



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2014

# Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942



The Inquiry Guidelines are issued by the Governor of the Central Bank of Ireland, Patrick Honohan, for and on behalf of the Central Bank of Ireland, in exercise of the Central Bank of Ireland's powers under Section 33BD of the Central Bank Act 1942, as amended.

The Inquiry Guidelines repeal and replace the previous Inquiry Guidelines published by the Central Bank of Ireland in 2013.

Signed for and on behalf of the Central Bank of Ireland on 03 November 2014



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Patrick Honohan  
Governor of the Central Bank of Ireland

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## 1. Introduction

- 1.1 The Central Bank of Ireland (**“the Central Bank”**) may conduct an Inquiry under Part IIIC of the Central Bank Act 1942, as amended (**“the Act”**) where it suspects on reasonable grounds that a prescribed contravention is being or has been committed<sup>1</sup>. Such Inquiries will be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the Inquiry will allow.<sup>2</sup>
- 1.2 These Inquiry Guidelines, published pursuant to section 33BD of the Act, (**“the Guidelines”**) set out the procedures which the Central Bank ordinarily proposes to follow when holding an Inquiry under Part IIIC of the Act. It may be necessary to depart from the Guidelines in certain instances where compliance with the Guidelines is not appropriate in the circumstances of the individual case. The Guidelines may be altered from time to time by the Central Bank as it considers appropriate and in particular may be altered to take into account any legal or other developments.
- 1.3 The Guidelines should be read in conjunction with another information publication - *Outline of the Administrative Sanctions Procedure 2014* (**“the Outline”**), which provides a general overview of the Administrative Sanctions Procedure operated by the Central Bank. The Guidelines and the Outline do not purport to represent a definitive legal interpretation of Part IIIC of the Act and in case of doubt it is recommended that reference be made to the text of the legislation itself and/or individual legal advice sought, as appropriate.
- 1.4 For the purposes of these Guidelines reference to **“regulated entities”** or a **“regulated entity”** can be taken to include both present and former regulated financial service providers, as well as persons presently or formerly concerned in their management and any other person subject to Part IIIC of the Act. Similarly, in this regard, reference to regulated entities or a regulated entity having committed a prescribed contravention, can be taken to include situations where persons presently or formerly concerned in the management of a regulated entity, or any other person subject to Part IIIC of the Act, have participated in that prescribed contravention.

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<sup>1</sup> The tasks and powers of the European Central Bank, under the Single Supervisory Mechanism, and as contained in Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, should be noted. Please see paragraph 2.2 of the Outline of the Administrative Sanctions Procedure 2014 for further details.

<sup>2</sup> Section 33AY(1) of the Act.

## 2. Referral

### *Referral to Inquiry*

- 2.1 Where the Central Bank suspects on reasonable grounds that a prescribed contravention is being, or has been committed, it may decide to hold an Inquiry.<sup>3 4</sup>
- 2.2 The Enforcement Directorate (“**ENF**”) will inform the Regulatory Decisions Unit (“**RDU**”) within the Central Bank of a decision to hold an Inquiry and will refer the case to the RDU. The work and role of the RDU is outlined in further detail at paragraph 2.10 below.
- 2.3 At the time of referral ENF will provide the RDU with the following:
- an outline of the prescribed contraventions that the regulated entity is suspected of committing or having committed and the grounds upon which the suspicions are based;
  - an Investigation Report, which will detail the Investigation carried out by ENF and contain a schedule of the categories of materials and information gathered during the Investigation;
  - copies (hard copy or electronic) of documentation relied upon in preparing the Investigation Report; and
  - copies of any Investigation Letter(s) issued to the regulated entity and any responses.

### *Appointment of Inquiry Members*

- 2.4 One or more persons, internal officers or employees of the Central Bank and/or external individuals<sup>5</sup>, will be appointed to an Inquiry, (“**the Inquiry Members**”). Following the notification to the RDU of the decision to hold an Inquiry, the RDU will arrange for the appointment of the Inquiry Members. Where appropriate, the RDU will arrange the nomination of a presiding person on the Inquiry, who shall be known as the Chairperson. In certain

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<sup>3</sup> Either under section 33AO or, if the prescribed contravention is admitted, but the sanction cannot be agreed, under section 33AR of the Act.

<sup>4</sup> See footnote 1 above in relation to the Single Supervisory Mechanism.

<sup>5</sup> Section 33BE(2) of the Act provides that: “Without prejudice to the generality of subsection (1), the Bank may for the purposes of that subsection designate a person who is not an officer or employee of the Bank. A person so designated is an agent of the Bank for performing and exercising the functions and powers of the Bank under this Part or the part of those functions and powers for which the Bank designated him or her”.

cases, the RDU may arrange for the appointment of a sole member and in such cases, references in these Guidelines to the “Inquiry Members” and the “the Chairperson” shall be understood as referring to “the Sole Member”.

- 2.5 Each proposed Inquiry Member shall confirm in writing that he or she is not prevented from participating in the Inquiry by virtue of any actual or apparent conflict of interest.
- 2.6 All decisions of the Inquiry shall be determined by a simple majority of the Inquiry Members, with each member having one vote. Where the RDU arranges for the appointment of a Sole Member, he or she shall decide the matter.
- 2.7 Once appointed, the Inquiry Members will not meet with, correspond or discuss matters relating to the Inquiry with supervisory or ENF staff involved in the case without the regulated entity either being offered the opportunity to be present, or sent a copy of any correspondence.
- 2.8 The Inquiry will commence once the Inquiry Members are appointed. The Inquiry Members will decide how the Inquiry will proceed and the procedures to be followed.
- 2.9 The RDU will furnish all materials provided to it at referral by ENF to the Inquiry Members.

### ***Regulatory Decisions Unit***

- 2.10 The RDU will provide administrative support to the Inquiry. The RDU will act as registrar to the Inquiry and will be the point of contact within the Central Bank for the regulated entity in relation to all Inquiry matters. The RDU will not give the Inquiry or the regulated entity legal advice but can provide assistance on procedural matters. The RDU will have no role in deciding matters before the Inquiry. RDU staff supporting the Inquiry will have had no prior involvement in the subject matter of the Inquiry or the supervision or authorisation of the regulated entity.

