



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# Administrative Sanctions Procedure Guidelines [Draft]

# Contents

<b>Preface</b> .....	<b>4</b>
<b>Part 1: Introduction</b> .....	<b>5</b>
1. Purpose and Structure of Guidelines .....	5
2. Effect and Application .....	5
3. Legal Basis.....	6
4. Interpretation .....	6
<b>Part 2: Overview of ASP</b> .....	<b>9</b>
5. Overview and Process Diagram .....	9
6. Single Supervisory Mechanism.....	13
7. Referrals and Prosecutions.....	13
<b>Part 3: Investigation</b> .....	<b>14</b>
8. Introduction .....	14
9. Commencing an Investigation.....	14
10. Confidentiality.....	15
11. Notice of Investigation.....	15
12. Gathering Evidence .....	17
13. Privilege.....	18
14. Options During an Investigation .....	21
15. Investigation Report .....	23
16. Deciding Whether to Hold an Inquiry.....	29
17. Notice of Inquiry .....	29
<b>Part 4: Inquiry</b> .....	<b>31</b>
18. Introduction .....	31
19. Inquiry Members.....	32
20. Inquiry Participants .....	34
21. Other Inquiry Roles.....	35
22. Commencing an Inquiry .....	37

23.	Inquiry Procedure.....	40
24.	Inquiry Management Meeting .....	43
25.	Procedural Applications .....	46
26.	Inquiry Hearing.....	51
27.	Witnesses.....	54
28.	Concluding an Inquiry.....	55
29.	Inquiry Finding.....	56
30.	Determination of Sanction.....	57
31.	Inquiry to Determine Sanctions Only .....	59
32.	Inquiry Decision .....	60
33.	Publication.....	61
<b>Part 5: Settlement.....</b>		<b>64</b>
34.	Introduction .....	64
35.	Central Bank Approach.....	65
36.	Settlement Scheme .....	66
37.	Undisputed Facts Settlement Process.....	68
38.	Investigation Report Settlement Process.....	70
39.	No Admissions Settlement Process.....	74
40.	Finalising Settlement and Settlement Agreement.....	76
41.	Publication.....	78
<b>Part 6: Sanction.....</b>		<b>80</b>
42.	Introduction .....	80
43.	Central Bank Approach.....	80
44.	Available Sanctions .....	82
45.	Sanctioning Factors.....	84
46.	Determination of Monetary Penalties .....	105
<b>Part 7: Confirmation by High Court and Appeal .....</b>		<b>111</b>
47.	Confirmation by High Court .....	111
48.	Appeal to IFSAT and High Court .....	113
<b>Appendix: Glossary of Terms and Statutes .....</b>		<b>116</b>

# Preface

Under our Administrative Sanctions Procedure (ASP) the Central Bank may carry out investigations and inquiries and may impose sanctions if it determines that firms or individuals have failed to discharge their obligations under financial services legislation.

The ASP is set out in Part IIIC of the Central Bank Act 1942. To take account of amendments to the ASP by the Central Bank (Individual Accountability Framework) Act 2023, the Central Bank has revised and consolidated the previous guidelines on the ASP, namely:

- Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942 (2014)
- Outline of the Administrative Sanctions Procedure (2018)
- ASP Sanctions Guidance (2019)

In carrying out our revisions we also applied our experience of operating the ASP.

In keeping with our commitment to being open and engaged, we carried out a 12-week public consultation on our draft revised guidelines between 22 June and 14 September 2023.

# Part 1: Introduction

This Part gives an overview of the content of the Guidelines and explains how to use them.

## 1. Purpose and Structure of Guidelines

1. The Guidelines provide guidance on the operation of the ASP. In particular, the Guidelines set out the Central Bank's procedures in relation to investigations, inquiries and administrative sanctions.
2. The Guidelines contain the following Parts, each of which contains a number of Sections:
  - Part 1: Introduction
  - Part 2: Overview of ASP
  - Part 3: Investigation
  - Part 4: Inquiry
  - Part 5: Settlement
  - Part 6: Sanction
  - Part 7: Confirmation by High Court and Appeal

## 2. Effect and Application

3. The Guidelines are effective from [**Date of Publication of Finalised Guidelines**]. From that date, the Guidelines apply to the following:
  - All investigations commenced on or after 19 April 2023.<sup>1</sup>
  - Subject to the transitional provisions in section 93 of the 2023 Act and to paragraph 4 below, all investigations commenced before 19 April 2023 that were ongoing on [**Date of Publication of Finalised Guidelines**].
  - Inquiries where the Notice of Inquiry was issued on or after 19 April 2023.

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<sup>1</sup> The provisions of the 2023 Act relevant to the ASP were commenced by Order of the Minister for Finance on 19 April 2023 (S.I. No. 176 of 2023).

4. The Central Bank's Outline of the Administrative Sanctions Procedure (2018) will only continue to apply to investigations commenced before 19 April 2023 that were ongoing on [**Date of Publication of Finalised Guidelines**] to the extent that section 93 of the 2023 Act disapplies the new statutory provisions in respect of the investigative process.
5. The following guidelines and guidance will only continue to apply to inquiries in respect of which a Notice of Inquiry issued prior to 19 April 2023, in accordance with the transitional provisions in section 94 of the 2023 Act:
  - Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942 (3 November 2014).
  - Outline of the Administrative Sanctions Procedure (2018).
  - ASP Sanctions Guidance (November 2019).
6. These guidelines and guidance are available on the Central Bank's website.

### 3. Legal Basis

7. Insofar as the Guidelines apply to the conduct of inquiries, they are prescribed pursuant to section 33BD(1) of the 1942 Act.
8. Insofar as the Guidelines apply to the determination of appropriate sanctions and the level of any monetary penalties to be imposed, they are prescribed pursuant to section 33BD(1A) of the 1942 Act.
9. Otherwise, the Guidelines are issued more generally in connection with the performance by the Central Bank of its functions under the ASP.

### 4. Interpretation

10. The Guidelines are not an exhaustive guide to the ASP, which is set out in the relevant legislation. In the event of a conflict between the Guidelines and the legislation, the legislation will prevail.

11. The Guidelines do not provide a definitive legal interpretation of any provision of legislation. In case of any doubt, legal advice should be sought, where required.
12. The Central Bank may amend the Guidelines from time to time.
13. The Central Bank may depart from the procedures set out in the Guidelines where they are not appropriate in the circumstances of a particular case.
14. The Guidelines should be read as one document.
15. In the Guidelines, unless a contrary intention appears:
  - A word or expression used in the Guidelines has the same meaning in the Guidelines as it has in the 1942 Act.
  - A reference to the singular includes a reference to the plural, and a reference to the plural includes a reference to the singular.
  - A reference to the **Guidelines** is to these Administrative Sanctions Procedure Guidelines.
  - A reference to a **Part** is to a Part of the Guidelines.
  - A reference to a **Section** is to a Section of the Guidelines.
  - A reference to the **Glossary** is to the Glossary of terms and statutes included in the Appendix of the Guidelines.
  - The term **firm** refers to a regulated financial service provider; a former regulated financial service provider; and any other person who is subject to the ASP (other than a natural person who is not a regulated financial service provider).
  - The term **inquiry** refers to an inquiry under the ASP as detailed in Part 4, and inquiry hearing should be construed accordingly. Refer to Glossary.
  - The terms **information** and **documents** include records.
  - The term **investigation**, and any variation or derivation of that term, refers to an investigation under the ASP as detailed in Part 3. Refer to Glossary.

- The term **prescribed contravention** refers to a breach of any legal obligation or other requirement that may be enforced under the ASP. Refer to Glossary.
  - A reference to the **commission of a prescribed contravention**, or any variation or derivation of that term, includes the ongoing or past commission by a firm or an individual of a prescribed contravention. In the context of **an individual**, the commission of a prescribed contravention includes the ongoing or past **participation** by an individual in the commission by a firm of a prescribed contravention.
  - The term **sanction** refers to an administrative sanction imposed by the Central Bank under the ASP as detailed in Part 6. Refer to Glossary.
  - The term **settlement**, and any variation or derivation of that term, refers to the early resolution of an ASP matter by agreement between the Central Bank and the Subject as detailed in Part 5, and **settlement agreement** and **settlement scheme** should be construed accordingly. Refer to Glossary.
16. The Glossary provides further explanation of terms and abbreviations for statutes used in the Guidelines.



