



BaFin

Bundesanstalt für
Finanzdienstleistungsaufsicht

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**Information sheet
BaFin Securities Supervision's
settlement procedure for
administrative fine proceedings**

**Federal Financial Supervisory Authority
Securities Supervision/Asset Management
Administrative Offence Proceedings Division**

Administrative fine proceedings can be concluded **by a negotiated agreement (settlement)**. A specific condition for this is that the party concerned or the secondary participant actually committed the offence and admits it.

As a rule, a settlement **expedites and shortens** the administrative fine proceedings, which require complex investigations and significant resources. Additionally, it also results in particular in a **reduction in the administrative fine (to be determined by BaFin) to the benefit of the party concerned**. From the perspective of BaFin's Securities Supervision, any reduction in the duration of the proceedings is a major factor supporting a settlement, with procedural economy aspects playing a particular role. A settlement can also be advantageous for the party concerned or the secondary participant in administrative fine proceedings: they are spared lengthy proceedings and the outcome is certain.

Legal basis for a settlement

Proceedings can be terminated by agreeing a settlement for all administrative offices for which BaFin's Securities Supervision is responsible. However, there is no provision under ordinary law governing the requirements for agreeing a settlement. The arrangements governing plea bargaining in criminal proceedings applicable to judicial criminal and administrative offence proceedings, in particular those set out in section 257c of the Code of Criminal Procedure (*Strafprozessordnung – StPO*) do not apply (see the government's explanatory memorandum on the Act on the Regulation of Plea Bargaining in Criminal Proceedings (*Gesetz zur Regelung der Verständigung im Strafverfahren*), Bundestag printed paper 16/12310, page 16).

The boundaries of any settlement are defined by the Basic Law (*Grundgesetz*), in particular by the rule of law: the party concerned or the secondary participant must have been granted the right to be heard, in particular before any settlement is agreed; additionally, the right to testify, the right to a fair hearing and the principle that any punishment must be in proportion to culpability must be observed. The alleged offence must be properly established and subject to legal scrutiny, based on the records. This means that the offence must actually have been committed. Finally, the administrative fine agreed in a settlement must constitute a tangible sanction that is proportionate to the alleged offence.

Subject matter of a settlement

Above all, a settlement sets out the legal consequences of the offence, in particular the amount of the administrative fine to be imposed and the conduct of the party concerned or secondary participants in the proceedings. Any agreement about, for example, the substance of the administrative order imposing the fine or about the applicability of any announcement of the administrative fine notice provided for by law, or any declaration of waiver of appeal, is not permitted.

A settlement is only possible if the party concerned or the relevant secondary participant at least admits to having committed the offence and accepts the imposition of the proposed administrative fine, less any agreed “settlement reduction”. If no admission has been made, no agreement on a settlement to terminate the proceedings is possible. Any admission must contain, first, a description of the offence to which the proceedings relate, and second, information about the circumstances that are relevant for assessing the administrative fine. The party concerned or the secondary participant should make a statement – written if possible – accepting the administrative fine up to the amount being proposed and acknowledging the alleged offence of which they have been accused. Any waiver of appeal may not be the subject of the settlement.

Settlement procedure

The Administrative Offence Proceedings Division in BaFin’s Securities Supervision is willing in principle to enter into talks with the aim of terminating proceedings by means of a settlement. Consequently, both sides can suggest a settlement at any time. BaFin may, at its discretion, grant the party concerned or the secondary participant a period within which the proposed settlement should be accepted.

There are no rules governing the timing of the commencement of settlement talks. However, the more advanced the administrative fine proceedings are, the less the settlement reduction will be.

The settlement (party concerned, factual findings, description of the offence and agreed outcome) is documented in the administrative fine record (see section 160b sentence 1 of the StPO). The negotiated termination of the proceedings is concluded by issuing a short-form administrative fine notice containing only the information required by section 66 of the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten – OWiG*), which will be withdrawn in the event of an appeal by the party concerned or the secondary participant (see section 69 (2) of the OWiG).