



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 191

Superannuation: helping investors look at longer-term returns—ASIC's best practice guide

July 2008

About this guide

This is a best practice guide from the Australian Securities and Investments Commission (ASIC) for superannuation funds.

The aim of this best practice guide is to show how super funds can use information about longer-term super returns (i.e. returns over 5 and 10 years) in periodic statements to help members better understand that super is a long-term investment.

Providing members with information on long-term returns in periodic statements is a condition of relief under a 'no-action position' ASIC has taken to allow super funds to use a website as the default method for delivering annual fund information (annual reports) to members: see Media Release 08-128 *Less paper in super*.

This guide gives practical guidance on how super funds might provide this information.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued on 25 July 2008 and is based on legislation and regulations as at 25 July 2008.

Previous version:

Superseded Regulatory Guide 191 *Superannuation: helping investors look at longer-term returns—ASIC's best practice guide*, issued 20 June 2008.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Super funds might want to include additional information about fund returns in periodic statements to members.

Clear, accurate information about medium to long-term returns can help members appreciate that super is a long-term investment.

Super funds must provide this information to members if they want to take advantage of ASIC's 'no action position' to use a website as the default method for delivering annual fund information to members.

Why has ASIC prepared this guidance?

- RG 191.1 Some super fund members might not fully appreciate that super returns fluctuate over time, and that negative returns from time to time are not inconsistent with successful long-term investment. This could result in some fund members focusing on short-term returns and, in a year of negative returns, potentially switching investment options or funds to their detriment.
- RG 191.2 Super funds must provide 5-year fund returns in their annual report to members. However, under ASIC's proposals in Consultation Paper 93 *Facilitating online financial services disclosures* (CP 93), super funds will be able to put their annual report online, instead of providing a copy direct to fund members.
- Note: Under reg 7.9.37(1)(j) of the Corporations Regulations 2001, super funds must include in the annual report to members:
- (a) the annual effective rate of net earnings in each of the most recent reporting periods that, in total, constitute a period of at least 5 years; and
 - (b) the compound average rate of net earnings for the period of 5 years ending at the end of the reporting period.
- RG 191.3 While we finalise our policy position on online disclosure generally, we have taken a 'no action position' that will allow super funds to use the fund's website as the means of giving fund members the annual fund report, provided that certain conditions are satisfied: see RG 191.6–RG 191.7 and Media Release 08-128 *Less paper in super*.
- RG 191.4 One condition of our relief is that super funds must give members information about medium and long-term returns with the periodic statement. This guide gives practical guidance on how super funds might provide this information.
- RG 191.5 Although only those funds that want to take advantage of the annual report relief will be required to include historical return information in the periodic statement, we encourage all funds as a matter of best practice to work towards providing members with personalised historical returns (or fund returns) for 5 and 10-year periods with their periodic statements.

Relief under our ‘no action position’

- RG 191.6 Super funds need not apply for individual relief to use the fund’s website as the means of giving fund members the annual fund report for the 2007–08 reporting year if they meet certain conditions: see Table 1.
- RG 191.7 Under our relief:
- (a) super funds must ensure that they continue to comply with the disclosure requirements in reg 7.9.37(1)(j) in their online annual report; and
 - (b) delivery requirements for other mandated disclosures will continue to apply as outlined under the law.

Table 1: Conditions of relief under ASIC’s ‘no action position’

Condition	What super funds must do
1. Access to annual report online	A copy of the annual super report must be readily accessible online.
2. Initial notification to members	<p>The trustee must directly notify each member at least once that:</p> <ul style="list-style-type: none"> • they can access the annual super report online; and • if they do not wish to access the information online, they can elect to receive a copy of the annual super report for each reporting period free of charge. <p>This can be done in other materials sent to members, such as the periodic statement, provided that the notification is made prominently.</p>
3. Subsequent notification to members	<p>If a member does not make an election, the trustee must notify the member annually that they can:</p> <ul style="list-style-type: none"> • access a copy of the annual super report online; or • elect to receive a hard copy. <p>This can be done in other materials sent to members, such as the periodic statement, provided that the notification is made prominently.</p> <p>Note: This condition is consistent with s314 of the <i>Corporations Act 2001</i> (Corporations Act), which applies to annual reports for companies.</p>
4. Information about medium and long-term returns	Members must be provided with information about medium and long-term returns with the periodic statement: see RG 191.8–RG 191.10 and Section B of this guide.