## Part 2: Overview of ASP

This Part provides an overview of the ASP, from the investigation of circumstances suggesting the commission of a prescribed contravention through to an inquiry and any decision to impose a sanction.

### 5. Overview and Process Diagram

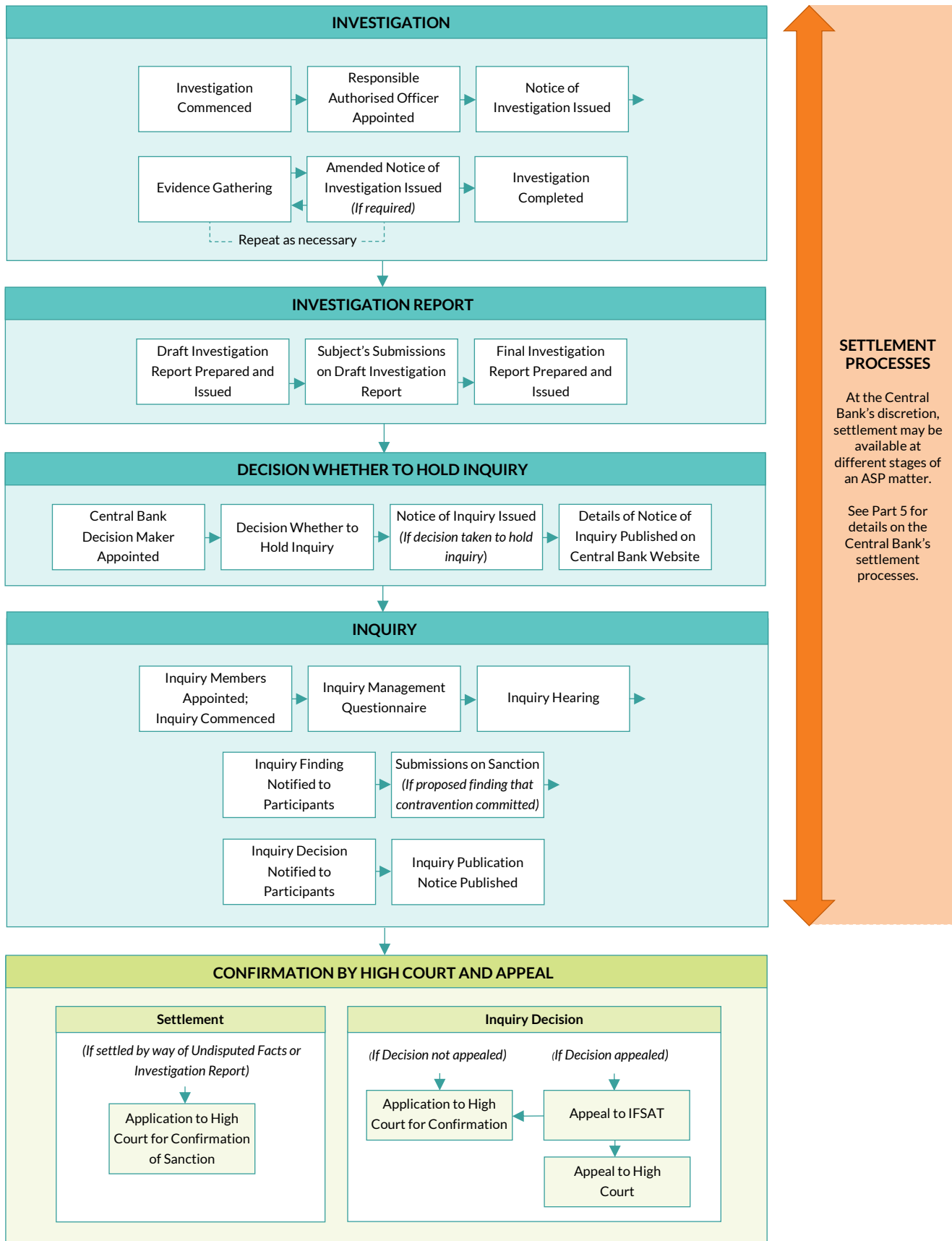
17. Under the ASP, the Central Bank has the power to investigate a prescribed contravention committed by a firm or individual, to impose a sanction in respect of a prescribed contravention, and to publicise its findings in this regard and the details of any sanction imposed.
18. Where the Central Bank becomes aware of circumstances suggesting that a prescribed contravention has been committed, the Central Bank may decide to carry out an investigation. In general, an investigation will be carried out by Enforcement. See Part 3 (Investigation).
19. The Central Bank will appoint a Responsible Authorised Officer to conduct the investigation. The Responsible Authorised Officer will issue a Notice of Investigation to the Subject outlining each prescribed contravention and the relevant conduct which is under investigation.
20. During an investigation, the Central Bank will gather information and evidence by collecting documentary evidence and may also conduct interviews with witnesses.
21. The Central Bank may resolve an ASP matter in a number of ways, including by taking supervisory action, by settlement with the Subject, or by discontinuing the investigation. Alternatively, the Central Bank may complete the investigation and prepare a report of the investigation.
22. Settlement with a Subject may occur in a number of ways and at various stages of the process. The Central Bank will only settle a matter where it is in the public interest to do so. The Central Bank's general policy in relation to settlement is to

require admissions from a Subject and to publish the details of the admissions and the sanction imposed. See Part 5 (Settlement) and Part 6 (Sanction).

23. Where the Central Bank completes an investigation it will prepare a Draft Investigation Report and invite the Subject to make submissions on the report before it is finalised. The Final Investigation Report will then be referred to a Central Bank decision maker, who will review the Final Investigation Report and decide whether an inquiry should be held.
24. If the Central Bank decision maker suspects on reasonable grounds that the Subject has committed a prescribed contravention, the decision maker may decide that an inquiry should be held. If the decision maker so decides, the Central Bank will issue a Notice of Inquiry to the Subject. See Part 4 (Inquiry).
25. The Central Bank will appoint Inquiry Members from the Regulatory Decisions Panel, which is a panel of decision makers established by the Minister for Finance. The panel comprises both externally recruited experts and Central Bank staff.
26. The Inquiry Members will conduct the inquiry with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before it will allow.
27. Inquiries will usually be held in public. The Inquiry Members will invite the Inquiry Participants to make oral and/or written submissions, and to propose witnesses whom the Inquiry Members may call to give evidence at an oral hearing or by way of written statement.
28. At the conclusion of an inquiry, the Inquiry Members will issue an Inquiry Decision which will outline their findings as to whether a prescribed contravention has been committed and what sanction (if any) should be imposed. See Part 6 (Sanction). The Inquiry Members will also publish details of their findings and/or any sanctions, as they consider appropriate.

29. Following the issue of the Inquiry Decision, the Central Bank will apply to the High Court for confirmation of the findings and sanctions (if any) to be imposed. Where the ASP has been resolved by way of settlement with admissions, the Central Bank will apply to the High Court for confirmation of the agreed sanctions. See Part 7 (Confirmation by High Court and Appeal).
30. The Central Bank will publish annually, in summary form, information on its actions under the ASP.
31. A diagram illustrating the key processes under the ASP is included below.

## ASP Process Diagram



## 6. Single Supervisory Mechanism

32. Within the area of banking supervision, under the Single Supervisory Mechanism (SSM), the European Central Bank (ECB) is responsible for the direct supervision of certain credit institutions. Consequently, in certain instances, the ECB will be the competent authority for investigating suspected regulatory breaches and imposing administrative sanctions. In other instances, the ECB may require the Central Bank to open proceedings to investigate if a breach has occurred and to determine whether the imposition of a sanction is warranted.
33. The Guidelines note the impact of the SSM on the ASP in a general way but are not comprehensive in this regard and do not represent a definitive legal interpretation of the relevant legislation.

## 7. Referrals and Prosecutions

34. The Central Bank has various reporting obligations in circumstances where the information obtained by it at any stage prior to, during, or after an investigation, gives rise to a suspicion of a criminal offence, a breach of company law, or a breach of competition law. In such circumstances, the Central Bank must refer the matter to the relevant authority.
35. In accordance with the 1942 Act, the Central Bank has the power to institute summary proceedings for certain breaches of financial services legislation.
36. No criminal prosecution may be brought by the Central Bank if the prescribed contravention in question has already been the subject of a monetary penalty under sections 33AQ or 33AR of the 1942 Act in connection with the ASP.
37. If a criminal prosecution has been brought in respect of an offence that also involves a prescribed contravention, and the Subject is found either guilty or not guilty of that offence, then no monetary penalty may be imposed as a sanction under the ASP in respect of such prescribed contravention.