### ***Enforcement***

- 2.11 ENF will be available during the Inquiry to provide any assistance, information or evidence requested by the Inquiry Members. Such assistance might include asking ENF to explain or provide (including by

way of submissions) any or all of the following:

- (i) additional information about the matter before the Inquiry;
- (ii) further explanation of any aspect of the papers furnished to the Inquiry by ENF;
- (iii) information about Central Bank policies (including as to ENF's view on the law or on the correct legal interpretation of legislative provisions relevant to the matter at Inquiry);
- (iv) information relevant to any sanctions hearing;
- (v) information relevant to the publication of Inquiry Members' findings; and/or
- (vi) any other relevant matter.

2.12 Any information furnished by ENF as outlined above will also be furnished to the regulated entity, which will be afforded an opportunity to respond.

2.13 At least one representative of ENF will attend any Inquiry management meetings, the Inquiry hearing and any sanctions hearing. Should further relevant information come to the attention of ENF during the course of the Inquiry it will bring this to the attention of the Inquiry.

### ***Legal Representation***

2.14 The regulated entity may choose to be represented at the Inquiry by a legal practitioner or, with the leave of the Inquiry Members, any other person.<sup>6</sup>

### ***Legal Practitioner***

2.15 The Act provides that the Inquiry may be assisted by a legal practitioner.<sup>7</sup> In certain potentially lengthy and complex matters more than one legal practitioner may be appointed to assist the Inquiry and different roles may be assigned to different legal practitioners. Any decision to appoint a legal practitioner and the precise role to be played by the legal practitioner in any given Inquiry will be a matter for the Inquiry Members.

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<sup>6</sup> Section 33AY(4) of the Act.

<sup>7</sup> Section 33AY(3) of the Act.

### 3. Preliminary Inquiry Procedures

#### *Notice of Inquiry*

3.1 The RDU will send a written **Notice of Inquiry**<sup>8</sup> to the regulated entity at least 25 working days in advance of an Inquiry hearing being held. The Notice of Inquiry shall:

- (a) set out the suspected prescribed contravention(s) and the grounds upon which the suspicions are based, as outlined by ENF at referral; and
- (b) append an Inquiry Management Questionnaire, as outlined further at paragraph 3.6 below.

The Notice of Inquiry will be accompanied by a copy of all documentation provided to the RDU by ENF at the time of the referral and a copy of the written confirmation(s) referred to at 2.5 above.

3.2 Inquiry hearings (including any Inquiry management meetings) will usually be held in public.<sup>9</sup> An Inquiry hearing may only be held in private (or part in private) in the following circumstances:<sup>10</sup>

- *by agreement*: the Inquiry and the regulated entity agree that the Inquiry should be held in private (or part in private); or
- *by decision of the Inquiry*: the Inquiry decides that the Inquiry shall be held in private (or part in private) being satisfied that:
  - (a) evidence may be given, or a matter may arise during the Inquiry that is of a confidential nature or relates to the commission, or the alleged or suspected commission, of an offence against a law of the State, or
  - (b) a person's reputation would be unfairly prejudiced.

3.3 A notice will appear on the Central Bank website advising of the time and location of the Inquiry hearing. The public and media will be able to watch

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<sup>8</sup> Section 33AP of the Act.

<sup>9</sup> Section 33AZ(1) of the Act provides that except as provided by section 33AZ(2), the Central Bank shall hold its inquiries in public.

<sup>10</sup> See Section 33AZ(2) of the Act.

and listen to the proceedings in a public gallery located within the Inquiry Room or adjacent to it.

- 3.4 If the Inquiry hearing or part of the Inquiry hearing is to be held in private a Notice will appear on the Central Bank's website outlining the fact that an Inquiry hearing is commencing which is being held in private, or is being conducted in part in private, unless the Inquiry Members direct otherwise based on the considerations outlined in paragraph 3.2.
- 3.5 A stenographer will be in attendance at all Inquiry hearings. A copy of the transcript will be made available to the Inquiry Members and the regulated entity as soon as practicable. The RDU will provide a copy of transcripts to ENF.

### ***Inquiry management***

- 3.6 Appended to the Notice of Inquiry will be an Inquiry Management Questionnaire ("**the Questionnaire**"), which must be completed and returned to the RDU by the regulated entity within the time specified in the Questionnaire (allowing at least 10 working days for response). If the regulated entity fails to respond within the time specified, the RDU will notify the Inquiry Members who may proceed to confirm the date and arrangements for the hearing without further consultation with the regulated entity.
- 3.7 The purpose of the Questionnaire is to enable the Inquiry Members to establish whether an Inquiry management meeting is required for the purpose of issuing directions prior to the Inquiry hearing. The Questionnaire may seek responses on the following topics:
- Inquiry arrangements (confirmation of suggested dates when the Inquiry will sit, estimated length of the Inquiry, legal representation);
  - any submissions in relation to the public nature of the Inquiry;
  - whether the regulated entity intends to deliver written submissions;
  - matters of evidence;
  - proposed witnesses; and
  - any other relevant matters.
- 3.8 Where the Inquiry Members decide that an Inquiry management meeting is required, the regulated entity will be invited to attend and may make submissions to the Inquiry. The Inquiry Members may agree to hold the Inquiry management meeting in private where the regulated entity wishes

to make submissions in relation to the public nature of the Inquiry.

