	80%	30%

¹⁰ In the Netherlands, in any advertisement stating expectations about the future or referring to past performance, the following sentences must be included: “The value of your investments may fluctuate. Past performance provides no guarantee for the future.”

¹¹ The Spanish CIS industry code of conduct requires a minimum operational period of 1 year prior to usage of performance data in marketing materials.

¹² Advertising is allowed so long as the “period of operation or the opening day is clearly stated in the advertising materials.”

Question 5 - What are the disclosure requirements in your jurisdiction for CIS volatility?

Volatility is a significant criteria that some investors use to determine whether to invest in a CIS. A CIS's volatility is a measure of how widely its value may vary over time.

Country	Not addressed	Stan. Dev. Required for		Other than stan. Deviation
		Same period as 4.1	Other period	
Australia				X
Brazil	X			
Canada				X
France	X			
Germany	X			
Hong Kong	X			
Italy				X
Japan	X			
Jersey	X			
Luxembourg	X			
Mexico	X			
Netherlands	X			
Portugal		X ¹³		
Spain		X		
Sweden	X			
Switzerland	X			
UK	X			
US				X
TOTAL	12	2	0	4
%	67%	11%	0%	22%

¹³ Only for a simplified prospectus.

Question 6 - Some CIS use benchmarks in order for shareholders to compare their CIS's relative performance to that of other CIS. Benchmarking is (multiple answers allowed):

Benchmarking is the use of the performance of a market index as a base of reference to compare the performance of the CIS. Five jurisdictions indicated that a change in the benchmark must be disclosed in a manner other than newspaper or letter:

- Canada and the Netherlands indicated that if a CIS changes its benchmark, it must explain why it changed the benchmark;
- Italy stated that changes in the benchmark must be disclosed in the prospectus;
- The United States stated that the old and new benchmarks must both be used during the year that the benchmark is changed.
- Australia stated that the change must be disclosed with the performance disclosure.

Country	Not Addressed	Rec.	Mandatory		Must be used in			Changes in disclosure		
			Reg. Appr'd	Set by CIS	Prospect.	All Ad.	Certain advert.	News paper	letter	other
Australia		X								X
Brazil				X		X			X	
Canada				X	X					X
France										
Germany	X									
Hong Kong									X	
Italy				X	X	X				X
Japan	X									
Jersey	X									
Luxembourg				X	X			X	X	
Mexico	X									
Netherlands										X
Portugal		X								
Spain	X									
Sweden	X									
Switzerland		X								
UK	X									
US				X	X					X
TOTAL	7	3	0	5	4	2	0	1	3	5
%	39%	17%	0%	28%	22%	11%	0%	6%	17%	28%

Question 7 - Disclosure of shareholder fees (multiple answers allowed):

Country	Disclose		Changes in disc. through			Performance must exclude ¹⁴			
	Entry fee	Mgmt/Perf fee	News paper	Letter	other	Mgmt fee	Perf fee	Income/other tax	Other tax
Australia	X	X			X	X ¹⁵	X	X	X
Brazil	X	X		X		X	X		
Canada	X	X			X	X	X	X	X
France	X	X		X	X	X	X		
Germany	X	X			X				
Hong Kong	X	X		X					
Italy	X	X		X	X	X	X	X ¹⁶	X
Japan	X	X	X	X					
Jersey	X	X		X					
Luxembourg	X	X	X	X					
Mexico	X	X				X ¹⁷	X	X	X
Netherlands	X	X	X	X				X	
Portugal	X	X		X					
Spain	X	X		X	X	X	X	X ¹⁸	X
Sweden	X	X		X					
Switzerland	X	X	X		X	X	X		
UK	X	X			X	X		X	X
US	X	X			X	X		X	
TOTAL	18	18	4	11	9	10	8	8	6
%	100%	100%	22%	61%	50%	56%	44%	44%	33%

¹⁴ In other words, the performance must be presented net of the identified fees and expenses.

¹⁵ Disclosure excluding management fees, performance fees, income and other taxes, and other taxes is voluntary in Australia.

¹⁶ Performance usually must be disclosed with taxes deducted. If that is not possible, a disclaimer must be included in the advertisement

¹⁷ Although the levying of performance fees is not regulated in Mexico, disclosed performance must reflect the deduction of fees and taxes.

¹⁸ Performance must be disclosed excluding those income and other taxes paid by the CIS.

