



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

ENHANCEMENT OF THE ENFORCEMENT PROCESS

14 AUGUST 2020

I. INTRODUCTION

1. In 2017, the Bermuda Monetary Authority (Authority or BMA) revised its Statement of Principles for Enforcement and issued guidance on the manner in which the Authority would exercise its powers. The impetus for this review was to carry out an assessment of the enforcement process and to make adjustments as needed. This was part of the Authority's due diligence to ensure that the regime is effective, transparent, provides for full disclosure of information pertaining to the alleged infractions and clearly sets out how matters are progressed from supervision to enforcement.
2. In light of the Government's decision to remove the Appeal Tribunal from the supervisory review process, the Authority has again undertaken an assessment of the disciplinary and enforcement process, taking into consideration that the review of any decision of the Authority will now be heard by the Supreme Court.
3. To that end, the Authority surveyed applicable international standards and peer jurisdictions. Such standards clearly state that the regulator must have sufficient powers to ensure that regulated financial and non-financial institutions (RFIs) are being prudently managed and do not put clients at risk. The enforcement actions should be reasonable and effective. The decision making process must be open and transparent, with the reasons for the decision clearly stated to the RFI. As part of this process, an RFI must have an opportunity to respond to the findings of the regulator. Finally, an RFI must have the right to "appeal" the decision of the regulator before an independent body. The mandate of this body is to ensure that the decision of the regulator was reasonable and based on the disclosed facts.
4. Therefore, the Authority has taken steps to further strengthen the enforcement process to complement the impending changes to the appeal process. In particular, the Authority has designated the present Enforcement Committee as a decision making committee. The Authority is now proposing to adopt a procedure of settlement, while reinforcing its internal procedures including ensuring there is more clarity as to when enforcement has been commenced.
5. The objective of this consultation paper is to present the proposed changes and to inform industry of the adjustments being made.

II. DISCUSSION

6. The international drive to secure effective regulatory regimes is balanced by regulators' approach to enforce and the overall right to ensure the decisions of the regulator are appropriate and reasonable.
7. The Authority has taken significant steps during the past 10 years to strengthen its approach to enforcement. The goal has been to ensure both RFIs' fulfilment of their obligations and the achievement of client and market protection. With the financial crisis unfolding in 2007, one of the primary concerns was that there was not enough

robust oversight by the supervisors and that the market was not following sound practices to the detriment of the financial community. That has given rise to concern from international standard setters (including the Financial Action Task Force, Basel Institute on Governance, International Organization of Securities Commissions and International Association of Insurance Supervisors) about how well regulators can measure compliance with rules and regulations and take appropriate actions where necessary. To that end, in 2012, the Authority revised the Regulatory Acts¹ to introduce additional powers, and issued the Statement of Principles for Enforcement. The Authority also reached out to all industry sectors to describe the approach to be taken and the principles that the Authority would take to progress enforcement actions.

8. The Authority has been proactive with its enforcement programme and has now constituted an enforcement unit within the Department of Legal Services and Enforcement (hereinafter referred to as “Enforcement”) to manage the process. Since 2016, the Authority has published all its disciplinary decisions on the BMA website. Publication is intended to inform the community about the nature of the breaches and the reasons for the disciplinary actions. A summary of all disciplinary actions is also published in the Authority’s Annual Report. The disciplinary actions imposed range from remedial actions, imposed by the relevant supervisory team, to civil penalties, winding up proceedings and revocation of licences. To date, there have been four appeal applications submitted to the Minister of Finance (MoF).
9. In the recent assessment of Bermuda’s Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) regime by the Caribbean Financial Action Task Force (CFATF), Bermuda’s enforcement regime was assessed as being effective, although there were constructive comments made regarding the number of actions taken and the impact. Whilst it is a generally accepted principle that the number and type of enforcement measures taken should be consistent with and reflect the number and severity of deficiencies and breaches identified through the risk-based supervisory processes, CFATF noted that the Authority did not use the full range of disciplinary measures available and indicated that more effort should be taken to apply the different tools available for achieving compliance.
10. To move forward, the Authority has undertaken a review of how other jurisdictions have approached their enforcement programme. Based on that survey, the Authority determined the following factors:
 - i. The decision making process of regulatory decisions that result in the imposition of disciplinary measures must be fully transparent, and the reasons for taking disciplinary measures must be disclosed. Many jurisdictions now have detailed procedures and manuals setting out the stages of enforcement