- 3.9 It should be emphasised that the purpose of an Inquiry management meeting is to assist in the timely and efficient running of the Inquiry. It ensures that the issues to be determined at Inquiry are narrowed to the greatest extent possible. Effective Inquiry management meetings enable, for example:
- any material factual disputes to be identified at an early stage;
  - arrangements to be put in place to ensure that evidence, whether disputed or not, is presented clearly and effectively;
  - the needs of any witnesses to be taken into account; and
  - an effective programme and timetable to be established for the conduct of the Inquiry.
- 3.10 Following review of the completed Questionnaire and any Inquiry Management meeting, the Inquiry Members will issue directions to the regulated entity together with a timeframe for compliance and confirm the Inquiry hearing date and location.
- 3.11 The regulated entity will have the opportunity to provide written legal submissions in accordance with the timetable laid down in any directions given by the Inquiry Members. All submissions must be accompanied by a copy of the case law to be relied upon in the course of legal submissions.
- 3.12 If the regulated entity fails to comply with a direction made by the Inquiry Members and the Inquiry Members are satisfied of adequate notification to the regulated entity, the Inquiry hearing may proceed on the date confirmed by the Inquiry or on any other date which has been notified to the regulated entity by the RDU.
- 3.13 The Inquiry Members may direct the RDU to furnish to ENF a copy of correspondence issued to and received from the regulated entity. The Inquiry Members may also direct the RDU to furnish a copy of any written submissions received from the regulated entity to ENF and may seek ENF's response to any submissions. A copy of any response from ENF will be sent to the regulated entity.
- 3.14 A sample running order for Preliminary Inquiry Procedures is set out at **Appendix 1**.

## 4. The Inquiry Hearing

### *Form and order of proceedings*

- 4.1 The Inquiry is not a court of law, and the procedure at the Inquiry hearing will be kept as informal as possible. The Central Bank has a statutory duty to undertake the Inquiry with as little formality and technicality, and with as much expedition, as proper consideration of the matter will allow.<sup>11</sup> However, an Inquiry into suspected prescribed contravention(s) is a serious matter and the procedure at Inquiry must reflect this fact. The Inquiry will at all times observe the rules of procedural fairness, but is not bound by the rules of evidence.<sup>12</sup>
- 4.2 The Central Bank is not proposing that the Inquiry necessarily adopts the approach of a hearing adducing oral evidence. In exercising its discretion whether to hold a hearing with oral evidence, the Inquiry Members will consider whether oral evidence is necessary for a fair determination of the suspected prescribed contravention(s), having considered any submissions by the regulated entity on the matter.

### *Standard of proof*

- 4.3 The Inquiry Members shall make findings as to whether the regulated entity is committing or has committed the prescribed contravention(s) to which the Inquiry relates on the balance of probabilities.

### *Legal submissions*

- 4.4 As outlined in paragraph 3.11, the regulated entity will have the opportunity to provide written legal submissions prior to the Inquiry hearing date and in accordance with the directions of the Inquiry. In the context of a hearing, with or without oral evidence, the regulated entity will also be afforded the opportunity of making oral legal submissions.

### *Applications during an Inquiry*

- 4.5 The Inquiry Members must act fairly and must consider and deliberate upon such applications as may be made to them in the course of the Inquiry.

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<sup>11</sup> Section 33AY(1) of the Act.

<sup>12</sup> Section 33AY(2) of the Act.

4.6 The Inquiry Members may be required to deal with a number of preliminary applications and issues, including *inter alia*:

1. A decision to proceed in the absence of the regulated entity

The Inquiry may proceed in the absence of the regulated entity provided that the regulated entity has been given an opportunity to participate in an Inquiry or to make written submissions to it.<sup>13</sup>

2. A request for an adjournment

The Inquiry Members may, at any point during an Inquiry, be requested to adjourn any Inquiry hearing. The Inquiry Members have the discretion to grant or refuse an application for an adjournment. In considering any such request the Inquiry Members shall exercise their discretion fairly, in accordance with fair procedures, taking into account the circumstances of the application and any submissions made, and where granted shall ensure that the regulated entity is notified of the date, time and place at which any Inquiry hearing is to be resumed.<sup>14</sup>

### ***Commencement of the Inquiry Hearing***

4.7 At the beginning of a hearing, the Chairperson shall state the purpose of the Inquiry and introduce the Inquiry Members and explain the manner and order of the Inquiry. **Appendices 2 and 3** outline sample running orders but these formats are flexible and may be varied by the Inquiry Members.

4.8 Following this introduction, the suspected contraventions, as per the Notice of Inquiry, will be set out by the Chairperson with the main facts, dates and persons involved outlined. If minor or clerical amendments are to be made to the Notice of Inquiry by the Inquiry Members, they will be raised at this stage. If more substantive amendments are required and the regulated entity has not agreed to such amendments in advance, the hearing may be adjourned in order to give the regulated entity adequate time to consider the amendments. The regulated entity will then be invited to make any preliminary submissions.

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<sup>13</sup> Section 33AP(5) of the Act.

<sup>14</sup> Section 33AP(4) of the Act.

### ***Hearing without oral evidence***

- 4.9 A hearing may be convened for the purpose of hearing oral submissions only. The Inquiry Members may decide, following consideration of any submissions by the regulated entity, that the matter is suited to resolution without adducing oral evidence. The Inquiry Members will then conduct their review based on relevant documents, any witness statements, written submissions and oral submissions.
- 4.10 A sample running order for this type of Inquiry is set out at **Appendix 2**.

### ***Hearing with oral evidence***

- 4.11 Once the suspicions against the regulated entity have been set out and the regulated entity has been invited to make preliminary submissions, witnesses may be called. The Inquiry Members will call such witnesses as they wish to hear from to give evidence at the Inquiry. A legal practitioner assisting the Inquiry Members may be required to lead evidence or cross-examine witnesses as appropriate. The legal or other representative of the regulated entity may also lead evidence or cross-examine witnesses as appropriate. In addition Inquiry Members may question witnesses as appropriate.
- 4.12 During the course of an Inquiry, at any time from the appointment of the Inquiry Members to the conclusion of the Inquiry, the Inquiry Members may, in writing:
- summons a person to appear before the Inquiry Members to give evidence and/or produce specified documents; and
  - require the person to attend each day of the hearing unless excused or released from attendance.<sup>15</sup>
- 4.13 The Chairperson may require the oral testimony of a witness to be given on oath. He or she may also:
- require a witness at the Inquiry to answer a question put to the witness; and
  - require a person appearing at the Inquiry pursuant to a summons to

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<sup>15</sup> Section 33BA(1) of the Act.

produce any document specified in the summons.<sup>16</sup>

4.14 The Chairperson may also allow a witness at the Inquiry to give evidence by tendering a written statement, verified by oath.<sup>17</sup> The witness may be required to attend the Inquiry hearing for the purposes of examination.