Providing information about medium and long-term returns

- RG 191.8 As a condition of our relief, super funds must give members information about medium and long-term returns with the periodic statement. Section B of this guide sets out three options for how this condition can be met, either by:
- (a) providing members with generic fund figures for 5 and 10-year average fund returns;

- (b) providing members with personalised fund figures for 5 and 10-year average fund returns; or
- (c) for the 2007–08 reporting season, providing members with ASIC's leaflet *Long-term performance figures for typical super fund investment options*.

RG 191.9 We are aware that some super funds are likely to report negative returns for the 2007–08 reporting year. For some funds, and some members, this might be their first experience of a negative return. For that reason, we think it is especially important that, wherever possible, fund members be given relevant information about returns over the medium to longer term. We think that such information is most usefully conveyed with periodic statements.

RG 191.10 As an alternative to providing generic or personalised fund figures, for the 2007–08 reporting season, super funds can include an ASIC leaflet that contains information about long-term performance for typical super fund investment options. The leaflet must be included with periodic statements sent to members, or an electronic link provided to the leaflet if member consent has been given to receive the periodic statement electronically. We believe this will benefit members and be a cost-effective option for super funds.

Other ASIC guidance on using past performance information

RG 191.11 The following ASIC regulatory guides also discuss using past performance information:

- (a) Regulatory Guide 53 *The use of past performance in promotional material* (RG 53); and

Note: The requirements in RG 53 do not apply to providing information under s1017D of the *Corporations Act 2001* (Corporations Act) to the extent that there is a conflicting legal requirement. However, many of the principles in RG 53 may broadly apply to the information in Section B of this guide: see paragraphs 2.6–2.7 of RG 53.

- (b) Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

RG 191.12 Although these regulatory guides discuss the use of past performance information in a different context, many of the principles are still useful. Where applicable, we have included cross-references in this guide to those parts of RG 53 and RG 168 that are particularly relevant.

B Giving members information about longer-term returns

Key points

Information about longer-term returns could be provided to members in periodic statements in one of these ways:

- generic fund figures for 5 and 10-year returns;
- personalised fund figures for 5 and 10-year returns; or
- a separate insert about long-term super performance (e.g. using consumer information from ASIC's FIDO website, see RG 191.16–RG 191.17).

What information about returns can be included in periodic statements?

Generic fund figures for 5 and 10-year average fund returns

- RG 191.13 The 5-year return for the super fund is currently given to members as part of the fund information in the annual report. Including this information with the periodic statement makes it more accessible and more likely to be read and understood, because the information is addressed to the client and is in the context of information about the client's personal balance and contributions.
- RG 191.14 We think that super funds should be able to give this information to members fairly easily because much of it is already prepared for annual reports and product disclosure statements.

Personalised fund figures for 5 and 10-year average fund returns

- RG 191.15 Funds that have the necessary systems in place might be able to give members personalised returns for 5 and 10-year periods. However, we recognise that many funds will not have IT and other systems to facilitate this at present.

Provide members with ASIC's leaflet

- RG 191.16 ASIC has produced a leaflet about long-term performance figures for typical super fund investment options, which can be downloaded from our FIDO website: see 'Long-term performance figures for typical super fund investment options' at www.fido.gov.au/superreturns.
- RG 191.17 For the 2007–08 reporting season, (i.e. before systems changes are able to be made) funds might prefer to send a copy of this leaflet with their periodic statements instead of including fund-specific medium and long-term performance information in the periodic statement itself. This leaflet

contains 2008 figures, so it can only be used for the 2007–08 reporting season, after which we will review the leaflet.

How should 5 and 10-year returns be calculated?

RG 191.18 Table 2 summarises how information about returns should be calculated.