¹ “Regulatory Acts” means Insurance Act 1978; Banks and Deposit Companies Act 1999; Trusts (Regulation of Trust Business) Act 2001; Investment Business Act 2003; Investment Funds Act 2006; Credit Unions Act 2010; Corporate Service Provider Business Act 2012; Money Service Business Act 2016; Digital Asset Business Act 2018.

- ii. The actions taken by the regulator must be reasonably based on the facts that support the findings of non-compliance. Jurisdictions do not have extensive grounds for appeal, and it is generally accepted that an appeal process should determine the fairness of the decision taken
 - iii. The enforcement process is not a judicial one, but the RFI must have an opportunity to review and challenge the findings
 - iv. The decision to impose disciplinary measures must be made independent of the team that supervises the RFI. There must be evidence that the disciplinary decision was not made by the same persons who regulate the RFI
 - v. The appeal hearing must be made by a body that is independent of the regulator. There have now been court cases dealing with the appeals of the regulator's decision. The appeal is intended to give the RFI an opportunity to present the reasons why the regulator's case was not reasonably based on the facts and for the appeal body to assess if that is the case
11. Based on these findings, the Authority is now revising its approach, while also taking into consideration the decision of the Government to dismantle the Appeal Tribunal's process.
12. The key changes to the enforcement process are divided into three categories: case management, settlement, and decision making.
13. *Case management* - At present, enforcement cases are triggered by several factors. Usually, the supervisors identify a series of issues which cumulate as not only supervisory concerns but also a pattern of non-compliance. The initiation of a further investigation is based on further discussions with the supervisor about the available facts. Then, Enforcement commences its fact-finding. Notionally this is a case management process. However, it is recommended that there be a more completely defined handover of matters to Enforcement and communication with the RFI so that there is full transparency.
14. The Authority's internal case management team will engage with the RFI to set out the nature of the alleged breaches, verify the facts, collect further information and proceed with substantiating whether there is a case and the recommended disciplinary steps.
15. Details of the Authority's proposed enforcement process, which will be included as an annex to the Authority's Statement of Principles and Guidance on the Exercise of

Enforcement Powers (Enforcement Guide²), are attached in Appendix 1. As an overview, the enforcement process will involve three stages:

- i. Stage 1 - Disclosures and document verification - This will involve discussions with the RFI as to the facts and the collection of additional information to substantiate the case
 - ii. Stage 2 - Review of the case - Once all the information has been compiled and verified, the internal case management team will review and determine whether there is a substantial case to put forward to the Enforcement Committee for consideration
 - iii. Stage 3 - Enforcement Committee hearing- The matter will be presented to the Enforcement Committee for consideration and to determine whether to issue a Warning Notice. Once the Warning Notice is issued, the RFI has an opportunity to make a presentation to the Enforcement Committee
16. **Settlement** - Based on our review of enforcement regimes adopted by peer jurisdictions, settlements are now a routine part of the process. The early acknowledgement by an RFI of breaches of Regulatory and Anti-Money Laundering Acts, which effectively saves time and investigative resources of the Authority, will always be considered favourably. In such cases, there is general agreement that there have been breaches supported by the facts, there are not substantial arguments to be made to challenge the findings of the Authority, and the RFI may enter into a settlement agreement with the Authority.
17. The settlement process in peer jurisdictions varies but usually involves reducing the fine by between 5 and 50%. Some jurisdictions have implemented a graduated discount scheme where a 50% discount is applied at a very early stage in the enforcement process. The discount is reduced incrementally thereafter throughout the enforcement process with a defined stage at which settlement discussions will no longer be considered. Other jurisdictions have implemented a flat rate of discount of 30% that will only be considered at a very early stage in the enforcement process.
18. The settlement process applies in such cases where the Authority is reasonably satisfied that it is consistent with the discharge of its statutory duties and the imposition of an expedient civil penalty is the appropriate Disciplinary Measure (“Civil Penalty”). To encourage early settlement, a graduated discount scheme will be implemented. The extent of the discount given is dependent on the stage at which settlement is agreed. Settlement discussions are conducted on a ‘without prejudice’ basis.