Question 8 - Firm composites (advertising material where more than one CIS is presented) are:

A CIS operator may manage more than one CIS. An operator may want to collectively present, through a composite, the performance of all of the CIS and other accounts that it manages that have the best performance. If an operator excludes poorly performing accounts from the composite, investors will not be able to evaluate the overall performance of the CIS operator.

The jurisdictions that answered “other” to this question stated the following:

- In Italy, performance presentation of CIS portfolio composites is not allowed. Ranking of performance is allowed only if the ranking contains only CIS portfolios classified within the same fund category, and risk adjusted returns (i.e., Sharpe ratio) are disclosed.
- In Japan, CIS performance must not be included in firm composites.
- In the United States, CIS operator composites are not specifically addressed in the federal securities laws -- although the general prohibition against misleading statements or omissions would apply -- but the Association for Investment Management and Research has issued industry best practice standards.

Country	Not add.	Regulated				
		Min. period	Active	Term.	Consis.	Other
Australia	X					
Brazil		3 yr.	X			
Canada	X					
France	X					
Germany	X					
Hong Kong	X					
Italy		1 yr.	X			X
Japan						X
Jersey	X					
Luxembourg					X	
Mexico	X					
Netherlands	X					
Portugal	X					
Spain	X					
Sweden	X					
Switzerland	X					
UK	X					
US						X
TOTAL	13		2	0	1	3
%	72%		11%	0%	6%	17%

Question 9 - Does your jurisdiction require that advertisements contain certain disclaimers?

Disclaimers generally are messages in advertisements and other documents that warn investors about risks or clarify factors that may affect investors' decisions to invest. Some form of disclaimer is required in all of the jurisdictions surveyed.

“Other” disclaimers include: “CIS Investments are neither guaranteed by the operator nor are covered by either insurance policies or by the Credit Guarantee Fund;” “Mutual funds are not guaranteed nor covered by government deposit insurance;” “Read the prospectus;” “Investment involves risk, and the offering document should be read for further details;” “Authorisation by the Securities and Futures Commission does not imply official approval or recommendation;” and “The value of your investments may fluctuate.”

Country	No	Yes			
		Past result	Neg. results	Lever-aged	Other
Australia		X			
Brazil		X	X	X	X
Canada		X		X	X
France		X	X		X
Germany		X			
Hong Kong		X			X
Italy		X			X
Japan		X	X		
Jersey		X	X		X
Luxembourg		X			
Mexico		X ¹⁹			
Netherlands		X			X
Portugal		X	X		X
Spain		X	X		
Sweden		X	X		X
Switzerland		X		X	X
UK		X	X		X
US		X	X		X
TOTAL	0	18	9	3	12
%	0%	100%	50%	17%	67%

¹⁹ In Mexico, this disclaimer is not mandatory, but the Regulator has the authority to demand its inclusion if necessary to avoid misleading or fraudulent information.

Part B - Additional Questions that were not part of the EMC-WG5 Questionnaire:

Question 1 - In your jurisdiction, are restrictions (other than standards for the presentation of performance that are discussed in response to Question A.1) placed on the contents of CIS advertisements? If so, please describe. (For instance, the U.S. federal securities laws make it unlawful for a CIS advertisement to contain materially misleading statements or omissions).

Australia - It is unlawful for a CIS advertisement to contain materially misleading statements or omissions.

Brazil - Advertisements cannot be in disagreement with the contents of the prospectus, the by-laws or the semi-annual reports. The regulator can require the operator to reprint the ads with corrections deemed necessary to avoid misleading investors and with a statement that they are being published by regulator demand.

Canada - Sales communication cannot be misleading or untrue.

France - Information must not be misleading for investors; it must be exact, precise and true so that investors are well and completely informed to make decisions about investment.

Germany - Misleading advertisements and performance presentations are forbidden.

Hong Kong - It is a violation to induce another person to make an investment through a fraudulent or reckless misrepresentation.

Italy - CIS advertisements must be clear and fair and may not contain misleading statements or omissions.

Japan - It is unlawful for a CIS advertisement to contain false or materially misleading statements.

Jersey - No other restrictions, although legislation is planned.

Luxembourg - Certain principles on “fair competition” cover the commercial and financial sector and make certain practices, such as misleading information, unlawful.

Mexico - Even though there are no specific standards, all information delivered to the public should comply with minimum standards of veracity, transparency and objectivity and should not contain misleading or fraudulent statements or contrasting different financial products or services.