4.15 An answer to a question put to a person, or information provided by a person, in response to a requirement shall not be admissible as evidence against the person in criminal proceedings, other than proceedings for perjury, if the information was provided on oath.<sup>18</sup>

4.16 A person may be held to have committed a criminal offence where they:

- obstruct the Inquiry in the exercise of a power conferred under Part IIIC of the Act;
- without reasonable excuse, fail to comply with a requirement or request made by the Inquiry under Part IIIC of the Act;
- in purported compliance with such a requirement or request, give information that the person knows to be false or misleading; or
- refuse to comply with a summons to attend before, or to be examined on oath by, the Inquiry.<sup>19</sup>

4.17 The Inquiry has the same powers with respect to the examination of witnesses (including witnesses who are outside the State) that a judge of the High Court has when hearing civil proceedings that are before the High Court. A person who is summoned to appear before the Inquiry will be entitled to the same rights and privileges as a witness appearing in civil proceedings before the High Court.<sup>20</sup>

4.18 A sample running order for this type of Inquiry is set out at **Appendix 3**.

### ***No oral hearing or evidence***

4.19 The Inquiry Members may decide to proceed on an entirely written basis, *i.e.* without oral submissions or evidence. This may occur where the Inquiry Members do not intend to take oral evidence and:

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<sup>16</sup> Section 33BA(2)-(4) of the Act specifically reserves these powers to the person presiding at the Inquiry.

<sup>17</sup> Section 33BA(5) of the Act also specifically reserves this power to the person presiding at the Inquiry.

<sup>18</sup> Section 33BA(8) of the Act.

<sup>19</sup> Section 33BA(9) of the Act.

<sup>20</sup> Section 33BA(6)&(7) of the Act.

- i) the regulated entity has indicated in the Questionnaire that it does not intend to make oral submissions; or
- ii) the regulated entity has been afforded an opportunity to be present at the Inquiry hearing, but has failed to appear.<sup>21</sup>

### ***Referral to the High Court on a point of law***

4.20 The Inquiry Members may, on their own initiative or at the request of the regulated entity or ENF, refer a question of law arising during the Inquiry to the High Court for decision.<sup>22</sup> This procedure constitutes a consultative case-stated procedure, the main purpose of which is to seek clarification on a point of law. The Inquiry Members are not obliged to state a case upon being requested to do so.

4.21 Where a question of law is referred to the High Court, the Inquiry will be temporarily stayed in full or in part (depending on whether the question is relevant to all of the prescribed contraventions), pending a decision by the High Court.

4.22 The question of law shall be drafted by or for the Inquiry Members taking into account any submissions and shall be sent by the RDU to the High Court, accompanied by all documents before the Inquiry that are relevant to the matter in question.<sup>23</sup>

### ***Applications for an adjournment to pursue settlement***

4.23 The Central Bank has authority and discretion to enter into a settlement agreement with the regulated entity at any stage before completion of the Inquiry.<sup>24</sup>

4.24 Where the regulated entity wishes to settle the matter immediately prior to or during the course of the Inquiry, the regulated entity and/or its legal adviser should contact ENF. The Inquiry Members may adjourn any hearing in order to facilitate settlement but shall have no other role in relation to settlement. The settlement discussions shall be carried out in private. The details of any settlement discussions should not be disclosed to the Inquiry

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<sup>21</sup> In accordance with section 33AP(5) of the Act.

<sup>22</sup> Section 33BB(1) of the Act.

<sup>23</sup> Section 33BB(3) of the Act.

<sup>24</sup> Section 33AV of the Act.

Members. Where the matter is successfully settled, the Inquiry Members shall be informed of the fact of settlement. Where settlement discussions are unsuccessful, the Inquiry shall, where it has been adjourned, be resumed.

- 4.25 Settlement agreements will be concluded only where the basis for settlement is consistent with the general approach to regulation adopted by the Central Bank, is fair having regard to all the facts known, and will contribute to the efficient, effective and economic use of resources.

## 5. The Findings of the Inquiry Members

### *Written Findings*

- 5.1 Following any closing submissions and a review of all the evidence, the Inquiry Members shall set out in writing their finding(s) as to whether the regulated entity is committing or has committed the prescribed contravention(s) to which the Inquiry relates.<sup>25</sup>
- 5.2 In all circumstances, the Inquiry Members shall produce written findings, which shall set out:
- their findings as to whether or not the regulated entity:
    - (a) is committing or has committed a prescribed contravention, or
    - (b) is participating or has participated in the commission of the prescribed contravention to which the Inquiry relates; and
  - the grounds on which their findings are based.
- 5.3 The written findings will be delivered to the regulated entity as soon as the written findings are available. The regulated entity will be kept informed of any delays in the completion of the written findings.
- 5.4 If necessary, the Inquiry Members will invite the regulated entity to attend before them on a specified date for a sanctions hearing.

### *Sanctions*

- 5.5 A sanctions hearing will either: (a) follow the Inquiry Members' written findings; or (b) constitute a standalone hearing in circumstances where the regulated entity acknowledges that the regulated entity is committing or has committed the contravention.<sup>26</sup>
- 5.6 The Inquiry Members will invite submissions regarding sanctions from the regulated entity and ENF.
- 5.7 The regulated entity will be entitled to submit any documentation relevant to the Inquiry Members' decision on sanctions once the Inquiry Members have delivered their findings on the prescribed contravention(s). Oral

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<sup>25</sup> Section 33AQ(1) and (2) of the Act.

<sup>26</sup> Section 33AR of the Act.

submissions may also be made directly to the Inquiry Members at the sanctions hearing.