² The Enforcement Guide will be amended to reflect the changes to the Authority’s proposed enforcement process once finalised.

19. The Authority intends to propose a graduated discount for settlement at the earliest opportunity. However, the value of such discount has not yet been determined. Full details of the settlement process are also contained within the Authority's proposed enforcement process, which is attached at Appendix 1.
20. ***Decision-making Enforcement Committee*** - At present, the decision-making function of the Board has been delegated to the Chief Executive Officer (CEO). During the past eight years, the CEO has made the final decisions based on advice received from an advisory committee composed of a number of the most senior officers of the Authority. The Enforcement Committee has now been formally designated by the Board of Directors (Board) of the Authority as a decision-making committee. The Enforcement Committee will be composed of a number of the most senior officers of the Authority, including the CEO. To meet international standards described above, the members of the Enforcement Committee must not have been involved in the day-to-day supervision of the RFI that is the subject of enforcement; this approach was upheld by the Court in the case R. (on application of Willford) v. Financial Services Authority [2013] EWCA Civ 677.
21. With these adjustments, the Authority is of the view that there will be further clarity and certainty in the enforcement process including addressing concerns that it may not always be clear when an RFI formally comes within an enforcement review process. This is important not only for the RFI but for the supervisory teams which continue to carry out oversight of the RFI and become removed from the enforcement investigations. There will be more focus on developing case bundles, which are based on the information collected from the relevant supervisory team and further verified by the RFI itself. The case bundles will be the material which will be considered by the Enforcement Committee and possibly the Supreme Court acting as an Appeal Tribunal.
22. An appeal to the Supreme Court is not intended to be a judicial proceeding but rather a forum to enable the RFI to challenge the Authority's decision and for the Authority to respond. Such a review is driven not necessarily by administrative law principles but by the general principle that the Supreme Court must determine if the Authority has acted reasonably and the facts support such a finding. The nature of the determination of the Court in hearing regulatory appeals was clearly articulated in the case of SWM Limited v. Jersey Financial Services Commission (2019) (JRC) 100.
23. **Legislative changes** - As part of this review, there will be specific legislative matters to address, which are now under active consideration. These include:
- i. **Settlement procedures** - With the adoption of the settlement process, the procedural requirements as set out in each of the Regulatory Acts will need to be modified. See, for example, section 28B of the Trusts (Regulation of Trust Business) Act 2001, which directs that the Authority must issue a Warning Notice before imposing a Civil Penalty. If a settlement is being progressed, then the requirement to issue a Warning Notice will not be required in all cases for the Authority to take disciplinary action. The legislation will be amended to dispense

with this requirement where the Authority has entered into a settlement agreement with the RFI

ii. **Consistency of appeal procedures** - A review of the Regulatory Acts, and Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 will be conducted to ensure consistency in provisions that apply to different sectors. In order to ensure uniformity of RFI rights of appeal, the Authority may propose certain amendments

iii. **Determination of appeals** - Each of the Regulatory Acts includes the actions which the Appeal Tribunal will take. The Appeal Tribunal may confirm or reverse the decision which is the subject of the appeal. It shall not have power to vary it except that, where the decision was to cancel a registration, the Tribunal may direct the Authority to impose conditions or issue directions instead, or where the decision was to impose or vary restrictions, the Tribunal may direct different restrictions on the licence

24. Recently, the MoF has announced that the appeals will now be made to the Supreme Court. In consultation with the MoF, the Authority has been asked to review these provisions. The Authority has recommended that, in addition to these determinative powers, the Supreme Court would have the power to send the matter back to the Authority with directions to reconsider the decision where the Supreme Court has considered that specific facts should or should not have been considered.