Table 2: Calculating 5 and 10-year returns

Requirement	Relevant guidance
The figures must be the compound average of the actual net earnings of the fund (or sub-plan) over the relevant 5 or 10-year period.	See paragraph 9.3 of RG 53 and surrounding material
The figures must be internally consistent—that is, the 12-month, 5-year and 10-year averages must: <ul style="list-style-type: none"> • <i>exclude</i> all fees and other costs from the returns received; and • be derived from the same sub-plan or investment option (i.e. averages must be comparable between time periods). 	See paragraphs 12.4–12.5 of RG 53
The figures must include a statement that past performance is not an indicator of future performance.	See paragraphs 8.1–8.2 of RG 53 and RG 168.93–RG 168.94
The figures may be generic (i.e. for whole of fund or sub-plan) or personal to the member (this is preferable when possible). If generic information is included, the member must be told that: <ul style="list-style-type: none"> • the figures are just an average for the fund or sub-plan; and • their personal return might be different depending on, for example, when they joined the fund, when they made contributions and whether they have switched investment strategy. 	
The figures must not be hypothetical. Funds that are less than 5 or 10 years old should not present hypothetical numbers for the averages for these time periods, and should note the time period from which the average of the fund has been calculated.	See paragraph 9.3.3 of RG 53 See reg 7.9.37(4)
The figures must not be misleading or deceptive in any other way.	See RG 53 generally, RG 168.93–RG 168.94 and surrounding material

How should 5 and 10-year returns be disclosed?

RG 191.19 We encourage super funds to include information about 5 and 10-year average fund returns in the body of periodic statements (i.e. with the details of transactions for the year). The information can be included anywhere in the statement.

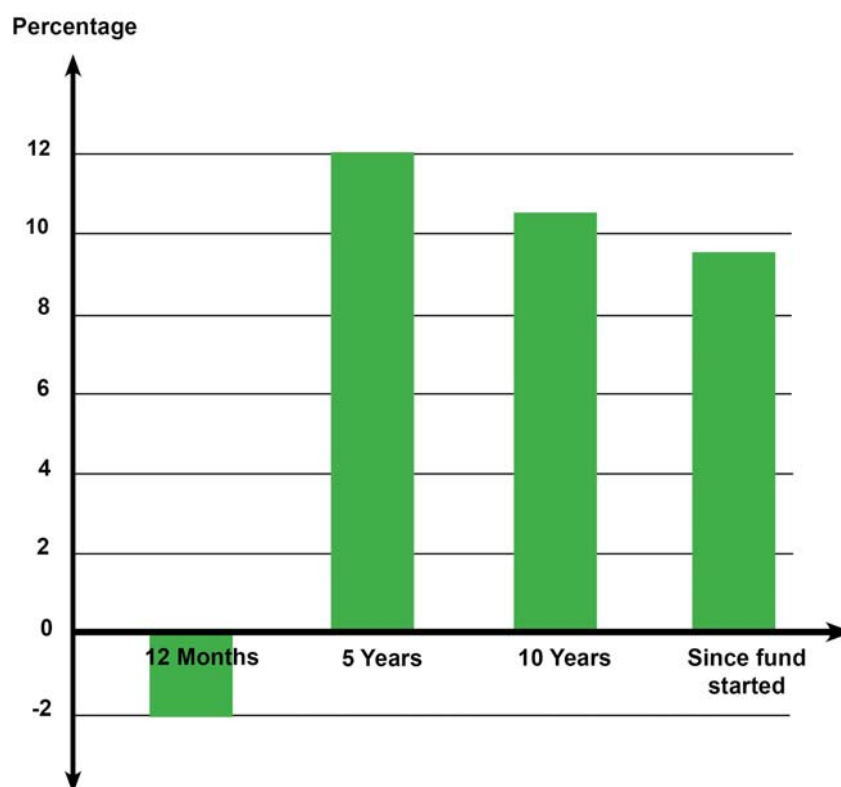
RG 191.20 We understand that including these average returns in members’ periodic statements might not be practical for some statements covering the current financial year (i.e. the year ending 30 June 2008). If funds want to include

this type of information, but are unable to do so due to timing constraints, they could consider including with periodic statements a separate user-friendly insert (either using the ASIC leaflet, or one produced by the fund and communicating the same type of message as the ASIC leaflet). This leaflet can be provided through an electronic link if member consent has been given to receive the periodic statement electronically.

