

Enforcement Guide

Chapter 5

Settlement

5.5 The settlement discount scheme

- 5.5.1** The *settlement discount scheme* allows a reduction in a financial penalty or period of suspension, restriction or condition that would otherwise be imposed on a *person* according to the stage at which the agreement is reached. Full details of the scheme are set out in ■ DEPP 6.7.
- 5.5.2** Normally, where the outcome is potentially a financial penalty, suspension, restriction, condition or disciplinary prohibition, the *FCA* will send a letter at an early point in the enforcement process to the subject of the investigation. This is what the *FCA* refers to as a stage 1 letter. The *FCA* will aim to give 28 *days'* notice of the beginning of stage 1 to allow the parties involved to make administrative arrangements, e.g. ensuring that key staff can be available to participate where necessary in any settlement discussions. Where appropriate, the *FCA* will offer a preliminary without prejudice meeting to explain the *FCA's* view of the misconduct (including the key factual and legal bases for our view), and to give the *firm* or individual an opportunity to identify where they believe there are errors in the factual basis and to indicate the extent to which they agree with the outline findings.
- [**Note:** stage 1 is the period from commencement of an investigation until the *FCA* has a sufficient understanding of the nature and gravity of the *breach* to make a reasonable assessment of the appropriate penalty (or suspension, restriction, condition or disciplinary prohibition, or combination thereof). The *FCA*, at stage 1, also needs to have communicated that assessment to the *person* concerned and allowed a reasonable opportunity to reach agreement as to the amount of penalty or the length of any suspension, restriction, condition or temporary disciplinary prohibition.]
- 5.5.3** The *settlement discount scheme* does not apply to civil or criminal proceedings brought in the courts, or to *public censures*, *prohibition orders*, withdrawal of *authorisation* or approval, limitations of the period for which any approval is to have effect, or the payment of compensation or redress.
- 5.5.4** There is no set form for a stage 1 letter though it will always explain the nature of the misconduct, the *FCA's* view on the sanction, and the period within which the *FCA* expects any settlement discussions to be concluded. In some cases, a draft *statutory notice* setting out the alleged *rule* breaches and the proposed sanction may form part of the letter, to convey the substance of the case team's concerns and reasons for arriving at a particular level of sanction. The *FCA* will identify the key evidence on which its case relies at the commencement of stage 1. While the *FCA* will identify the key evidence that underpins our outline findings, the *FCA* will not generally provide

evidence where that evidence is already in the possession of the *firm* or individual.

5.5.5

The timing of the stage 1 letter will vary from case to case. Sufficient investigative work must have taken place for the *FCA* to be able to satisfy itself that the settlement is the right regulatory outcome. In many cases, the *FCA* can send out the stage 1 letter substantially before the *person* concerned is provided with the *FCA*'s preliminary investigation report (see paragraphs ■ 4.13.1 to ■ 4.13.4). The latest point the *FCA* will send a stage 1 letter is when the *person* is provided with the preliminary investigation report.

5.5.6

The *FCA* considers that 28 days following a stage 1 letter will normally be the 'reasonable opportunity to reach agreement as to the amount of penalty' before the expiry of stage 1 contemplated by ■ DEPP 6.7.3G. Extensions to this period will be granted in exceptional circumstances only, and factors that will be taken into account in considering an application will include the extent to which factors outside the *firm's* or individual's control will have a material impact on their ability to engage in settlement negotiations within the period set out in the stage 1 letter.

5.5.7

The procedure for the *settlement discount scheme* where the outcome is potentially a financial penalty, described in paragraphs ■ 5.5.1 to ■ 5.5.6, will also apply where the outcome is potentially a suspension, restriction or condition.