25. This amendment will enable the Supreme Court to assess whether the facts upon which the Authority relied should or should not have been considered when making the decision.

III. CONCLUSION

26. The Authority has begun to adjust its internal enforcement process. To this end, the Board has designated the Enforcement Committee as a decision making committee. The Authority is revising its internal procedures with definitive stages for determining whether to undertake an enforcement action and the nature of the disciplinary action. The Authority is preparing to implement a process for settlement. These revisions will provide greater certainty and clarity as well as preserve the resources of the Authority in appropriate cases.

27. Overall, the process must be robust and fair and demonstrate, not only to the RFI but all stakeholders, the reasons for the enforcement actions taken. This will reinforce Bermuda's recognition as a sound financial centre and recognises the efforts and investment made by RFIs to ensure they are prudentially managed and in good compliance.

28. Proposed legislative amendments are to be led by and agreed upon with the MoF and adopted in early course. The Authority's Statement of Principles and Enforcement

Guide, issued in 2018, will also be amended upon the final adoption of the revised enforcement process.

29. In light of the proposed changes to the appeal process and the adjustments being made to the enforcement process, the Authority invites industry stakeholders to provide feedback to help ensure that the adjustments do not give rise to any unintended consequences.

Responses may be sent to Policy@bma.bm no later than 11 September.

Proposed Enforcement Structure

Public Version for Consultation

14 August 2020

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PART 1. THE DECISION MAKING PROCESS

A. PRELIMINARY REVIEW OF POTENTIAL MATTERS FOR ENFORCEMENT

Responsibility

- Determine if there is information to start an enforcement process against a regulated financial and non-financial institution (“RFI”)
- Determine if more investigation is required
- Start settlement process if appropriate ([See Part 2. The Settlement Process](#))
- Start [Stage B - Decision Making Process](#) in for enforcement matters that require the issuance of a Warning Notice and Decision Notice

Workflow

- This stage is not part of the Decision Making Process
- The purpose is to assess if there is a reasonable possibility that a non-compliance event has occurred to which the Bermuda Monetary Authority (Authority) may want to impose any of the disciplinary measures as prescribed in the Regulatory and AML/ATF Acts¹ (hereinafter referred to as the “Disciplinary Measures”)

¹ “Regulatory and AML/ATF Acts” means Insurance Act 1978; Banks and Deposit Companies Act 1999; Trusts (Regulation of Trust Business) Act 2001; Investment Business Act 2003; Investment Funds Act 2006; Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; Credit Unions Act 2010; Corporate Service Provider Business Act 2012; Money Service Business Act 2016; Digital Asset Business Act 2018.

B. DECISION MAKING PROCESS

STAGE 1 - DISCLOSURES AND DOCUMENT VERIFICATION

Responsibility

- Written notification to the RFI that the matter has been formally referred to the Enforcement unit within the Department of Legal Services and Enforcement (hereinafter referred to as “Enforcement”)
- Members of Enforcement gather all required information
- Confirmation of all facts and relevant documents with the RFI

Workflow

Disclosing to the RFI the information which will form the basis for a decision to be taken by the Authority.

Objective is

- To ensure the RFI is provided with all the information the Authority will rely upon to make its decisions;
- For that information to be examined as reliable and complete in all material respects before any decision is taken

Steps

- A case officer within Enforcement will liaise with the RFI (who must respond in writing) to confirm that the facts as presented are correct (if not, the RFI must suggest what changes should be made to ensure they are correct) and also provide any additional information that is considered material or relevant in any way to the matter
- Collation of all comments and summary of all facts relevant to the proposed enforcement decision is an important part of the process. Therefore, all comments received above will be carefully considered and evaluated
- Once collation is complete the bundle of documents will be submitted for a [Stage 2 - Case Management Review](#)
- The RFI is also provided with the bundle of documents - which could include the case officer’s suggested Disciplinary Measure(s)

