

Settling In



AUTHOR

Hannah Rossiter
Director
Compliance Consulting
hannah.rossiter@duffandphelps.com

The French regulator is increasingly preferring settlement agreements to enforcement action and sanctions. That's good news for firms, but it doesn't let them off the hook.

Since they were introduced in 2010, settlement agreements have given the French regulator, the Autorité de Marchés Financiers (AMF), an alternative to enforcement action. It's one we are seeing more frequently, and it's likely to continue, with the AMF's head of enforcement recently publicly promoting the use of settlements.

That's largely good news for firms that find themselves being inspected. Settlements offer the opportunity of a quicker, cheaper and more flexible resolution to cases. It is not just that enforcement action is a more formal process; it is also far longer. Even once the Sanctions Commission is instructed to intervene in a case, firms must generally wait at least another 18 to 24 months for a decision. And cases rarely go their way.

A settlement agreement can usually be finalised in a third of that time.

It is also a negotiated document. In contrast to formal sanctions texts, most settlement agreements are short and are agreed between the regulator and the firm. They simply outline the failures the AMF alleges, any points the firm would challenge and the action being taken. All start with a statement that the settlement is not an admission of responsibility on the part of the firm.

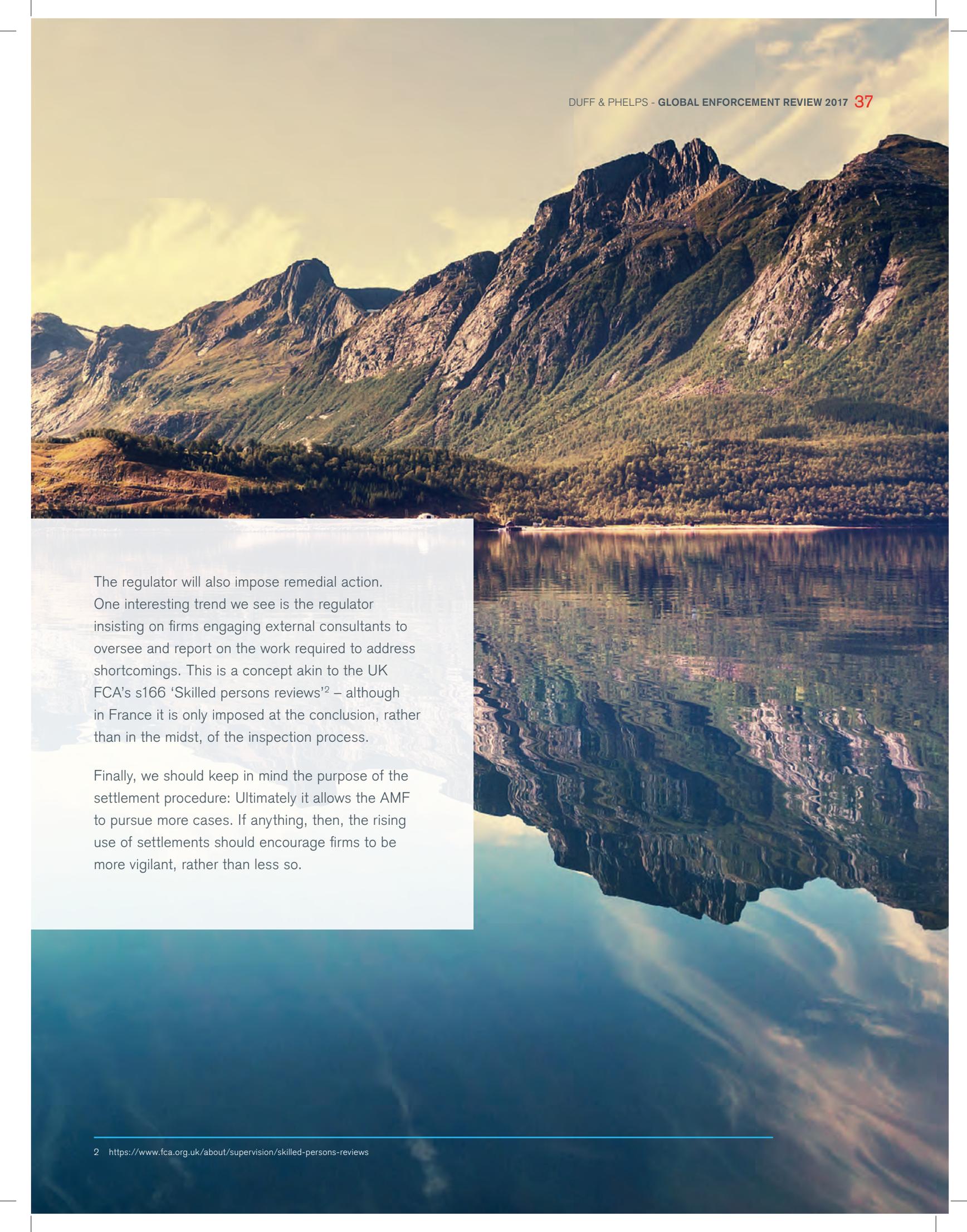
No Slap on the Wrist

While a settlement is almost always preferable to sanctions for a firm, increased use doesn't necessarily indicate a softer enforcement regime in France, however.

First, the settlement procedure won't be offered in cases of market abuse, whether insider dealing, dissemination of false information or price manipulation.¹ Enforcement and sanctions will be the route employed for these.

Second, settlements impose real obligations on firms. That includes substantial payments, even if these may be less than the penalties imposed in enforcement.

1 http://www.amf-france.org/en_US/L-AMF/Missions-et-competences/Transactions.html#



The regulator will also impose remedial action. One interesting trend we see is the regulator insisting on firms engaging external consultants to oversee and report on the work required to address shortcomings. This is a concept akin to the UK FCA's s166 'Skilled persons reviews'² – although in France it is only imposed at the conclusion, rather than in the midst, of the inspection process.

Finally, we should keep in mind the purpose of the settlement procedure: Ultimately it allows the AMF to pursue more cases. If anything, then, the rising use of settlements should encourage firms to be more vigilant, rather than less so.

² <https://www.fca.org.uk/about/supervision/skilled-persons-reviews>