## Part 3: Investigation

We may investigate firms and individuals to gather information where there are circumstances suggesting the commission of a prescribed contravention. This Part explains our investigation process.

### 8. Introduction

38. Investigations are an important component of the Central Bank’s tool kit and regulatory strategy.
39. The Central Bank has a number of statutory powers that can be used to investigate whether a prescribed contravention has been committed.
40. The purpose of this Part is to explain the investigation process and the Central Bank’s general approach to investigations.
41. A Subject remains under the general supervision and oversight of the Central Bank throughout the course of an investigation and any subsequent inquiry. An investigation and inquiry are without prejudice to the fact that prior to, during and after an investigation or inquiry, the Central Bank may, as part of the exercise of its supervisory functions, engage in supervisory inspections, analyses and interventions. This may include the exercise of various statutory powers to assess and/or compel compliance with financial services legislation.
42. All investigations are confidential and all information and/or material related to an investigation is confidential information.

### 9. Commencing an Investigation

43. Where the Central Bank becomes aware of circumstances suggesting that a prescribed contravention has been committed, it may decide to carry out an investigation. In general, an investigation will be carried out by Enforcement.

44. In the case of credit institutions, depending on the category of credit institution, an investigation may be commenced directly by the ECB or on foot of a request by the ECB to the Central Bank to open proceedings.
45. Following a decision being made to carry out an investigation, a Responsible Authorised Officer will be appointed to the investigation. The Responsible Authorised Officer has a number of responsibilities in relation to an investigation; for example, issuing the Notice of Investigation, keeping the Subject informed as to the progress of the investigation, and preparing the Final Investigation Report. Each of these is explained in the Sections that follow.

## 10. Confidentiality

46. Where confidential information is provided by the Central Bank to a Subject and/or any third party for the purposes of an investigation (including for the purposes of interviews or requests for information), the Responsible Authorised Officer will expressly notify the recipient that such information is confidential and that it must not be disclosed to any other third party unless authorised to do so by the Central Bank in writing or they are required by law to do so. The recipient is not prevented from disclosing the information to their legal representative.
47. A failure to comply with the legal obligations concerning confidentiality in the course of an investigation could have serious consequences for the Subject and/or recipient of the confidential information. Non-compliance may be an aggravating factor taken into account in determining any sanction imposed on a Subject and/or may constitute a prescribed contravention in itself. Where necessary, such non-compliance may be enforced via an application to the High Court and/or the taking of other appropriate enforcement measures by the Central Bank.

## 11. Notice of Investigation

48. As soon as practicable after a decision is made by the Central Bank to carry out an investigation, the Responsible

Authorised Officer appointed by the Central Bank will provide the Subject with a Notice of Investigation.

49. The Notice of Investigation will be in writing and will contain the following:
  - A statement identifying each prescribed contravention, and the conduct of the Subject, to which the investigation relates.
  - A copy of any such material relating to the matters referred to in the first bullet point above as the Responsible Authorised Officer, in their discretion, considers appropriate.
  - A statement that a response to the contents of the Notice of Investigation will be taken into account if made by the Subject in writing within the timeframe set out in the Notice of Investigation or such longer period as the Responsible Authorised Officer may allow.
50. The Central Bank will also notify the Guidelines to the Subject.
51. Any responses from the Subject to the Notice of Investigation should be on an open basis, i.e. full and complete disclosure of information should be provided in open correspondence.
52. The Responsible Authorised Officer may include copies of material which, in their opinion at that stage of the investigation, evidences the commission of a prescribed contravention. However, circumstances could arise where the Responsible Authorised Officer may not consider it appropriate to provide copies of material with a Notice of Investigation. For example, where the material relates to a protected disclosure or is subject to professional secrecy, legal professional privilege or data protection requirements; or where providing copies might prejudice an ongoing criminal or other investigation.
53. A Notice of Investigation may be amended at any stage of an investigation. This means that an investigation may be narrowed or broadened as appropriate to the circumstances in each case. The Responsible Authorised Officer will give the



Subject an amended Notice of Investigation where any of the following arises:

- There is a substantive change in the investigation such that the statement in the Notice of Investigation identifying each prescribed contravention, and the conduct of the Subject, to which the investigation relates (see paragraph 49), is no longer accurate.
- The investigation is being extended to include the investigation of the commission of another prescribed contravention.
- The investigation into a prescribed contravention is discontinued while continuing in respect of another prescribed contravention.

54. During the course of an investigation, the Responsible Authorised Officer will take such steps as they consider reasonable to keep the Subject informed as to the progress of the investigation.

## 12. Gathering Evidence

55. The Central Bank will gather information and/or evidence throughout the course of an investigation, including through the use of its statutory powers. For example, the Central Bank may use its statutory powers to collect documentary evidence and to carry out interviews with witnesses, who may include the Subject.

56. To enable the Central Bank to carry out the investigation in an effective and timely manner, a Subject must submit considered, accurate and timely responses to information requests from the Central Bank. The Central Bank expects a Subject to engage and cooperate fully with the evidence gathering process. A failure to do so may be considered an aggravating factor when determining any sanction that may be imposed (see Part 6 (Sanction)) and/or may constitute a prescribed contravention in itself. In some cases, the Central Bank may bring an application to the High Court to secure compliance with the requirements in the information request. Further, a failure to comply with and/or obstruction to the use

of the Central Bank's statutory powers may constitute a criminal offence.

### **Timeframe for Compliance with Information Request**

57. Any timeframe set by the Central Bank for complying with an information request must be complied with.
58. Any request for an extension of time must:
- Be in writing
  - Be received by the Responsible Authorised Officer in sufficient time in advance of the expiry of the set timeframe to allow the Responsible Authorised Officer to fully consider the request
  - Include reasonable, cogent and compelling reasons as to why it is not possible for the Subject to comply with the timeframe set by the Responsible Authorised Officer.
59. The granting of an extension is at the discretion of the Responsible Authorised Officer. An extension will only be granted where the request complies with the above requirements and the Responsible Authorised Officer believes that granting an extension would be in the interests of fairness. In the event that an extension is granted, the Responsible Authorised Officer will issue a written notice specifying the revised timeframe for complying with the information request.

### **Use of Information**

60. Information gathered in the course of an investigation can be used at any subsequent inquiry and in the performance by the Central Bank of any of its statutory functions including, for example, in any related investigation.

## **13. Privilege**

### **Legal Professional Privilege**

61. The recipient of an information request may, in response to the request, make a claim of legal professional privilege over a portion or all of the requested information. Where such a claim is made, the recipient of the request will be required to

provide the Central Bank with a privilege schedule setting out details of the claim. The schedule must be prepared in accordance with the specifications of the Central Bank outlined in the request.

62. The Central Bank will review the privilege schedule. If the Central Bank has reasonable grounds for believing that information listed in the schedule is not legally privileged, the Central Bank will seek further explanation of the legal and factual basis for the privilege claim. If the response provided to these queries does not explain to the Central Bank's satisfaction why the information is legally privileged, the Central Bank will take appropriate action to determine the disputed privilege claim. This may include making an application to the High Court to determine whether the information is legally privileged.
63. Information listed in a privilege schedule over which a claim of privilege is not disputed does not need to be produced to the Central Bank. However, there may be circumstances where the privilege owner may waive privilege entirely. Alternatively, the privilege owner and the Central Bank may enter into a disclosure agreement.

#### **Disclosure Agreement**

64. Under a disclosure agreement, the privilege owner agrees to a limited waiver of legal professional privilege to the Central Bank and any other person specified in the disclosure agreement. This limited waiver, which may be over all or a portion of the privileged material, does not constitute a waiver of privilege in relation to third parties. Under the agreement, the privilege owner will agree to produce and/or give access to the privileged material to the Central Bank or any other person specified in the agreement.
65. If the Central Bank considers a disclosure agreement to be appropriate in a particular investigation, such disclosure agreement will include a provision confirming that the Central Bank can utilise the disclosed material for the performance of any of its statutory functions and any other purpose specified in the agreement, including for the purposes of that

investigation, any related investigation, any subsequent inquiry, and any related procedure such as an appeal to the Irish Financial Services Appeals Tribunal or an application to the High Court.