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STAGE 2 - CASE MANAGEMENT REVIEW

Responsibility

- Determine if there is enough information to go forward with an Enforcement hearing based upon the completion of the Stage 1 - Disclosures and Document Verification

Workflow

- The purpose of the Case Management Review is to determine if there is enough information to go forward with an enforcement hearing. This will involve: reviewing the bundle of documents from Stage 1 - Disclosures and Document Verification, and considering any response from the RFI and comments from the case officer
- The Case Management Review will also involve an assessment of the non-compliance event(s) to ensure the proposed Disciplinary Measures are proportionate thereto
- The following decisions (without limitation), or a combination, may be taken:
 - Determine whether or not further investigation is required;
 - Discontinue the investigation and either take no formal action or take some other action be taken that is not subject to the Decision Making Process (e.g., heightened supervision);
 - Refer the matter to the Enforcement Committee (described below in Stage 3 – Enforcement Committee First Meeting) for decision as to whether it is minded to pursue Disciplinary Measures

If the investigation is discontinued, the RFI will be issued with the Authority's decision not to proceed.

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STAGE 3 - ENFORCEMENT COMMITTEE – FIRST MEETING

Responsibility

After reviewing the material obtained during Stage 1- Disclosures and Document Verification, the Enforcement Committee (EC) will make the following decisions;

- Send the matter back to the relevant supervisory team for enhanced supervision;
- Send the matter back to Enforcement for further investigation; or
- Send Warning Notice to RFI if the EC is minded to pursue Disciplinary Measures

Officers responsible²

The EC is a standing committee composed of senior officers of the Authority and is convened on a case by case basis, with membership dependent upon the matter under consideration. The EC will be comprised of three members which will be chaired by the Chief Executive Officer (CEO) will serve as Chair and two other members of the Authority holding any of the following posts will serve as the remaining members:

- Managing Director (if not conflicted)
- Chief Operating Officer
- Director (one that is not conflicted)
- Senior Advisor (one that is not conflicted)

Workflow

RFI is informed of the date of the First Meeting of the EC but will not be permitted to attend.

- Prior to the commencement of the 1st Meeting, the Director of Legal Services and Enforcement shall advise the CEO/Chairman of the EC which members of the Authority are conflicted and are therefore not eligible to form part of the decision making process
- If the EC is minded to exercise one or more of the Authority's statutory powers to impose Disciplinary Measures. The RFI will be notified in writing of that fact and be provided with the EC's reason for the proposed Disciplinary Measures. This is via the issuance of the statutory Warning Notice. This signals that the matter will move on to the Stage 4 - EC Second Meeting. In such cases the RFI will be advised as follows:
 - Date of the Second Meeting of the EC to consider whether or not it is minded to exercise one or more of its statutory powers to impose Disciplinary Measures;
 - Offer the RFI the opportunity to make written submissions to the EC within a specified timeframe;
 - Request the RFI to advise if it plans on making oral submissions to the EC and if it will be accompanied by a legal advisor. Oral submissions shall not be permitted to replace written submissions and will not be permitted if the RFI chooses not to submit written submissions;
 - Consequences for failing to respond within time frame

Enforcement may provide comments on any written submissions received and provide reasons where it rejects the points raised. This information is provided to the EC and the RFI prior to the Second Meeting.

² The terms "Director", "Managing Director" and "Deputy Director" as used herein do not include, or imply, that such persons are Members of the Board of Directors of the Authority.

STAGE 4 - ENFORCEMENT COMMITTEE – SECOND MEETING

Responsibility

- The EC will hear the matter, including oral submissions from the RFI and representatives of Enforcement, which may include receiving advice from the Director of Legal Services and Enforcement as to matters of process;
- EC deliberates in private and then makes decision;
- The EC will either:
 - Dismiss the matter (with possible recommendation of enhanced supervision going forward); or
 - Issue a Decision Notice outlining the Disciplinary Measures to be imposed.

