

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 20-21 February 2008

Question: aet 7

Topic: Retail Investors

Hansard Page: Written

Senator WATSON asked:

- There is a basic finance theory that suggests that finance markets contain all information; that they are efficient. Therefore, analysing historical prices could be considered as being irrelevant in future investment decision. **Given this, does ASIC believe that the current practice of management funds advertising their past performance could be mis-leading to uninformed retail investors?**

Answer:

Yes, ASIC believes that the use of past performance information in advertising may be misleading to retail investors if it is not used appropriately.

ASIC issued guidance on the use of past performance material in advertising to retail clients, including by managed funds, in Regulatory Guide 53: *The use of past performance in promotional material* in July 2003. This Guide sets out when the use of past performance material may be misleading under the law in ASIC's view and the factors that ASIC will take into account in considering whether to take enforcement action. However, mere compliance with the standards does not preclude liability.

In this Guide, ASIC outlines that past performance material may be misleading if it:

- leads people to an incorrect conclusion, due to their existing specific knowledge and general understanding;
- is imbalanced and does not give a fair indication of the risks and disadvantages of a financial product or service;
- is used selectively to exaggerate a fund's success;
- gives disproportionate prominence to past performance in promotions for a product or service;
- creates the impression that substantially the same returns will be achieved in the future; or
- implies that reliance on the past performance material is a good way to select investments.

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ASIC has also given guidance that a promotion containing past performance material should give a warning to investors such as 'past performance is not a guarantee of future performance'.

As announced by the Chairman to the Committee hearing Senate Standing Committee on Economics on 30 May 2007, ASIC will be conducting advertising blitzes on more complex products targeted at the retail investor as part of our Retail Investors Taskforce. In particular, ASIC will be looking at recent advertising campaigns that encourage retail investors to invest in contracts for difference so they can continue to earn high returns despite falling markets.

ASIC also recently issued new advertising standards for issuers of debentures, Regulatory Guide 156: *Debenture advertising*, on 19 December 2007.