5.8 If the Inquiry Members find that a regulated entity is committing or has committed a prescribed contravention, or is participating or has participated in the commission of such a contravention, the Inquiry Members may, pursuant to Part IIIC of the Act<sup>27</sup>, impose one or more of the following sanctions:

- (a) a caution or reprimand;
- (b) a direction to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service by the regulated financial service provider;
- (c) a direction to pay to the Central Bank a monetary penalty (not exceeding the prescribed maximum amount, see paragraph 5.10 below);
- (d) except where the provisions of Council Regulation (EU) No 1024/2013 apply, suspension of the regulated financial service provider's authorisation<sup>28</sup> in respect of any one or more of its activities, for such period, not exceeding 12 months, as the Central Bank considers appropriate;
- (e) except where the provisions of Council Regulation (EU) No 1024/2013 apply, revocation of the regulated financial service provider's authorisation<sup>29</sup>;
- (f) a direction disqualifying a person from being concerned in the management of a regulated financial service provider for such period as is specified in the order;
- (g) if the contravention is found to be on-going, a direction ordering the contravention to cease;
- (h) a direction to pay the Central Bank all or a specified part of the costs incurred by it in holding the Inquiry and investigating the matter.<sup>30</sup>

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<sup>27</sup> It may arise that other sanctions, further or in addition to the sanctions outlined in section 33AQ of the Act, may be available to the Inquiry Members. For example, Regulations 54 and 55 of the European Union (Capital Requirements) Regulations 2014 provide that particular sanctions may be imposed in respect of certain contraventions as set out therein.

<sup>28</sup> As per Section 33AQ(9) of the Act 'authorisation', in this context, means an authorisation, licence, or any other permission required to carry on business as a regulated entity granted by the Central Bank pursuant to any provision of financial services legislation, and includes registration.

<sup>29</sup> As per Section 33AQ(9) of the Act 'authorisation', in this context, means an authorisation, licence, or any other permission required to carry on business as a regulated entity granted by the Central Bank pursuant to any provision of financial services legislation, and includes registration.

<sup>30</sup> See Sections 33AQ(3) and (5) of the Act.

5.9 All the circumstances of the case will be taken into account by the Inquiry Members in determining the appropriate sanction(s) and, in doing so, regard may be had to the following factors<sup>31</sup> –

1. The Nature, Seriousness and Impact of the Contravention

- (a) whether the contravention was deliberate, dishonest or reckless;
- (b) duration and frequency of the contravention;
- (c) the amount of any benefit gained or loss avoided due to the contravention;
- (d) whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of the business;
- (e) the extent to which the contravention departs from the required standard;
- (f) the impact or potential impact of the contravention on the orderliness of the financial markets, including whether public confidence in those markets has been damaged or put at risk;
- (g) the loss or detriment or the risk of loss or detriment caused to consumers or other market users;
- (h) the effect, if any, of the contravention on vulnerable consumers;<sup>32</sup>
- (i) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;
- (j) whether there are a number of smaller issues which individually may not justify administrative sanction, but which do so when taken collectively;
- (k) any potential or pending criminal proceedings in respect of the contravention which will be prejudiced or barred if a monetary penalty is imposed pursuant to the Administrative Sanctions Procedure.

2. The Conduct of the Regulated entity after the Contravention

- (a) how quickly, effectively and completely the regulated entity brought the contravention to the attention of the Central Bank or any other relevant regulatory authority;
- (b) the degree of co-operation with the Central Bank or other agency provided during the investigation of the contravention;

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<sup>31</sup> Where appropriate the Inquiry Members may take other circumstances into account, for example, see Regulation 58 of the European Union (Capital Requirements) Regulations 2014.

<sup>32</sup> The term “vulnerable consumer” has the same meaning as the definition set out in Chapter 12 (‘Definitions’) of the Consumer Protection Code 2012 at p.75.

- (c) any remedial steps taken since the contravention was identified, including identifying whether consumers have suffered loss or detriment and compensating them, taking disciplinary action against staff involved (where appropriate), addressing any systemic failures, and taking action designed to ensure that similar problems do not arise in the future;
- (d) the likelihood that the same type of contravention will recur if no administrative sanction is imposed;
- (e) whether the contravention was admitted or denied.

3. The Previous Record of the Regulated entity

- (a) whether the Central Bank has taken any previous enforcement action including instances resulting in a settlement or sanctions or whether there are relevant previous criminal convictions;
- (b) whether the regulated entity has previously undertaken not to do a particular act or engage in particular behaviour;
- (c) whether the regulated entity has previously been requested to take remedial action, and the extent to which such action has been taken.

4. Other General Considerations

- (a) prevalence of the contravention;
- (b) the appropriate deterrent impact of any sanction on the regulated entity and on other regulated entities;
- (c) action taken by the Central Bank in previous similar cases;
- (d) the level of turnover of the regulated entity in its last complete financial year prior to the commission of the contravention; and
- (e) any other relevant consideration.

5.10 Where a monetary penalty is imposed, pursuant to section 33AQ or section 33AR of the Act, the amount shall not exceed: <sup>33</sup>

- (a) in the case of a body corporate or an unincorporated body, the greater of
  - i) €10,000,000, and
  - ii) an amount equal to 10% of the turnover of the body for its last complete financial year before the finding is made;

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<sup>33</sup> Notwithstanding Part IIIC of the Act and the sanctions set out in section 33AQ of the Act, Regulations 54 and 55 of the European Union (Capital Requirements) Regulations 2014 provide for administrative pecuniary penalties which may be imposed in respect of particular contraventions by regulated entities.

- (b) in the case of a natural person, €1,000,000; or
- (c) such other amount as may be prescribed by regulations.

The monetary penalty shall not be of an amount that would be likely to cause the regulated entity to cease business, or in the case of a natural person would be likely to cause the person concerned to be adjudicated bankrupt.<sup>34</sup> If more than one contravention is found in respect of the same conduct, only one monetary penalty may be imposed.<sup>35</sup>

- 5.11 If a monetary penalty is imposed in respect of a contravention which is also an offence under the law of the State, the regulated entity is not liable to be otherwise prosecuted or punished for the offence.<sup>36</sup> Where a regulated entity has already been tried for an offence and found either guilty or not guilty, and the offence involved a prescribed contravention, a monetary penalty may not be imposed.<sup>37</sup>
- 5.12 At the conclusion of a sanction hearing the Inquiry Members shall issue their written decision, which will set out their findings, the sanctions, if any, imposed and the reasons for same.<sup>38</sup>

### ***Appeal to the Irish Financial Services Appeals Tribunal***

- 5.13 A decision of the Inquiry may be appealed by the regulated entity to the Irish Financial Services Appeals Tribunal ("**IFSAT**") within 28 days of being notified of that decision, or within such time as agreed with the Registrar and Chairperson of IFSAT.<sup>39</sup> IFSAT may affirm, vary, substitute or set aside the decision or remit the matter back to the Inquiry for reconsideration, together with any recommendation or direction as to the matters to be reconsidered.