Officers responsible

Wherever possible, the same members of the Authority that formed the decision making quorum of the First Meeting of the EC

Workflow

The EC may invite members of Enforcement or Supervision to the EC meeting or any other person it thinks may assist in informing its deliberations

- Oral submissions can be made by the RFI
- The EC may ask questions of the RFI
- Members of Enforcement and Supervision may be invited to answer questions from the EC to clarify issues
- The process is designed to be interactive rather than adversarial (court rules do not apply)
- Oral submissions are formally recorded through the use of audio equipment. A copy of the audio recording will be provided to the RFI upon its written request at no cost to the RFI. Should the RFI request a written transcription, this cost will be borne by the RFI.

The EC will then deliberate in private and reach its decision having regard to the written and oral submissions and all other information and documents before it at the Second Meeting of the EC (“EC Bundle of Documents”).

Decision of the EC

As soon as is reasonably practicable the RFI will be given written notice of the EC’s decision, in the form of the statutory Decision Notice, which will constitute the Final Decision of the Authority.

If the decision is to impose any Disciplinary Measures, then the Decision Notice will include:

- The reasons for the decision; and
- Advise the RFI of its right to appeal the decision to the Supreme Court.

At the conclusion of this stage, the RFI has the option to either:

- Accept the Decision Notice and comply with enforcement action; or
- Appeal the Decision Notice directly to the Supreme Court.

C. APPEAL PROCESS

STAGE 1 - APPEAL OF THE FINAL DECISION OF THE AUTHORITY TO THE SUPREME COURT OF BERMUDA

Responsibility

- The RFI may appeal the Final Decision of the Authority, the evidence of which is the Decision Notice
- The Supreme Court is the independent arbiter charged with the responsibility to review and consider the matter in which the Authority exercised its enforcement powers
- Following the grounds of appeal that currently exist in the Regulatory and AML/ATF Acts, the Supreme Court may consider whether, for the reasons adduced by the appellant, the Final Decision of the Authority was unlawful or not justified by the evidence on which it was based
- The Supreme Court may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that, where the decision was to cancel a registration, the Supreme Court may direct the Authority to impose conditions or issue directions instead, or where the decision was to impose or vary restrictions the Supreme Court may direct different restrictions on the licence

STAGE 2 - APPEAL DECISION OF THE SUPREME COURT TO THE COURT OF APPEAL OF BERMUDA³

Responsibility

- Review the decision of the Supreme Court
- Ground for appeal is solely on a point of law
- Leave of the Supreme Court to appeal to the Court of Appeal must first be obtained

³ These grounds of appeal are identical to the grounds that currently exist in the Regulatory and AML/ATF Acts that form the basis of an appeal to the Court of Appeal.

PART 2. THE SETTLEMENT PROCESS

OVERVIEW

The early acknowledgement by an RFI of breaches of Regulatory and AML/ATF Acts which, effectively saves time and investigative resources of the Authority, will always be considered favourably.

In such cases, where the Authority is reasonably satisfied that it is consistent with the discharge of its statutory duties and that the imposition of a civil penalty is the appropriate Disciplinary Measure and one which is expedient and appropriate (Civil Penalty), the Authority may enter into settlement discussions with the RFI with a view to entering into a written agreement (Settlement Agreement) concerning the nature of the RFI's non-compliance and the action taken by the Authority to impose a Civil Penalty.

A graduated discount scheme is implemented to encourage early settlement. The extent of the discount given is dependent on the stage at which settlement is agreed. Settlement discussions are conducted on a 'without prejudice' basis.

