



Jersey Financial
Services Commission

Regulatory Settlements

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Glossary of terms

For the purposes of this policy statement, the following terms should be understood to have the meaning shown by this table.

Board DMP Committee	The committee of the JFSC's Board of Commissioners responsible for making a determination in relation to the imposition of a regulatory sanction, as set out in the JFSC's published Decision-Making Process.
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended.
Executive	One or more officers of the JFSC, including the Director General, acting individually or together, as appropriate, exercising responsibilities delegated to them by the JFSC's Board of Commissioners.
JFSC	The Jersey Financial Services Commission.
regulatory laws	Alternative Investment Funds (Jersey) Regulations 2012, as amended; Banking Business (Jersey) Law 1991, as amended; Collective Investment Funds (Jersey) Law 1988, as amended. Financial Services (Jersey) Law 1998, as amended; Insurance Business (Jersey) Law 1996, as amended; Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.
regulatory sanction	Has the meaning assigned to it in the JFSC's published Decision-Making Process.
Subject	The subject of any decision that may be taken in accordance with the JFSC's published Decision-Making Process. The Subject may be a natural person or a legal person. The Subject may be singular or plural.

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Introduction

- 1 The purpose of this document is to explain the JFSC's policy in relation to regulatory settlements.
- 2 A regulatory settlement is a voluntary process to resolve a regulatory investigation and will conclude with the imposition by the JFSC of a regulatory sanction, appropriate to the case, on the Subject.
- 3 The JFSC may decide to conclude a case by way of a regulatory settlement where it is satisfied that to do so would be consistent with discharging its statutory functions in accordance with its guiding principles¹ and result in an appropriate outcome. For example, settlement may achieve a swifter resolution for the protection of consumers.

Requirements for entering into settlement discussions

- 4 The JFSC will only consider entering into settlement discussions once it has sufficient information to understand the nature and gravity of the suspected misconduct, such as would enable the JFSC to make a reasonable assessment of the appropriate regulatory response. There is no obligation on the JFSC to offer settlement discussions and in cases where the suspected misconduct is particularly egregious settlement discussions are less likely to be offered.
- 5 For the JFSC to consider entering into settlement discussions, the Subject will, as a minimum, be required to:
 - › acknowledge that the JFSC will expect full and frank disclosures during the discussions;
 - › acknowledge that settlement requires a Subject to accept its misconduct;
 - › acknowledge that, if successful, the outcome of the discussions will include the imposition of a regulatory sanction by the JFSC.
- 6 If a Subject chooses not to accept the opportunity to enter into settlement discussions when first offered by the JFSC, the JFSC may decline to enter into settlement discussions at a later stage.
- 7 However, where the JFSC does agree to a later request from the Subject to discuss a settlement, the terms offered will be adjusted to reflect the delay.

Discounts - civil financial penalties

- 8 In cases where the JFSC considers that the appropriate regulatory sanction would be the imposition of a civil financial penalty on the Subject, the amount of the penalty to be imposed will incorporate a discount reflecting how early in the JFSC's published Decision-Making Process the settlement agreement is signed.
- 9 The discount will be applied against the amount of the financial penalty that the JFSC would otherwise have expected to impose on the Subject had the decision-making process been taken through to its conclusion as a contested case.
- 10 The following discounts will apply:

- › Settlement before the conclusion of Stage 1 (Investigation)
– up to 50%
- › Settlement before the conclusion of Stage 2 (Review of the case by the Executive)
– up to 25%
- › Settlement before the conclusion of Stage 3 (Consideration of the case by the Board DMP Committee)
– up to 5%

Process

- 11 Where the JFSC considers that it would be appropriate to offer settlement discussions it will notify the Subject of that by letter.
- 12 The JFSC's letter will make it clear that all settlement discussions will be conducted on a "without prejudice" basis. Consequently, if settlement discussions are not successful neither party may refer to, or seek to rely on, any admissions, concessions, offers or proposals made in the course of settlement discussions (i.e. neither party is prejudiced as a result of a position taken in the course of trying to resolve a matter by way of settlement).
- 13 Entering into settlement discussions is voluntary and either the Subject or the JFSC may withdraw at any stage, should they choose to do so.
- 14 If the Subject accepts the offer of settlement discussions, the JFSC will provide the Subject with a draft settlement agreement and draft documents associated with the proposed regulatory sanction (for example, a draft direction² and public statement³, etc.).
- 15 The Subject will be encouraged to take legal advice on the draft documents provided by the JFSC.
- 16 After the Subject has had an opportunity to consider the draft settlement documents, the JFSC will arrange a meeting, on a without prejudice basis, to discuss finalising them. The Subject will be encouraged to be accompanied at that meeting by its legal adviser.
- 17 There will be one meeting only of the JFSC with the Subject⁴. Where the Subject is not a natural person, the representatives of the Subject that attend must have authority to agree settlement terms, on behalf of the Subject, **at the meeting** (this must include having the authority to agree to the quantum of a civil financial penalty where one is proposed as part of the settlement). Similarly, the representatives of the JFSC will have authority to agree settlement terms at the meeting.

Effect of the settlement agreement

- 18 The settlement agreement will form part of the Subject's compliance record with the JFSC. As such, in circumstances where subsequent concerns about the conduct of the Subject arise, the agreement may be taken into account by the JFSC when it is determining what regulatory response would be appropriate.

Endnotes

¹ See Article 7 of the Commission Law.

² For example, a direction pursuant to Article 23 of the Financial Services (Jersey) Law 1998 or under the equivalent provision in one of the other regulatory laws.

³ For example, a public statement pursuant to Article 25 of the Financial Services (Jersey) Law 1998 or under the equivalent provision in one of the other regulatory laws.

⁴ In exceptional circumstances, at the discretion of the JFSC, more than one meeting may take place.