66. Statutory protection is provided to the legal privilege in the disclosed material.<sup>2</sup> This protection ensures that its subsequent use by the Central Bank for the purposes stated above or by any other specified person does not constitute a waiver of legal professional privilege. It also provides that where disclosed material is utilised by the Central Bank or other persons specified in the disclosure agreement in evidence in any proceedings under financial services legislation, the proceedings or any part of them may be heard otherwise than in public to maintain the confidentiality of the disclosed material. Further, the application of the Freedom of Information Act 2014 is expressly excluded in relation to the disclosed material and the legislation provides that the disclosed material is confidential information.

### **Absolute Privilege of Investigation and Investigation Report**

67. All proceedings of an investigation, including any statement or submission made by or on behalf of the Subject, and all communications of the Responsible Authorised Officer in the course of the investigation, are absolutely privileged for the purposes of the law of defamation. Further, the content of the Draft Investigation Report and the Final Investigation Report, any correspondence from the Responsible Authorised Officer in the course of the investigation report process, and any submissions made by the Subject in response to the Draft Investigation Report, are absolutely privileged. See Section 15 (Investigation Report) for further details in relation to the investigation report process.

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<sup>2</sup> Section 34A of the 2013 Act.

## 14. Options During an Investigation

68. Following the commencement of an investigation the Central Bank may deal with the matter in a number of ways. For example, the Central Bank may:

- Take further supervisory action
- In appropriate cases, resolve the matter by settlement, which can occur at any stage of an ASP matter – see Part 5 (Settlement)
- Complete the investigation and prepare a report of the investigation which may be referred to a Central Bank decision maker to decide whether to hold an inquiry
- Discontinue the investigation.

69. Supervisory action, settlement and discontinuance are outlined immediately below. The preparation of an investigation report and the decision whether to hold an inquiry are detailed in Sections 15 (Investigation Report) and 16 (Deciding Whether to Hold an Inquiry).

### **Supervisory Action**

70. Notwithstanding any other action taken by the Central Bank, the Central Bank may decide that further action is required in relation to the supervision of a Subject. Such action may include utilising various supervisory tools and powers. For example, the Central Bank may issue directions to, or impose conditions on, a Subject, where appropriate.

### **Settlement**

71. At the sole discretion of the Central Bank, it is open to a Subject and the Central Bank to resolve an investigation by agreement. This process of early resolution by agreement is referred to as settlement.

72. There are three distinct settlement processes:

- Undisputed Facts Settlement
- Investigation Report Settlement
- No Admissions Settlement

73. The Central Bank's settlement processes are detailed in Part 5 (Settlement). The Central Bank is under no obligation to enter into settlement and will only engage in the consideration of settlement options where it is satisfied that it is appropriate to do so in the particular circumstances.

#### **Discontinuing an Investigation**

74. The Central Bank may decide to discontinue an investigation in a number of circumstances.

75. When an investigation is discontinued in respect of all prescribed contraventions, the Responsible Authorised Officer will inform the Subject of this as soon as practicable by notice in writing.

76. The Responsible Authorised Officer will state that the investigation has been discontinued and give one or more of the following reasons for the discontinuance:

- The Central Bank no longer has reasonable grounds to suspect the Subject's commission of a prescribed contravention.
- The matters included in the investigation immediately before the discontinuance were minor in nature, immediate remedial action was taken in respect of them and full co-operation was provided.
- The investigation has been discontinued for reasons of resources.
- The investigation has been discontinued for policy reasons.
- The investigation has been discontinued for reasons of any other description stated in the notice provided by the Responsible Authorised Officer.

77. Where an investigation of a particular prescribed contravention is discontinued while continuing in relation to another prescribed contravention, the Responsible Authorised Officer and the Central Bank are not required to give a reason for the discontinuance of that aspect of the investigation.

78. Where the Subject has been informed of the discontinuance of an investigation and relevant information becomes available to the Central Bank at a later date, the Central Bank may commence a new investigation into the same matter.

## 15. Investigation Report

### Draft Investigation Report

79. When the Central Bank has completed an investigation, the Responsible Authorised Officer will prepare a Draft Investigation Report as soon as practicable.
80. The Draft Investigation Report will set out details of the investigation. The Responsible Authorised Officer will consider the following when preparing the Draft Investigation Report:
- The Notice of Investigation and any amended Notice of Investigation provided during the course of the investigation.
  - Any relevant information or evidence gathered or received in the course of the investigation.
  - Any responses made by the Subject in response to a Notice of Investigation and any other relevant submissions made by the Subject during the course of the investigation.
81. The Draft Investigation Report will include material which, in the opinion of the Responsible Authorised Officer, is relevant to the consideration of the Final Investigation Report by the Central Bank decision maker appointed to decide whether an inquiry should be held. Such material will include an outline of the prescribed contravention.
82. The Draft Investigation Report will provide a general outline of how the Responsible Authorised Officer identified the relevant information and/or documents that they relied upon for the purposes of preparing the Draft Investigation Report. The Responsible Authorised Officer will determine whether or not information and/or documents are relevant and whether they will be relied upon for the purposes of the Draft Investigation Report. The Responsible Authorised Officer will,

in making this decision, bear in mind that information and/or documents may be relevant and may be relied upon and included for the purpose of the Draft Investigation Report either because it supports or because it undermines the commission of a prescribed contravention.

83. The Responsible Authorised Officer will provide the Draft Investigation Report to the Subject in electronic form. The Draft Investigation Report will include the following:
- A copy of section 33ANK of the 1942 Act, which sets out the investigation report procedure.
  - A notice in writing stating that the Subject is invited to make submissions in writing in response to the Draft Investigation Report. Such submissions must be made within 7 days from the date on which the notice is served, or such longer period as the Responsible Authorised Officer considers necessary to give the Subject an opportunity to respond. If greater than 7 days, the timeframe will be set by the Responsible Authorised Officer following consideration of the complexity of the issues, the contents of the Draft Investigation Report and having regard to what the Responsible Authorised Officer considers would be a necessary period in order to give the Subject a fair opportunity to respond.

#### **Timeframe for Making Submissions**

84. The Subject may request an extension of time to make submissions in response to the Draft Investigation Report. Any request from the Subject for an extension of time to make submissions must:
- Be in writing
  - Be received by the Responsible Authorised Officer in sufficient time in advance of the expiry of the timeframe set by the Responsible Authorised Officer in the Draft Investigation Report to allow them to fully consider the extension request
  - Include reasonable, cogent and compelling reasons as to why it is not possible for the Subject to make submissions



within the timeframe set by the Responsible Authorised Officer in the Draft Investigation Report

- Propose an alternative date by which the Subject can make submissions and an explanation as to why that alternative date is necessary in the circumstances
- Be signed by the Subject or an individual nominated by the Subject who will take responsibility for providing the submissions by the proposed alternative date.

85. An extension will only be granted where it can be shown that there are reasonable grounds for doing so, and where the Responsible Authorised Officer is satisfied, on the basis of their assessment of the reasonableness of the explanations provided by the Subject, that granting an extension would be in the interests of fairness. In the event that an extension is granted, the Responsible Authorised Officer will issue a written notice specifying the revised timeframe for making submissions.

86. The Responsible Authorised Officer will consider any submissions made by the Subject in response to the Draft Investigation Report, including whether the Responsible Authorised Officer requires further information and/or clarifications are required from the Subject to facilitate that consideration.

#### **Requesting Further Information and/or Documents**

87. If the Subject, upon receipt of the Draft Investigation Report, requires any further information and/or documents from the Central Bank relating to the Draft Investigation Report, the request must be made in writing and sufficiently in advance of the expiry of the timeframe for making submissions to enable the Responsible Authorised Officer to fully consider the request.

88. The written request for further information and/or documents should include a detailed explanation of the relevance and necessity for any additional information and/or documents concerning the prescribed contravention to which the Draft Investigation Report relates.