The amount of the Civil Penalty to be imposed by the Authority will incorporate a discount reflecting:

- (a) How early in the decision-making process the settlement agreement is signed
- (b) Whether the contravention is remediated to the satisfaction of the Authority before the settlement agreement is signed.
 - Stage 1 = [TBD] % discount will be applied to the proposed Civil Penalty. This discount is considered appropriate because of the efficiencies gained by avoiding the need for extensive preparation for a contested case
 - Stage 2 = [TBD] % discount
 - Stage 3 = [TBD] % discount

A. PRELIMINARY ‘WITHOUT PREJUDICE’ SETTLEMENT MEETING(S)

Responsibility

- Determine if there is information to start an enforcement process against a RFI
- Determine if more investigation is required
- Start settlement process if appropriate

Workflow

Steps

- If it appears that the information presented by the supervisory unit indicates a reasonable probability that non-compliance has occurred in relation to which the Authority may wish to impose a Civil Penalty, Enforcement may seek approval to commence settlement discussions with the RFI
- Authorisation to commence settlement discussions will not be provided in cases of significant importance and should be heard by the EC
- Cases that are considered likely to have significant effect on the reputation and integrity of Bermuda or which could generate significant negative media attention for Bermuda or the Authority will not be suitable for the settlement consideration
- Once authorisation has been provided to commence settlement discussions, the assigned Enforcement case officer will hold a preliminary meeting or discussion with the RFI on a ‘without prejudice’ basis in the period leading up to the commencement of Stage 1 - Settlement
- Such meeting(s) provide a useful opportunity for investigators to set out (in general terms) the case theory, and for the RFI to understand the Authority’s position on material issues
- This practice may not be appropriate in all cases, but it is consistent with fostering constructive dialogue, and with promoting early settlement

Conduct of Preliminary meetings

- Convening preliminary meetings, (in the period between notification of the date on which Stage 1 Settlement will begin, and its commencement), will prove helpful in most cases. The key legal and factual bases of the case should be summarised by the investigators at preliminary meetings. It will usually be helpful for investigators to identify to RFIs the evidence that they regarded as key
- It is anticipated that preliminary meetings will usually take place prior to a determination of the penalty parameters (described in Stage B below). Preliminary meetings should be expressly undertaken on that basis so that the RFI understands there is the potential for the case to change

B. SETTLEMENT DISCUSSION PROCESS

STAGE 1 – SETTLEMENT

Responsibility

Overview

- Written notification to the RFI that the matter has been formally referred to Enforcement
- Commence settlement discussions with RFI

Workflow

Steps

- **Stage 1 Settlement Letter** is issued to the RFI which explains the nature of the misconduct, identifies and where necessary provides the RFI with key evidence on which the case relies at the commencement of Stage 1 - Settlement
- It will also include the proposed Civil Penalty as well as the period within which the Authority expects any settlement discussions to be concluded
- Standard period to conclude settlement discussions is 28 days.
- **[TBD]% discount to be applied if settlement is concluded**
- **An Extension of Stage 1, will be granted in exceptional circumstances.** To enhance transparency, the Authority will set out those factors that it may consider to be relevant to an application for extension of Stage 1.

In the event a Settlement Agreement is not reached, The Decision Making Process, Stage 1 - Disclosure and Document Verification process will be commenced.

Settlement Review of Draft Settlement Agreement

- The Settlement Review is conducted throughout Stages 1 through 3 of the Settlement Process and will involve reviewing the relevant information obtained at each stage of the settlement process to assist in its review
- Enforcement will present the draft Settlement Agreement to the Director of Legal Services and Enforcement for review, consideration and approval of the agreement, if one has been reached with the RFI
- The reasons for not approving the draft Settlement Agreement will be communicated to the case officer with directions as to the manner in which the draft Settlement Agreement should be revised
- If the draft Settlement Agreement is approved at the Settlement Review, it will then be provided to the EC for endorsement

EC Meeting – Endorsement of the Settlement Agreement

- The EC is a standing committee of the Authority and is convened on a case by case basis, with membership dependent upon the matter under consideration
- The EC will be convened to review and approve, on behalf of the Authority, the draft Settlement Agreement
- Where a draft Settlement Agreement has been reviewed and approved following a Settlement Review, the Deputy Director, Enforcement will submit a Settlement Agreement for endorsement by the EC.
- If the Settlement Agreement is endorsed by the EC, it will be signed by the Director of Legal Services and Enforcement and the publication of the penalty will be completed noting the reduction in penalty arising from a settlement with the RFI