Examples of how information can be presented

RG 191.21 Figure 1 shows how the information could be presented as a graph. Alternatively, the information could be presented in a table. See also RG 53 for guidance on preparing average figures (Section 14) and presenting this information (Section 15).

Figure 1: Presenting information as a graph—Fund returns for balanced option



Note: Compound average effective rate of net earnings.

Educating members through a general statement

RG 191.22 We recognise that some funds will want to give clients additional information about super investment risks and returns (e.g. that super is a long term investment, that it might experience negative returns from time to time, and that it is generally not appropriate to judge the performance of a fund by the return for a single year).

RG 191.23 For example, in addition to including 5 and 10-year compound average returns, super funds could include a statement along the following lines:

‘A super fund’s investment performance typically varies over time. Because super is a long-term investment, 5 and 10-year figures smooth out short-term results. For example, in a given fund over a 5-year period, a growth option might have a negative return for 1 year but a positive return for the other 4 years, giving an overall result that is positive for the 5 years.’

Note: See also RG 53, particularly paragraph 13.1.

Super interests in master trusts

RG 191.24 Some people split their super among a number of investment strategies using a master trust service. When super funds are managed in this way, the client might receive a periodic statement that shows the total opening and closing balance, without breaking down the returns received from the various options.

RG 191.25 If a client has interests in multiple investment strategies, it would be helpful for the master trust to include information about the average returns for the investment strategy where the greatest proportion of their money is invested. For example, if a client has super invested in three investment strategies, with 50% in one investment strategy and 25% in the two other investment strategies, we think it would be helpful for the average return information for the 50% investment strategy to be used in the periodic statement.

RG 191.26 If this information is given to a client, it is important for the master trust to include a statement in the periodic statement explaining that these are the average return figures for that particular investment strategy, not for the client’s entire super investments.

Defined benefit funds

RG 191.27 We think that defined benefit superannuation funds will also be able to provide members with information about returns, including the generic fund figures for 5 and 10-year average funds returns: see RG 191.13–RG 191.14 and RG 191.31. This disclosure, or providing the other disclosures described in Section B of this guide, will also permit defined benefit superannuation funds to take advantage of the ‘no action’ position announced in MR 08-128: see RG 191.8.

C How does this guidance fit in with the current requirements for periodic statements?

What information must currently be given to members in periodic statements?

- RG 191.28 The content of periodic statements is governed by s1017D and 1017DA. Broadly, these sections require that information about a range of issues be included in periodic statements, including information about the member's current balance and any transactions that have taken place during the relevant reporting period. These prescribed requirements do not prevent super fund trustees from including information of the type discussed in Section B of this guide.
- RG 191.29 Most relevantly to this guidance, s1017D also says that product issuers, including super fund trustees must:
- (a) give fund members the information that the trustee reasonably believes the fund member needs in order to understand their investment in the fund (s1017D(4)); and
 - (b) include details of any change in circumstances affecting the investment that has not been notified since the previous periodic statement (s1017D(5)(f)).
- RG 191.30 We think that these requirements are relevant to providing the information discussed in Section B of this guide. In particular, we think that the requirement to give members 'details of any change in circumstances' could be taken to include information about changes in the market that have had a significant impact on their investment.

What other information must funds give members?

- RG 191.31 Each year, super funds must give members an annual report setting out information about that member's particular investment, as well as more generic information about the general performance of the fund. The requirements for the generic information are set out in Subdivision 5.6 of Pt 7.9 of the Corporations Regulations, and include a requirement for the fund to give members information about the compound average net earnings of the fund for the previous 5 years: reg 7.9.37(1)(j).
- RG 191.32 As already noted, we think it would be useful to include the 5-year average return of the fund with the periodic statement to members. We think that giving information in this way makes it more accessible to members. It is also more likely to be taken notice of and understood in the context of the member's personal information.