89. In considering the request by the Subject for information and/or documents over and above what has already been provided by the Central Bank during the course of the investigation and with the Draft Investigation Report, the Responsible Authorised Officer will have regard to the following:
- Whether the request is for information and/or documents that are relevant to a prescribed contravention that is the subject matter of the Draft Investigation Report.
  - Whether the request for, and the provision of, the additional information and/or documents is fair, necessary and proportionate in all of the circumstances having regard to the following:
    - The volume and extent of information and/or documents already provided as against the additional information and/or documents requested.
    - The potential relevance and necessity of the requested information and/or documents to the prescribed contravention.
    - The potential relevance and necessity of the requested information and/or documents to the consideration of the Final Investigation Report by the Central Bank's decision maker appointed to decide whether to hold an inquiry.
90. Where further information and/or documents are to be provided by the Responsible Authorised Officer, they will engage with the Subject in respect of next steps. Where no further information and/or documents are being provided by the Responsible Authorised Officer, the Subject will be informed and invited to make submissions on the Draft Investigation Report within the specified timeframe.

### Final Investigation Report

91. Following the consideration of any submissions made, the Responsible Authorised Officer will make any revisions or amendments to the Draft Investigation Report which may, in the opinion of the Responsible Authorised Officer, be

warranted. The revisions will include any response to the Subject's submissions on the Draft Investigation Report that the Responsible Authorised Officer considers relevant to the consideration of the Final Investigation Report by the Central Bank's decision maker appointed to decide whether an inquiry should be held. The Responsible Authorised Officer will then finalise the investigation report. The Responsible Authorised Officer will not express any opinion on or make any recommendation in the Final Investigation Report as to whether or what sanction might be appropriate in the event that a finding is made that the Subject had committed a prescribed contravention.

92. The timeframe for finalising the investigation report will vary from case to case and will also depend on the volume and the nature of the submissions received from the Subject. The Responsible Authorised Officer will finalise the investigation report as soon as practicable following the receipt of submissions, subject to the receipt of any further information and/or clarifications requested from the Subject by the Responsible Authorised Officer.
93. The Final Investigation Report will include the material that, in the opinion of the Responsible Authorised Officer, is relevant to the consideration of the Final Investigation Report by the Central Bank's decision maker appointed to decide whether to hold an inquiry. Such material will include an outline of the prescribed contravention.
94. The Final Investigation Report will provide a general outline of how the Responsible Authorised Officer identified the relevant information and/or documents that they relied upon for the purposes of preparing the Final Investigation Report. In determining whether information or documents are relevant and whether they will be relied on and included for the purposes of the Final Investigation Report, the Responsible Authorised Officer will consider information and/or documents that support or undermine the commission of the prescribed contravention.

95. The Responsible Authorised Officer will provide the Final Investigation Report and any submissions made by the Subject on the Draft Investigation Report to the Central Bank's decision maker appointed to decide whether an inquiry should be held. See Section 16 (Deciding Whether to Hold an Inquiry).
96. At the same time, the Responsible Authorised Officer will provide, in electronic form, a copy of the Final Investigation Report and any submissions made by the Subject on the Draft Investigation Report to the Subject and inform them that the Final Investigation Report has been provided to the decision maker.

### Confidentiality

97. The investigation report process is confidential and all information and/or material related to the investigation report is confidential information. The Responsible Authorised Officer will expressly notify the recipient that such information is confidential and must not be disclosed to any other party unless authorised to do so by the Central Bank in writing or they are required by law to do so. The Subject is not prevented from disclosing information to their legal representative.
98. A failure to comply with the legal obligations concerning confidentiality in the course of the investigation report process could have serious consequences for the Subject and/or recipient of the confidential information. Non-compliance may be an aggravating factor taken into account in determining any sanction imposed on the Subject and/or may constitute a prescribed contravention in itself. Where necessary, the Central Bank may enforce such non-compliance by making an application to the High Court and/or by taking other appropriate enforcement measures. In addition, the Subject may be held to have committed a criminal offence where the existence or content of the Final Investigation Report is disclosed without having received the prior authorisation of the Central Bank.

## 16. Deciding Whether to Hold an Inquiry

99. The Central Bank's appointed decision maker must consider the Final Investigation Report and determine whether there are reasonable grounds to suspect that the Subject has committed a prescribed contravention.
100. The Central Bank's appointed decision maker may make any of the following decisions:
- To hold an inquiry to determine whether or not the Subject has committed a prescribed contravention.
  - To hold an inquiry into the suspected participation by an individual in the commission of a prescribed contravention as part of an inquiry into the commission of another prescribed contravention.
  - Not to hold an inquiry in circumstances where the decision maker does not suspect on reasonable grounds that the Subject has committed a prescribed contravention.
101. If the Subject has acknowledged in open correspondence the commission of a prescribed contravention but an agreement cannot be reached between the Subject and the Central Bank as to the level of sanction to be imposed, the Central Bank may decide to refer the matter to an inquiry to determine sanctions only. This more limited form of inquiry has as its sole purpose the determination of what, if any, sanction to impose. See Section 31 (Inquiry to Determine Sanctions Only).

## 17. Notice of Inquiry

102. The Central Bank will issue a Notice of Inquiry to a Subject in advance of the commencement of an inquiry.
103. The Notice of Inquiry will include the following:
- Details of the prescribed contravention.
  - The grounds on which the Central Bank's suspicions are based.
104. Where the Central Bank has decided to hold an inquiry to determine sanctions only, the Notice of Inquiry will include details of the acknowledged prescribed contravention.

105. Further Notices of Inquiry Hearing will issue during the course of the inquiry to specify the date, time and place at which the Central Bank will hold any inquiry hearing and to either invite the Subject to attend the inquiry hearing or to make written submissions about the matter to which the inquiry relates.
106. Once the Notice of Inquiry has been issued, the Central Bank will publish details of the Notice of Inquiry on the Central Bank's website, including for example details relating to the prescribed contravention, the Subject and any other related firms or individuals.

## Part 4: Inquiry

If, following an investigation, we suspect the commission of a prescribed contravention, we may hold an inquiry. This Part explains our inquiry process.

### 18. Introduction

107. Where the Central Bank suspects on reasonable grounds that a Subject has committed a prescribed contravention, the Central Bank may hold an inquiry. Such inquiries will usually be held in public.
108. The purpose of the inquiry will be to determine whether or not the Subject has committed a prescribed contravention.
109. The functions and powers of conducting an inquiry will be performed and exercised by Inquiry Members appointed by the Central Bank from the Regulatory Decisions Panel, on a case-by-case basis. The Inquiry Members appointed in a particular case will decide how the inquiry will proceed and the procedures to be followed.
110. The inquiry is not a court of law, and the inquiry procedure 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 a proper consideration of the matter will allow. The Central Bank shall observe the rules of procedural fairness at an inquiry but is not bound by the rules of evidence.
111. This Part, which must be read in the light of the Guidelines more generally, sets out the procedures which the Central Bank proposes should be adopted when holding an inquiry in order to provide transparency, observe the rules of fair procedures, and to ensure the efficient running of inquiries. Inquiry Members may depart from the Guidelines in certain instances where they are not appropriate in the circumstances of a particular case.

112. The Sections below first outline the roles of the Inquiry Members, Inquiry Participants and other roles at inquiry, and then describe the procedure to be followed at inquiry.

## 19. Inquiry Members

### Appointment of Inquiry Members

113. As soon as practicable after the Central Bank makes a decision to hold an inquiry, one or more individuals will be appointed from the Regulatory Decisions Panel to act as Inquiry Members. The Regulatory Decisions Panel is a panel of decision makers established by the Minister for Finance. The panel comprises both externally recruited experts and Central Bank staff. The Central Bank will select suitably qualified members of the panel for appointment as Inquiry Members, taking account of their experience and expertise, availability and any conflicts of interest. The number of Inquiry Members appointed will depend on the requirements of the case as identified by the Central Bank.

### Functions and Powers of Inquiry Members

114. The Inquiry Members will make findings at the conclusion of an inquiry as to whether a prescribed contravention has been committed and determine what sanction (if any) should be imposed.
115. The Inquiry Members will at all times observe the rules of fair procedures, whilst at the same time conducting the inquiry as expeditiously and efficiently as possible.
116. With respect to the examination of witnesses (including witnesses who are outside the State), the Inquiry Members have the same powers as those of a High Court judge in hearing civil proceedings.
117. In exercising all functions necessary in order to conduct the inquiry, the Inquiry Members will also determine any issues (including any legal issues) arising during the course of the inquiry. The functions of Inquiry Members therefore may include asking questions of witnesses, requesting submissions and any other relevant function necessary for the conduct of the inquiry. However, Inquiry Members may not lead the



presentation of evidence, or examine witnesses to the inquiry on behalf of the Central Bank, as this role will be carried out by Enforcement.