### ***Appeal to the High Court***

- 5.14 The regulated entity or the Central Bank may appeal the decision of IFSAT to the High Court within 28 days of being notified of the decision, or within such time as the High Court may allow.<sup>40</sup> An appeal to the High Court does not affect the operation of the IFSAT decision appealed against, or prevent the taking of action to implement the decision, unless the High Court

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<sup>34</sup> See Sections 33AS(1) and (2) of the Act.

<sup>35</sup> Section 33AS(3) of the Act.

<sup>36</sup> Section 33AT(1) of the Act.

<sup>37</sup> Section 33AT(2) of the Act.

<sup>38</sup> Section 33AQ(7) & (8) of the Act.

<sup>39</sup> Section 57L(1) of the Act.

<sup>40</sup> Section 57AK of the Act.

otherwise orders.<sup>41</sup>

- 5.15 The High Court may make such order as it sees fit in light of its decision, including, but not limited to, affirming or setting aside the decision of IFSAT, or remitting the matter to IFSAT with such directions as it sees fit. The decision of the High Court is final, save that an appeal may be brought to the Supreme Court on a point of law only, with leave of either Court.<sup>42</sup>

***When a decision of the Inquiry takes effect***

- 5.16 A decision by the Inquiry Members to impose a **caution or reprimand** will take effect:<sup>43</sup>

- if no appeal is lodged with IFSAT within the period allowed, at the end of that period (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT);<sup>44</sup> or
- if an appeal is lodged with IFSAT and the decision is confirmed by IFSAT (with or without variation), at the time when the period allowed for lodging an appeal with the High Court has ended, no appeal against IFSAT’s determination having been lodged within that period (28 days after the affected person is notified of IFSAT’s decision or such extended period as the High Court allows);<sup>45</sup> or
- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination, and withdrawn, at the time of withdrawal.

- 5.17 A decision by the Inquiry Members directing payment of a **monetary**

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<sup>41</sup> Section 57AM of the Act.

<sup>42</sup>Section 57AL(3) of the Act.

<sup>43</sup> Section 33AW(1) of the Act.

<sup>44</sup> Section 57L(2)(b) of the Act.

<sup>45</sup> Section 57AK(3) of the Act.

**penalty, a refund of money or costs** will take effect:<sup>46</sup>

- if the amount is not paid to the Central Bank within the period allowed for appeals against such a decision (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT), and no appeal to IFSAT is lodged (or having been lodged, is withdrawn), at the time when the decision is confirmed by an order of a court of competent jurisdiction;<sup>47</sup> or
- where an appeal is lodged with IFSAT and the decision is confirmed by that Tribunal (with or without variation), at the time when the period allowed for lodging an appeal against IFSAT's determination with the High Court has ended (28 days after the affected person is notified of IFSAT's decision or such extended period as the High Court allows), no appeal having been lodged within that period; or
- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is lodged with the High Court against IFSAT's determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is lodged with the High Court against IFSAT's determination and withdrawn, at the time of withdrawal.

5.18 **A disqualification direction** will take effect:<sup>48</sup>

- if no appeal is lodged with IFSAT within the period allowed for bringing such an appeal (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT), or is lodged within that period but is later withdrawn, at the time when it is confirmed by an order of a District Court; or
- if an appeal is lodged with IFSAT and the direction is confirmed by IFSAT, at the time when the period allowed for lodging an appeal with the High Court has ended, no appeal against IFSAT's determination

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<sup>46</sup> Section 33AW(2) of the Act.

<sup>47</sup> Section 33AW(2)(a) of the Act.

<sup>48</sup> Section 33AW(3) of the Act.

having been lodged within that period (28 days after the affected person is notified of IFSAT’s decision or such extended period as the High Court allows); or

- if such an appeal is lodged within that period but is later withdrawn, at the time of withdrawal; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination, and withdrawn, at the time of withdrawal.

**5.19 Any other decision by the Inquiry Members will take effect:**<sup>49</sup>

- if no appeal against the decision is lodged with IFSAT within the period allowed, at the end of that period (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT); or
- if an appeal is lodged with IFSAT and the decision is confirmed by IFSAT (with or without variation), at the time when the period allowed for lodging an appeal with the High Court has ended, no appeal against IFSAT’s determination having been lodged within that period (28 days after the affected person is notified of IFSAT’s decision or such extended period as the High Court allows); or
- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination, and withdrawn, at the time of withdrawal.

***Publication***

5.20 Generally, the Central Bank’s obligations to publish the findings of an

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<sup>49</sup> Section 33AW(4) of the Act.

Inquiry are set out in section 33BC of the Act<sup>50</sup>. Pursuant to section 33BC of the Act, where the Inquiry Members have found that a regulated entity is committing or has committed a prescribed contravention and/or the Inquiry Members have imposed a sanction, the Central Bank must, subject to paragraph 5.21, publish in such form and manner as it considers appropriate the Inquiry Members' findings and such (if any) of the particulars of the contravention(s)<sup>51</sup> as it thinks appropriate, which will ordinarily include:

- (a) the name of the regulated entity on whom a sanction has been imposed;
- (b) details of the prescribed contravention(s) in respect of which the sanction has been imposed;
- (c) details of the sanction imposed; and
- (d) the grounds on which the finding is based.<sup>52</sup>

5.21 Notwithstanding this, the Central Bank is not required to publish a finding or particulars:

- if publication of the finding or particulars involves the disclosure of confidential information the disclosure of which is prohibited by the 'Rome Treaty'<sup>53</sup>; the ECSB Statute or the Supervisory Directives (within the meaning of section 33AK(10) of the Act); or
- if the Inquiry Members determine:
  - (i) that the finding or particulars are of a confidential nature or relate to the commission of an offence against a law of the State; or
  - (ii) that publication of the finding or particulars would unfairly prejudice a person's reputation.<sup>54</sup>

5.22 The regulated entity shall be entitled to make submissions in relation to publication. Such submissions shall not affect the timeframe within which

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<sup>50</sup> There are, however, circumstances where different publication provisions apply in respect of the imposition of sanctions. For example where the prescribed contravention constitutes a breach of the European Union (Capital Requirements) Regulations 2014 and/or Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Regulation 56 of European Union (Capital Requirements) Regulations 2014 applies.