The Netherlands - The advertisement shall be truthful in its content and shall not be misleading and the information in the ad shall not differ in any material respect from the

information furnished in reports. The advertisement shall state where the public can obtain the prospectus.

Portugal - The information must be complete, clear, objective, true, and timely.

Spain - The regulator is empowered to monitor and, in the case of illicit publicity, adopt measures to stop or rectify the campaign and to bring enforcement actions.

Sweden - Advertising materials must contain information about where to obtain the prospectus. The Marketing Act states that advertisements must be formulated in accordance with “good marketing practice,” and violations can be unlawful. Guidelines extending the general clause in the Marketing Act state that information should be relevant, not misleading nor fraudulent, nor containing subjective opinions (e.g., safe, secure, best) that cannot be verified nor discreditable statements about competitors.

Switzerland - It is unlawful for a CIS advertisement to contain materially misleading statements or omissions. The law contains penalties for persons who make inappropriate, misleading, or fraudulent statements in an advertisement.

United Kingdom. - Misleading statements in CIS advertisements are prohibited.

United States - It is unlawful for a CIS advertisement to contain false or materially misleading statements or omissions.

Question 2.1 - When a retail investor is interested in a CIS, which institution(s) may that person approach for information about which CIS to invest in? Please identify which type of institution(s) retail investors commonly use.

Many channels, including banks, broker-dealers, the CIS itself, insurance companies, and financial planners or advisers, are permitted to provide information on CIS investing.

Country	Bank	B-D	CIS	Ins. Co.	Other
Australia	X	X	X		X
Brazil	X	X			
Canada	X ²⁰	X	X	X	X
France	X		X		X
Germany	X			X	X
Hong Kong	X	X	X	X	X
Italy	X		X		X
Japan	X	X	X	X	X
Jersey	X	X	X	X	X
Luxembourg	X				
Mexico	X	X		X	X
Netherlands	X	X	X	X	
Portugal	X	X			
Spain	X	X	X		X
Sweden	X	X	X	X	
Switzerland	X		X	X	X
UK	X	X	X	X	
US	X	X	X	X	X
TOTAL	18	13	13	11	12
%	100%	72%	72%	61%	67%

²⁰ In Canada, banks, broker-dealers, CIS operators and insurance companies may provide information to CIS investors, so long as the entity is operating a registered dealer firm with registered salespersons as part of its organization.

Question 2.2 - What types of documents and information are those institutions required to provide to such an investor? Are they required to provide information containing CIS performance information? If so, would that performance information be subject to the restrictions addressed in response to Question A.1?

Australia - Prospectus and application form that is attached to the prospectus must be given to an investor when an offer of investment is made to the investor. Under the FSRA reforms, the same requirement will apply with respect to a prospectus-like document called a Product Disclosure Statement (which will replace the current prospectus). Prospectuses (and the Product Disclosure Statement) are required to have information about the fund's performance where the information might reasonably be expected to have a material influence on the decision of a reasonable retail investor to acquire the investment.

Brazil - Prospectus and by-laws. Not required to provide information containing CIS performance information. Prospectuses are required to be delivered whenever an investor makes a purchase. The operator must keep a signed receipt.

Canada - Prospectus is required to be delivered either before the purchase or within two days of the trade date. This requirement is coupled with legislation that allows investors to rescind their purchase if they exercise their right of rescission within two days after the receipt of the prospectus. At the point of sale, investors receive a simplified prospectus and may also ask for audited financial statements and semi-annual unaudited financial statements. They may also ask for an "annual information form" which contains additional details about the fund and its operator. Any performance information given in any document, including financial statements, must be calculated and presented using the general rules for performance information disclosure.

France - Prospectus and annual or semi-annual reports. For open-end companies,]; for unit investment trusts.

Germany - Sales prospectus and annual and semi-annual reports.

Hong Kong - Prospectus and application form; financial reports and accounts. The prospectus should be made available and offered to investors. They are not required to provide information containing CIS performance. However, if they choose to do so, any such materials must be approved by the Regulator and comply with the advertising guidelines and restrictions.

Italy - Prospectus, which must be delivered to investors.

Japan - Prospectus and performance report.

Jersey - Prospectus and audited financial report and accounts; they are not required to provide CIS performance information. All persons must be offered, free of charge, a copy of the prospectus before completing the sale. If the shares are sold through means other than a face-to-face conversation or by telephone, a copy of the prospectus will be provided only if the purchaser asks for it.