### **Inquiry Chair**

118. Certain functions and powers at inquiry may only be exercised by the person presiding at inquiry<sup>3</sup>, which role will be held by the Inquiry Chair.
119. Where the Central Bank appoints a sole Inquiry Member, that person will be the Inquiry Chair.
120. Where the Central Bank appoints a committee of Inquiry Members, a legally qualified chairperson will be appointed to act as the Inquiry Chair.
121. Where there is an uneven number of Inquiry Members appointed, any decisions made by them can be made by simple majority. If for any reason there is an even number of Inquiry Members, the Inquiry Chair will have a casting vote, where necessary.

### **Replacement of Inquiry Member**

122. In the event that an Inquiry Member is unable to continue as an Inquiry Member in a particular inquiry, the Central Bank may appoint a replacement Inquiry Member, if it considers appropriate. In considering whether to appoint a replacement Inquiry Member, the Central Bank will have regard to the circumstances of the inquiry, in particular the number of remaining Inquiry Members and the current stage of the inquiry. In the event that an Inquiry Chair wishes to withdraw from a committee of Inquiry Members, the Central Bank may designate another member of the committee to act as Inquiry Chair, irrespective of whether or not they are legally qualified.

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<sup>3</sup> These powers and functions include: power to prohibit the disclosure of inquiry-related information under section 33AZA(1), power to require evidence be given on oath and to administer the oath to the witness under section 33BA(2), power to require a witness to answer a question or produce a document under section 33BA(3), power to allow a witness to give evidence in writing under section 33BA(5) and power to determine objection to the admission of information in evidence under section 33BAA(4) of the 1942 Act.

A committee of Inquiry Members may continue to act despite one or more than one vacancy among its members.

## 20. Inquiry Participants

### Enforcement

123. The Central Bank can designate a suitably qualified person to present the evidence and conclusions of the investigation to the inquiry. This role will be usually performed by Enforcement, who may be advised or represented by one or more legal practitioners. The role may include, but is not limited to, the following:

- Delivering opening and closing statements.
- Making submissions to the inquiry.
- Leading evidence and examining witnesses.
- Managing any settlement discussions.
- Any other function that is necessary or ancillary to the above functions and to the presentation of the results of the investigation to the inquiry.

### Subject

124. The Subject is the firm or individual who the Central Bank suspects has committed a prescribed contravention. An inquiry may relate to more than one Subject.

125. The Subject may choose to be legally represented at the inquiry by a legal practitioner or, with the leave of the Inquiry Members, any other person. While a Subject may apply to be represented by any other person, the Inquiry Members may refuse to grant such leave where they are satisfied that the interests of justice and fairness do not require it. Where the Inquiry Members grant a Subject leave to be represented by another person, they may determine the manner in which such representation is provided. They may withdraw the leave if they are of the opinion that the conduct of the inquiry is being impeded by that person.

126. Neither the Central Bank nor the Inquiry Members have the power to discharge any legal costs or expenses incurred by the

Subject relating to the inquiry (with the exception of witness expenses, which may be allowed in accordance with paragraph 138 below).

## 21. Other Inquiry Roles

### Regulatory Decisions Unit (RDU)

127. RDU is a unit of the Central Bank, which acts as registrar to the inquiry. The registrar's role involves managing the administration of the inquiry, and receiving and distributing inquiry materials.
128. RDU also supports Inquiry Members by providing advice and guidance to Inquiry Members with regard to inquiry procedures, and providing drafting and research assistance. RDU does not provide legal advice with regard to the subject matter of the inquiry. RDU has no role in deciding matters before the inquiry.

### Legal Advisor to Inquiry Members

129. The Inquiry Members may, at any stage during an inquiry, request legal advice from one or more legal practitioners. The legal practitioner will act as a legal advisor to the Inquiry Members and may be either a solicitor or barrister. Any decision to appoint a legal advisor in any given inquiry will be a matter for the Inquiry Members.
130. The functions of a legal advisor may include, but are not limited to, the following matters:
  - To advise on questions of law as to evidence or procedure arising in the course of the inquiry.
  - To provide legal submissions on specific legal points arising during the inquiry process.
  - To intervene during an inquiry hearing to advise the Inquiry Members on an issue of law as to evidence or procedure where it appears to the legal advisor that, without their intervention, there is the possibility of a mistake in law being made.

- To intervene during an inquiry hearing to advise the Inquiry Members of any irregularity in the conduct of the inquiry which comes to the legal advisor's knowledge.
- To advise on the drafting of the decisions of the Inquiry Members (notwithstanding that the legal advisors will not themselves be parties to those decisions).
- Such other functions as are necessary and ancillary to their role in providing legal assistance and advice to the Inquiry Members in the performance of their functions.

131. Legal advice provided by the legal advisor to the Inquiry Members will, where necessary in order to observe the rules of procedural fairness, be made available as soon as practicable to the Inquiry Participants.

### Third Party Firms

132. A firm who believes that it has an interest in the subject matter of an inquiry involving an individual who is or was performing a controlled function in that firm may make an application to the Inquiry Members to request a role in the inquiry.

133. The firm may be invited by the Inquiry Members to make submissions to the inquiry as to the nature of its interest in the subject matter of the inquiry and the nature of the role which it is seeking. The Inquiry Members may seek further information or legal submissions from the firm, the Subject and Enforcement, as appropriate.

134. Whether a firm will be afforded any role at an inquiry in which they are not the Subject is at the discretion of the Inquiry Members, noting that the legislation does not provide for any such third party involvement.

### Witnesses

135. A witness is a person who has been identified as someone who may be able to provide relevant information to an inquiry, and may include an expert witness or the Subject. A witness may be required to provide evidence by way of a written statement and may be required to furnish specified documents to an inquiry and/or to attend an inquiry hearing to give evidence.

To assist with the preparation to give evidence, the Inquiry Participants may also provide a witness with relevant documentation.

136. It may be determined that it is necessary for the witness to attend an inquiry hearing to give oral evidence on oath or affirmation. A person who is summonsed to appear before an inquiry will be entitled to the same rights and privileges as a witness appearing in civil proceedings before the High Court.
137. Witnesses are entitled to seek legal advice in relation to their attendance as a witness before an inquiry and the Inquiry Members may, in their discretion, allow a witness to be represented before an inquiry.
138. The Inquiry Members do not have the statutory power to discharge the legal costs or vouched expenses of any witness appearing before the Inquiry. The Inquiry Members may decide to provide witnesses, who have been summonsed and attend to give evidence, with a flat rate payment for expenses (i.e. a viaticum).

## 22. Commencing an Inquiry

### Referral to Inquiry

139. As soon as practicable after RDU receives a Notice of Inquiry from Enforcement, RDU will write to the Subject to confirm receipt of the Notice of Inquiry and to advise of the next steps in the process. The Central Bank will then appoint one or more individuals from the Regulatory Decisions Panel to act as Inquiry Members.
140. RDU will write to the Inquiry Participants to confirm the appointment of the Inquiry Members and the commencement date of the inquiry. An inquiry commences on the date on which the Central Bank's appointment of the Inquiry Members becomes effective.
141. RDU will also place a notice on the Central Bank's website confirming that an inquiry has commenced. RDU will continue to regularly update the inquiry page on the Central Bank's

website to reflect the current status of an inquiry, to include the dates of any hearings of an inquiry.

### **Inquiry Referral Documents**

142. Enforcement will refer the following documents to RDU, who will then share them with the Inquiry Members:
- Notice of Inquiry, as delivered to the Subject.
  - Final Investigation Report (see paragraph 91 et seq. (Final Investigation Report) for further details) and any submissions made by the Subject on the Draft Investigation Report.
143. A Subject will already have been given access to these documents before the commencement of an inquiry.