<sup>51</sup> Section 33BC(1) and (2) of the Act.

<sup>52</sup> Section 33BC(3) of the Act.

<sup>53</sup> The Treaty on the Functioning of the European Union.

<sup>54</sup> Section 33BC(4) of the Act.

the regulated entity must appeal the decision.

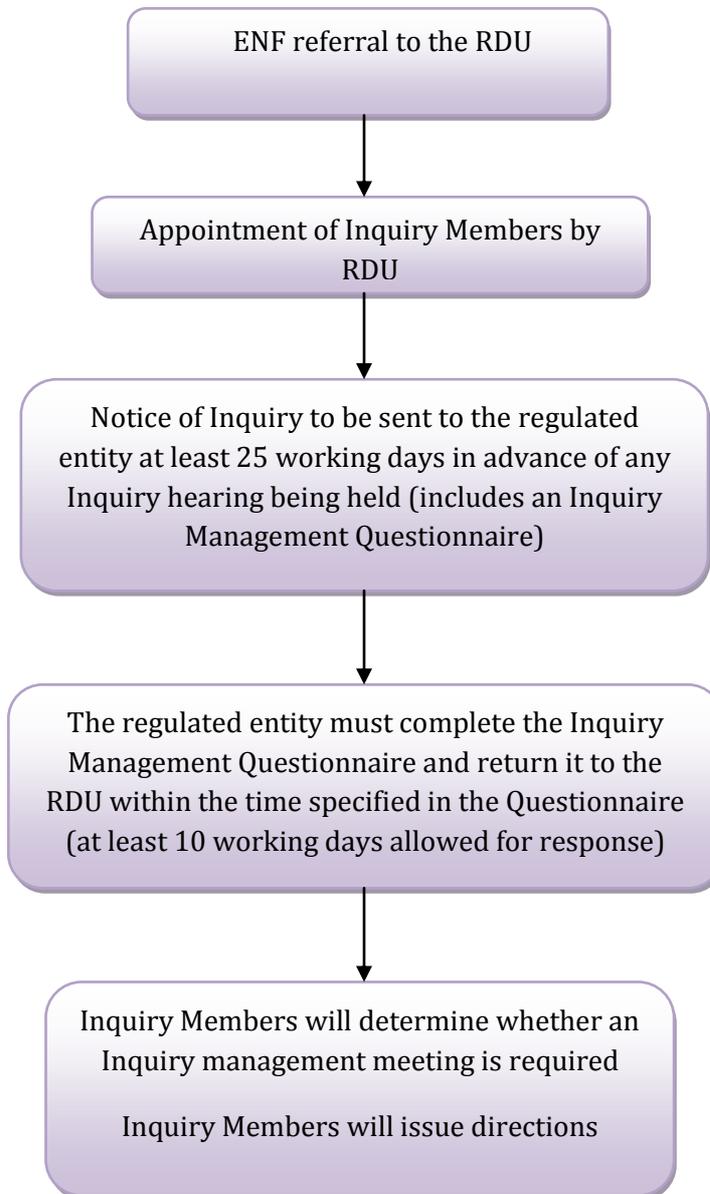
5.23 Separate to the publication of the Inquiry Members' findings, the Central Bank may issue a market commentary on the outcome of the Inquiry, which will outline the Central Bank's view of how the findings in the case apply more broadly to the market at issue.

5.24 The Central Bank will publish annually, in summary form, information on its actions under Part IIIC of the Act<sup>55</sup>, including on the decisions of any Inquiry conducted.