Luxembourg - The prospectus is required to be offered to subscribers before the conclusion of the contract. Not required to provide information containing CIS performance information.

Mexico - Prospectus along with any modifications thereto, which should be made available to investors for analysis, consultation and approval through the means stipulated in the contract.

Netherlands - Prospectus on request, obtainable free of charge. Can also deliver other information, but such information is considered an advertisement and is subject to usual restrictions on advertisements. In 2002, CIS will be required to provide a simplified prospectus prior to sale.

Portugal - Simplified prospectus, which provides information about annual performance (return and risk) over the last five years should be delivered. The performance information required in the simplified prospectus is subject to the restrictions addressed in response to Question A.1. If the CIS has not been in operation five years, the prospectus, which should be made available on request, provides performance information since inception.

Spain - Prospectus (including rules of incorporation), last quarterly report and last audited annual account (which must include information about CIS performance during the year) must be delivered to investors before their first acquisition of a CIS. Any performance information contained in these documents must comply with restrictions addressed in response to Question A.1.

Sweden - Annual and semi-annual reports. The prospectus must be offered to investors and, upon request, delivered. The annual report and prospectus must contain information on performance for the last three years, and the semi-annual report for the accounting period. Any performance presentation is subject to restrictions in Question A.1.

Switzerland - Annual and semi-annual reports. The prospectus must be offered to investors. The performance information is subject to the restrictions addressed in response to Question A.1.

United Kingdom - The CIS operator normally provides leaflets, brochures, etc. about a fund. Prospectuses must be offered and made available to investors, but they are not required to be delivered to investors. Performance information is not required to be delivered to investors. Where sales are advised or by direct offer, a Key Features Document (“KFD”) must be given to investors before they conclude their purchase. A KFD must include information about the aims, risks, commitments and charges for the product. A firm is not required to provide performance information in a KFD but may do so if it wishes.

United States - If an institution offers securities for sale, it must provide a prospectus. A prospectus generally must contain CIS performance information that is subject to the restrictions addressed in Question A.1.

Question 2.3 - Do CIS in your jurisdiction advertise their performance using any of the following mediums (multiple answers allowed)?

CIS may advertise performance through a number of mediums, including newspaper and magazines, television, direct mail, internet, billboards, and radio.

Country	News paper	TV	Mail	Inter net	Other
Australia	X	X	X	X	
Brazil	X	X	X	X	
Canada	X	X	X	X	X
France	X		X	X	X
Germany	X	X	X	X	X
Hong Kong	X	X	X	X	X
Italy	X	X	X	X	X
Japan	X	X	X	X	X
Jersey	X		X	X	
Luxem-bourg	X	X	X	X	
Mexico	X	X	X	X	
Nether-lands	X	X	X	X	
Portugal	X		X	X	X
Spain	X	X	X	X	X
Sweden	X	X	X	X	X
Switzer-land	X	X	X	X	X
UK	X	X	X	X	X
US	X	X	X	X	X
TOTAL	18	15	18	18	12
%	100%	83%	100%	100%	67%

Question 3 - Who is responsible for the accuracy of the contents of a CIS advertisement?

Australia - The directors of the offeror and any expert who has given an opinion and consented to the use of that opinion.

Brazil - The director registered at the regulator for that particular CIS.

Canada - The entity putting out the advertisement; usually the fund company or a dealer.

France - The management company and the depository are jointly liable.

Germany - The CIS operator.

Hong Kong - The promoter of the ad (usually the management company or the distributor).

Italy - Usually the chief executive director and the senior manager of the CIS marketing department.

Japan - The executive director of the CIS operator or the securities company that makes the advertisement.

Jersey - The manager of the fund.

Luxembourg - Generally the CIS operator.

Mexico - The CIS operators and any other institution involved in the distribution of CIS shares.

Netherlands - Management of the investment institution.

Portugal - Management company and custodian.

Spain - The advertiser (only entities authorized to distribute the CIS) as well as the CIS manager.

Sweden - The management of the fund company, ultimately the board.

Switzerland - For funds domiciled in Switzerland, both the fund management company and the custodian bank. For foreign funds, which may be marketed or distributed professionally in or from Switzerland, the so-called "representative agent."

United Kingdom - Firm approving the advertisement.

United States - Depending on the facts and circumstances, the CIS, CIS operator, directors of the CIS, distributor, and/or underwriter of the relevant security could be liable for inaccuracies in an advertisement.