### **Inquiry Management Questionnaire**

144. The Inquiry Members will prepare and issue an Inquiry Management Questionnaire to the Inquiry Participants within six weeks from the date on which an inquiry commences.
145. The purpose of the Inquiry Management Questionnaire is to narrow the issues to be determined at the inquiry and to enable the Inquiry Members to establish whether an Inquiry Management Meeting is required to consider any preliminary applications and to issue any directions regarding the inquiry arrangements.
146. The Inquiry Participants will complete and return the Inquiry Management Questionnaire within the time specified by the Inquiry Members. If either of the Inquiry Participants fail to respond within the time specified, the Inquiry Members may proceed to progress the inquiry without the participation of that Inquiry Participant. The Inquiry Members will continue to notify the Inquiry Participant of the progress of the inquiry. The Inquiry Participant may apply in writing for permission to deliver their delayed response.
147. The Inquiry Management Questionnaire will seek responses on a number of topics, which may include but are not limited to the following:

- Whether the Subject intends to participate in the inquiry process.
- Whether the Subject or Enforcement intends to seek an oral hearing or whether the inquiry should be held by way of written procedure.
- Whether the Subject is represented by a legal practitioner or wishes to apply to be represented by another person.
- Whether the Subject or Enforcement intends to apply for the hearing to be held in private.
- What matters the Subject intends to dispute at inquiry arising from the Final Investigation Report.
- Whether the Final Investigation Report includes any legally privileged material, such that particular arrangements may need to be put in place to preserve that legal privilege.
- Whether the Subject intends to make any further requests to Enforcement for disclosure of documentary evidence.
- Whether there will be any notices or applications by the Subject or Enforcement concerning the admissibility of documentary evidence.
- Whether the Subject or Enforcement intends to call any witnesses of fact to give evidence by way of a written statement and/or at an oral hearing.
- Whether the Subject or Enforcement intends to call any expert witnesses to give evidence by way of a written statement and/or at an oral hearing.
- The potential timeframe for an oral hearing, if one is being requested.
- Any other preliminary matters which the Subject or Enforcement wishes to bring to the attention of the Inquiry Members.

## 23. Inquiry Procedure

### Paperless Inquiry

148. An inquiry will ordinarily be run on a paperless basis i.e. using electronic copies of documentation only. All correspondence will be sent and received electronically. The Central Bank will arrange for the provision of necessary technology to enable hearings (including Inquiry Management Meetings) to take place on a paperless basis.

### Correspondence between Inquiry Members and Inquiry Participants

149. When the Inquiry Members propose to discuss matters relating to an inquiry with an Inquiry Participant, either in writing or at a meeting, the Inquiry Members will ensure that the other Inquiry Participant is offered the opportunity to be present at the meeting or is sent a copy of the relevant correspondence.
150. Unless the Inquiry Members direct otherwise, all correspondence sent or received in relation to the inquiry will be made available electronically by RDU to all Inquiry Participants as soon as practicable.
151. The Inquiry Members may at their discretion determine that individual items of correspondence should not be sent to any of the Inquiry Participants, or should be sent in a redacted form, if considered appropriate or necessary having considered the fair conduct of the inquiry.
152. Where a third party firm has succeeded in their application for a role in an inquiry (see paragraph 132 et seq. (Third Party Firms), the Inquiry Members may at their discretion direct that certain relevant correspondence also be copied to that third party firm.

### Hearing Arrangements

153. A hearing (including an Inquiry Management Meeting) will usually be held in person at the Central Bank or other suitable location. Where circumstances require, the Inquiry Members may decide to hold the hearing remotely by way of video/telephone link, or as a hybrid with some participants



attending in person and others attending remotely by way of video/telephone link.

154. Any decision to be made by the Inquiry Members as to whether to hold a hearing in person, remotely or as a hybrid will have regard to section 31 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.
155. Inquiry hearings are usually heard in public. Members of the public and media will be able to watch and listen to the proceedings in a public gallery located in, or adjacent to the inquiry room, or online.

### Notice of Inquiry Hearing

156. Where the Inquiry Members have decided to hold a hearing (including an Inquiry Management Meeting), the Inquiry Members will issue a Notice of Inquiry Hearing, which will:
  - Specify the date, time and place at which the hearing will be held
  - Invite the Inquiry Participants to attend at the hearing or to make written submissions about the matters to be considered at the hearing.
157. A notice will appear on the Central Bank's website advising of the date, time and location of the hearing. The notice will indicate if the hearing is being held as a physical, remote or hybrid hearing.
158. If the hearing or part of the hearing is to be held in private, a notice will appear on the Central Bank's website outlining the fact that a hearing is commencing which is being heard in private, or is being conducted in part in private.

### Transcripts

159. A stenographer will be in attendance at all hearings (including an Inquiry Management Meeting). A copy of the transcript will be made available to the Inquiry Members and the Inquiry Participants as soon as practicable.

### Absolute Privilege of Inquiry Proceedings

160. Similar to investigation proceedings, all proceedings of an inquiry, including any statement or submission made by or on behalf of any person in the proceedings, and all communications of an Inquiry Member in relation to inquiry proceedings, are absolutely privileged for the purposes of the law of defamation.<sup>4</sup>

### Confidentiality

161. Where confidential information is provided to a Subject and/or any third party for the purposes of an inquiry, the Inquiry Chair will expressly notify the recipient that such information is confidential and must not be disclosed to any other party unless authorised to do so by the Central Bank in writing or they are required by law to do so. The recipient is not prevented from disclosing information to their legal representative. A failure to comply with these legal obligations may constitute a criminal offence.<sup>5</sup>

### Obstructive Behaviour

162. A person may be held to have committed a criminal offence where they do any of the following:
- Obstruct the Inquiry Members in the exercise of a statutory power.
  - Without reasonable excuse, fail to comply with a requirement or request made by the Inquiry Members.
  - In purported compliance with a requirement or request made by the Inquiry Members, give information that the person knows to be false or misleading.
  - Refuse to comply with a summons to attend before, or to be examined on oath or affirmation by, an inquiry.
163. Where a person behaves in such a manner at inquiry, or fails or refuses to comply with a request made by the Inquiry Chair, or engages in any other obstructive behaviour as described in section 33BA(10) of the 1942 Act, the Central Bank may apply

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<sup>4</sup> Section 33BG of the 1942 Act.

<sup>5</sup> Sections 33AK and 33AZB of the 1942 Act.

to the High Court for an order requiring the person to comply with the request, or requiring the person not to repeat the conduct which is the subject of the application.

## 24. Inquiry Management Meeting

### Purpose

164. On receipt of the completed Inquiry Management Questionnaire, the Inquiry Members will consider the responses and determine whether an Inquiry Management Meeting is required.
165. The purpose of an Inquiry Management Meeting is to assist in the timely and efficient running of an inquiry by:
  - Seeking to ensure that the issues to be determined by the inquiry are narrowed to the greatest extent possible
  - Facilitating the making of any directions in respect of procedural matters
  - Facilitating the making of any directions for the conduct of the inquiry, including the fixing of hearing dates.
166. The Inquiry Members may determine that any procedural matters may be dealt with on the basis of written submissions and correspondence only, and that it is not necessary to hold an Inquiry Management Meeting.

### Procedure for Holding an Inquiry Management Meeting

167. Where the Inquiry Members decide that an Inquiry Management Meeting is required, the Inquiry Participants will be invited to attend and may make submissions to the inquiry.
168. The Inquiry Members may also inform the Inquiry Participants of the matters which they wish to have addressed at the Inquiry Management Meeting.
169. An Inquiry Management Meeting will be held in public unless an application has been made by an Inquiry Participant that the Inquiry Management Meeting be held in private (or part in private), or the Inquiry Members have determined that the Inquiry Management Meeting be held in private. See

paragraph 185 et seq. (Application for Inquiry to be Held other than in Public).

170. Where the Subject indicates, in their response to the Inquiry Management Questionnaire, an intention to apply to have the inquiry hearing (or part of the inquiry hearing) held in private, that application will be heard in private and, if possible and the Inquiry Members consider it appropriate, this will happen at the outset of the Inquiry Management Meeting.
171. At the Inquiry Management Meeting, the Inquiry Participants may make oral submissions in respect of those matters which they have identified in their response to the Inquiry Management Questionnaire and/or in respect of any of the matters raised by the Inquiry Members or any other relevant matter.
172. Further information on the types of procedural applications and process for making such applications is outlined at Section 25 (Procedural Applications).

### Directions

173. Having taken account of the submissions of the Inquiry Participants made in advance of and during the course of the Inquiry Management Meeting, the Inquiry Members will issue directions as appropriate, together with a timeframe for compliance.
174. Such directions as may be given should aim to ensure the timely and efficient running of the inquiry while having due regard to the requirements of the legislation and to the principles of procedural fairness.
175. The Inquiry Members will seek, where possible, to be in a position to issue directions at the end of the Inquiry Management Meeting, but may adjourn any Inquiry Management Meeting and/or reserve their decision in order to deliberate and thereafter issue any directions.
176. In the event that no Inquiry Management Meeting is held, the Inquiry Members may issue directions on procedural matters in advance of an inquiry hearing being held. RDU will communicate such directions to the Inquiry Participants.

