

## Chapter 4

# Communicating with clients, including financial promotions

## 4.6 Past, simulated past and future performance (non-MiFID provisions)

### Application

4.6.1

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(1) Subject to (2) and (3), this section applies to a *firm* in relation to:

- (a) [deleted]
- (b) the *communication* or *approval* of a *financial promotion*,

where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

(2) This section does not apply to a *firm* communicating in relation to its *MiFID*, *equivalent third country* or *optional exemption business*

(3) This section does not apply in relation to a communication:

- (a) to the extent that it is an *excluded communication*;
- (b) to the extent that it is a prospectus advertisement to which ■ PR 3.3 applies;
- (c) if it is *image advertising*;
- (d) to the extent that it relates to a *deposit* that is not a *structured deposit* (see also ■ COBS 4.1.1R(3));
- (e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

### Past performance

4.6.2

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A *firm* must ensure that information that contains an indication of past performance of *relevant business*, a *relevant investment* or a financial index, satisfies the following conditions:

- (1) that indication is not the most prominent feature of the communication;
- (2) the information includes appropriate performance information which covers the preceding five years, or the whole period for which the investment has been offered, the financial index has been established, or the service has been provided (where less than five years, or such longer period as the *firm* may decide), and in every case that performance information must be based on complete 12-month periods;
- (3) the reference period and the source of information are clearly stated;

- (4) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
- (5) if the indication relies on figures denominated in a currency other than that of the *EEA State* in which the *retail client* is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- (6) if the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed.

**4.6.3** G The obligations relating to describing performance should be interpreted in the light of their purpose and in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey. For example, a periodic statement in relation to *managing investments* that is sent in accordance with the *rules* on reporting information to *clients* (see ■ **COBS 16**) may include past performance as its most prominent feature.

**4.6.4** G If a *financial promotion* includes information referring to the past performance of a *packaged product* that is not a *financial instrument*, a *firm* will comply with the *rule* on appropriate performance information (■ **COBS 4.6.2R (2)**) if the *financial promotion* includes, in the case of a *scheme*, unit-linked *life policy*, unit-linked *personal pension scheme* or unit-linked *stakeholder pension scheme* (other than a unitised with-profits *life policy* or *stakeholder pension scheme*) past performance information calculated and presented in accordance with the table in ■ **COBS 4.6.4A G**.

**4.6.4A** G This Table belongs to ■ **COBS 4.6.4 G**

Percentage growth					
[Fund name]	Quarter/ Year - Quarter/ Year	Quarter/ Year - Quarter/ Year	Quarter/ Year - Quarter/ Year	Quarter/ Year - Quarter/ Year	Quarter/ Year - Quarter/ Year
	pgr%	pgr%	pgr%	pgr%	pgr%

- Notes:
1. The table should show performance information for five (or if performance information for fewer than five is available, all) complete 12-month periods, the most recent of which ends with the last full quarter preceding the date on which the *firm* first *communicates* or *approves* the *financial promotion*.
  2. For products with performance data for fewer than five 12-month periods, *firms* should clearly indicate that performance data does not exist for the relevant periods.
  3. No allowance should be made for tax recoveries on income for *pension contracts*, *ISAs* or *PEPs*.
  4. pgr is the percentage growth rate for the year, where:  $pgr = ((P1 - P0) / P0) * 100$  and rounded to the nearest 0.1%, with exact 0.05% rounded to the nearest even 0.1%; and where P0 is the price at the start of the 12-month period and P1 is the price on the same day in the following 12-month period.
  5. The prices should allow for any net distributions to be reinvested.

6. The price at P1 must be adjusted for any charges since the date of P0 which are based on a proportion of the fund and are levied by the cancellation of units.

7. The *firm* should use single pricing, or (if this is not available) bid to bid prices, unless the *firm* has reasonable grounds to be satisfied that another basis would better reflect the past performance of the fund.

4.6.4B

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- (1) The *firm* should present the information referred to in ■ COBS 4.6.4 G no less prominently than any other past performance information.
- (2) This *guidance* does not apply to a *prospectus*, *key investor information document* or *NURS-KII document* drawn up in accordance with *COLL*.

4.6.5

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- (1) In relation to a *packaged product* (other than a *scheme*, a *unit-linked life policy*, *unit-linked personal pension scheme* or a *unit-linked stakeholder pension scheme* (that is not a *unitised with-profits life policy* or *stakeholder pension scheme*)), the information should be given on:
  - (a) an offer to bid basis (which should be stated) if there is an actual return or comparison of performance with other *investments*; or
  - (b) an offer to offer, bid to bid or offer to bid basis (which should be stated) if there is a comparison of performance with an index or with movements in the price of *units*; or
  - (c) a single pricing basis with allowance for charges.
- (2) If the pricing policy of the *investment* has changed, the prices used should include such adjustments as are necessary to remove any distortions resulting from the pricing method.

### Simulated past performance

4.6.6

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A *firm* must ensure that information that contains an indication of simulated past performance of *relevant business*, a *relevant investment* or a financial index, satisfies the following conditions:

- (1) it relates to an investment or a financial index;
- (2) the simulated past performance is based on the actual past performance of one or more investments or financial indices which are the same as, substantially the same as, or underlie, the investment concerned;
- (3) in respect of the actual past performance referred to in (2), the conditions set out in paragraphs (1) to (3), (5) and (6) of the *rule* on past performance (■ COBS 4.6.2 R) are complied with; and
- (4) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

**Future performance**

4.6.7

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- (1) A *firm* must ensure that information that contains an indication of future performance of *relevant business*, a *relevant investment*, a *structured deposit* or a financial index, satisfies the following conditions:
- (a) it is not based on and does not refer to simulated past performance;
  - (b) it is based on reasonable assumptions supported by objective data;
  - (c) where the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed;
  - (ca) it is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specified types of investments included in the analysis; and
  - (d) it contains a prominent warning that such forecasts are not a reliable indicator of future performance.
- (2) This *rule* only applies in relation to *financial promotions* that relate to a *financial instrument* (or a financial index that relates exclusively to *financial instruments*) or a *structured deposit*.

4.6.8

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A *firm* should not provide information on future performance if it is not able to obtain the objective data needed to comply with the *rule* on future performance. For example, objective data in relation to *EIS shares* may be difficult to obtain.

4.6.9

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- (1) A *firm* that communicates to a *client* a *projection* for a *packaged product* which is not a *financial instrument* must ensure that the *projection* complies with the *projections rules* in ■ COBS 13.4, ■ COBS 13.5 and ■ COBS 13 Annex 2.
- (2) A *firm* must not communicate a *projection* for a highly volatile product to a *client* unless the product is a *financial instrument*.