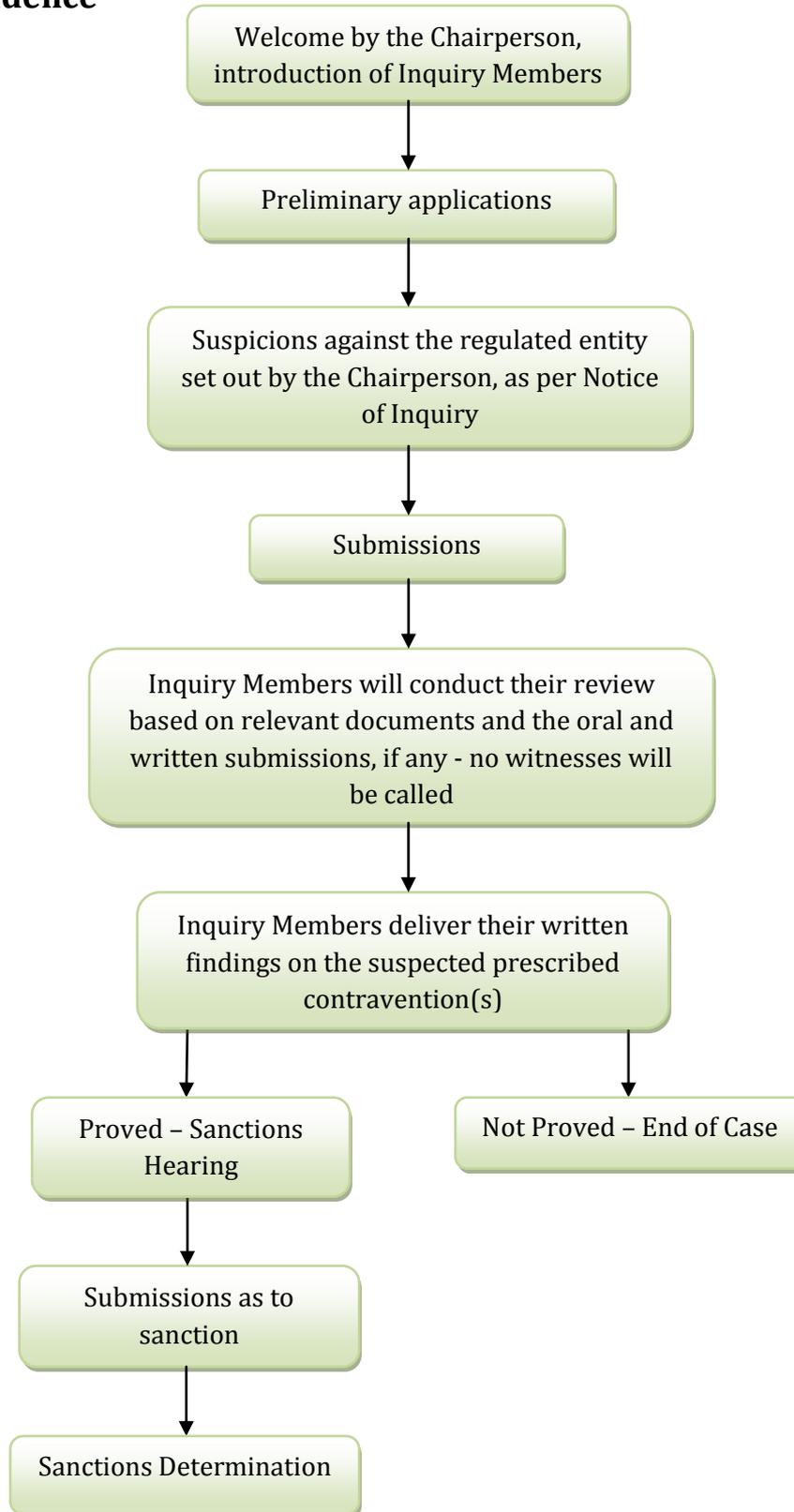
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<sup>55</sup> Section 33BC(5) of the Act.

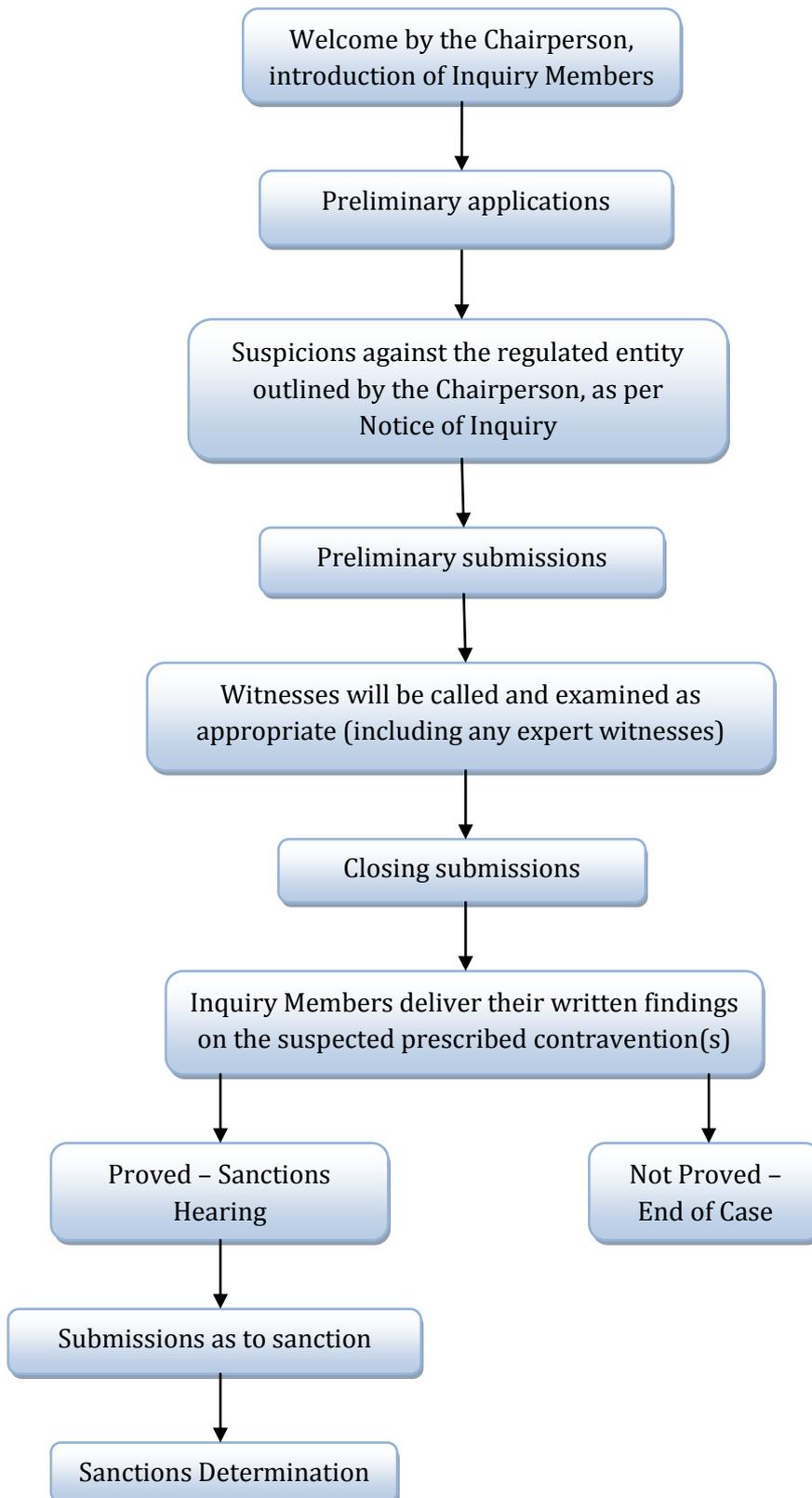
## Appendix 1: Preliminary Inquiry Procedures



## Appendix 2: Order of proceedings at hearing without oral evidence



### Appendix 3: Order of proceedings at hearing with oral evidence



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