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STAGE 2 – SETTLEMENT

Responsibility

- If the RFI chooses not to accept the opportunity to commence settlement discussions when first offered at Stage 1 - Settlement, the case will have moved into The Decision Making Process, Stage 1 - Disclosure and Document Verification
- During this stage, the RFI can request to enter Stage 2 – Settlement discussions which must be concluded before the case moves to The Decision Making Process, Stage 2 – Case Management Review
- The Authority may decline to enter into settlement discussions at this later stage

Workflow

- If the Authority does agree to negotiate terms of a settlement agreement at this stage, the terms offered will be adjusted to reflect the delay and will be based entirely upon the bundle of documents prepared at The Decision Making Process, Stage 1 - Disclosure and Document Verification
- **[TBD]% discount to be applied if settlement concluded**

In the event a Settlement Agreement is not reached, the matter will proceed to The Decision Making Process, Stage 2 – Case Management Review.

Settlement Review of Draft Settlement Agreement

- The Settlement Review is conducted throughout Stages 1 through 3 of the Settlement Process and will involve reviewing the relevant information obtained at each stage of the settlement process to assist in its review
- Enforcement will present the draft Settlement Agreement to the Director of Legal Services and Enforcement for review, consideration and approval of the agreement, if one has been reached with the RFI
- The reasons for not approving the draft Settlement Agreement will be communicated to the case officer with directions as to the manner in which the draft Settlement Agreement should be revised
- If the draft Settlement Agreement is approved at the Settlement Review, it will then be provided to the EC for endorsement

EC Meeting – Endorsement of the Settlement Agreement

- Where a Draft Settlement Agreement has been reviewed and approved following a Settlement Review, the Deputy Director of Enforcement will submit a Settlement Agreement for endorsement by the EC
- If the Settlement Agreement is endorsed by the EC, it will be signed by the Director of Legal Services and Enforcement and the publication of the penalty will be completed noting the reduction in penalty arising from a settlement with the RFI

STAGE 3 – SETTLEMENT

Responsibility

- **This is the final opportunity for the commencement of settlement discussions and the Authority may decline the RFI's request to negotiate at this late stage**
- The RFI must submit its request for settlement discussions BEFORE the convening of The Decision Making Process, Stage 3 - Enforcement Committee - First Meeting.

Workflow

- If the Authority does agree to negotiate terms of a settlement agreement at this stage, the terms offered will be adjusted to reflect the delay and will be based entirely upon bundle of documents that were submitted to and result from The Decision Making Process, Stage 2- Case Management Review
- **[TBD]% discount to be applied if settlement concluded**

In the event a Settlement Agreement is not reached, the matter will proceed to The Decision Making Process, Stage 3 – Enforcement Committee – First Meeting.

Settlement Review of Draft Settlement Agreement

- The Settlement Review is conducted throughout Stages 1 through 3 of the Settlement Process and will involve reviewing the relevant information obtained at each stage of the settlement process to assist in its review
- Enforcement will present the draft Settlement Agreement to the Director of Legal Services and Enforcement for review, consideration and approval of the agreement, if one has been reached with the RFI
- The reasons for not approving the draft Settlement Agreement will be communicated to the case officer with directions as to the manner in which the draft Settlement Agreement should be revised
- If the draft Settlement Agreement is approved at the Settlement Review, it will then be provided to the EC for endorsement

Enforcement Committee Meeting – Endorsement of the Settlement Agreement

- Where a draft Settlement Agreement has been reviewed and approved following a Settlement Review, the Deputy Director, Enforcement will submit a Settlement Agreement for endorsement by the EC.
- If the Settlement Agreement is endorsed by the EC, it will be signed by the Director of Legal Services and Enforcement and the publication of the penalty will be completed noting the reduction in penalty arising from a settlement with the RFI