## Timeframe for Complying with Directions

177. At various points throughout an inquiry, the Inquiry Members may set time limits for making submissions or complying with directions. The Inquiry Members will give reasonable time for such steps to be taken.
178. If responding within the time given is not possible, the Inquiry Participants may request an extension of time to respond. Any request for an extension of time must:
- Be in writing
  - Be received by the Inquiry Members in sufficient time in advance of the expiry of the set timeframe to allow the Inquiry Members to fully consider the request
  - Include reasonable, cogent and compelling reasons as to why it is not possible for the Inquiry Participant to comply with the timeframe set by the Inquiry Members
  - Propose an alternative date by which the Inquiry Participant can submit their response and an explanation as to why that alternative date is necessary in the circumstances.
179. The Inquiry Members may grant short extensions where it can be shown that there are reasonable grounds for doing so and where the Inquiry Members are satisfied, on the basis of their assessment of the reasonableness of the explanations provided by the Inquiry Participant, that an extension to the original specified time period is necessary in the interests of fairness.
180. If there are repeated delays in responding or complying with directions or if the Inquiry Members determine that no further extensions should be granted, the Inquiry Members may notify the Inquiry Participants of their intention to continue to progress the inquiry.
181. The Inquiry Members may then proceed to progress the inquiry without the participation of the Inquiry Participants. The Inquiry Members will continue to notify the Inquiry Participants of the progress of the inquiry. The Inquiry

Participants may apply in writing for permission to deliver their delayed responses.

## 25. Procedural Applications

### Process for Making Procedural Applications

182. Where either of the Inquiry Participants wishes for the Inquiry Members to determine a procedural matter in advance of an inquiry hearing, they may submit an application in writing to the Inquiry Members, which should be supported by any submission they wish to make.
183. It is for the Inquiry Members to determine whether the application can be dealt with in writing or if it is appropriate for an Inquiry Management Meeting to be convened in order for oral submissions to be made. The date on which such Inquiry Management Meeting will be held will be determined by the Inquiry Members.
184. Upon considering the application, the Inquiry Members will make any directions which they deem appropriate.

### Application for Inquiry to be Held other than in Public

185. There is a statutory presumption that all inquiries will be held in public.<sup>6</sup>
186. As an exception to this statutory presumption, an inquiry hearing (including any Inquiry Management Meeting) may be held in private (or part in private) where the Inquiry Members and the Subject agree that the inquiry should be held in private (or part in private).
187. Even if they do not agree, the Inquiry Members may decide that the inquiry should be held in private (or part in private) being satisfied that any of the following applies:
- 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.

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<sup>6</sup> Section 33AZ(1) of the 1942 Act.

- A person's reputation would be unfairly prejudiced unless the hearing is held in private (or part in private).<sup>7</sup>
- To maintain the confidentiality of legally privileged material disclosed to the Central Bank pursuant to any disclosure agreement.<sup>8</sup>

188. For the avoidance of doubt, the Inquiry Members may direct on their own motion that an inquiry hearing be heard wholly or partly in private where they are satisfied that any of the above circumstances apply. The Inquiry Members may at any stage of an inquiry vary or revoke a decision to hold the inquiry in private (or part in private).
189. Irrespective of whether an inquiry is being held in public or private, the Inquiry Members may direct that any directions, decisions or transcripts of an inquiry or records of an inquiry in respect of procedural matters be published on the Central Bank's website. The Inquiry Members may, where they are satisfied that doing so would not unfairly prejudice a person's reputation, decide to publish such records, including information identifying those taking part in the inquiry. Alternatively, the Inquiry Members may direct that such identifying information be redacted.
190. Notwithstanding the public nature of inquiries, where the Inquiry Chair is satisfied that there are reasonable grounds to do so, the Inquiry Chair may order that specified information relating to specified proceedings before the inquiry, insofar as such proceedings are being held in public, will not be disclosed. A person who contravenes such an order will be guilty of an offence.

### **Application for Disclosure of Information and/or Documents**

191. A Subject will have been provided with disclosure of information and/or documents during the course of an investigation and in the context of an investigation report. It is

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<sup>7</sup> Section 33AZ(2) of the 1942 Act.

<sup>8</sup> Section 34A(5) of the 2013 Act.

expected that all requests for information and/or documents will have been made before the commencement of the inquiry.

192. However, a Subject may apply to the Inquiry Members for a direction that Enforcement make a further disclosure of information and/or documents.
193. Any such request for further disclosure must:
- Be in writing
  - Clearly identify the information requested
  - Include reasonable, cogent and compelling reasons as to why the disclosure is necessary and why it is relevant to the prescribed contravention that is the subject matter of the inquiry.
194. In considering whether to direct the production by Enforcement of such information and/or documents, the Inquiry Members will have regard to the following factors:
- Whether the request is for information and/or documents that are relevant to a prescribed contravention that is the subject matter of the inquiry.
  - Whether the request and provision of additional information and/or documents is fair, necessary and proportionate in all of the circumstances having regard, in particular, to the following:
    - The volume and extent of information and/or documents already provided as against what has been requested.
    - The timely and efficient running of the inquiry.
195. The Inquiry Members may seek further submissions from the Inquiry Participants to assist their determination of the disclosure application.

## Application to Call Witness Evidence

### Oral Evidence

196. In their responses to the Inquiry Management Questionnaire (see paragraph 144 et seq. (Inquiry Management Questionnaire), the Inquiry Participants must identify any



person who they wish to be called as a witness to give evidence at the inquiry. Having considered the lists of persons proposed, the Inquiry Members will make directions with regard to the witnesses they wish to call to give oral evidence. Any application to supplement the list of witnesses at a later stage of the inquiry will be considered at the discretion of the Inquiry Members.

197. In order to assist the Inquiry Members' decision on the relevance of a particular witness, the Inquiry Chair may direct an Inquiry Participant to procure a witness statement from a proposed witness and submit such statement to the inquiry within a prescribed timeline. Where a witness refuses to submit a witness statement, an Inquiry Participant may make an application seeking that the Inquiry Chair request the witness statement be submitted to the Inquiry Members.

#### **Documentary Evidence**

198. Where an Inquiry Participant is of the view that any person other than Enforcement holds specified documents which would assist the inquiry, the Inquiry Participant may make an application seeking that the Inquiry Members require the person to be summonsed to appear as a witness before the inquiry to produce those specified documents. In considering whether to direct the production of such documents, the Inquiry Members will have regard to the factors identified above at paragraph 194.

#### **Disclosure of Confidential Information**

199. An Inquiry Participant may wish to disclose confidential inquiry documentation to a witness to assist in preparing to give evidence or in preparing a witness statement.
200. The Subject must seek written consent from the Inquiry Members prior to disclosing that confidential information to a witness. A Subject who discloses such confidential information without seeking written consent is guilty of an offence.
201. Where either Inquiry Participant discloses confidential information to a witness, such disclosure is on a confidential

basis and the witness is under a duty of confidentiality in respect of the documents.<sup>9</sup>

### **Application to Admit Documentary Evidence**

202. An inquiry is not bound by the strict rules of evidence that may apply in the courts, but the rules of procedural fairness must be observed. The legislation provides a procedure for the admissibility of information contained in a document at an inquiry as evidence of any fact in the document of which direct oral evidence would be admissible.<sup>10</sup> It should be noted, however, that the Inquiry Chair may exercise their discretion to admit information contained in a document as evidence at inquiry outside of that procedure.
203. Following any directions by the Inquiry Chair as regards the documents which are to be admitted into evidence, the Inquiry Members may direct the Inquiry Participants to prepare a book of agreed core documents for use at inquiry.

### **Applications for Adjournment**

204. The Inquiry Members may, at any point during an inquiry, be requested to adjourn an 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 will exercise their discretion fairly, in accordance with fair procedures, taking into account the circumstances of the application and any submissions made, and where granted will ensure that the Inquiry Participants are notified of the date, time and place at which the inquiry hearing is to be resumed.

### **Application for Adjournment to Pursue Settlement**

205. The Central Bank has authority and discretion to enter into a settlement agreement with a Subject at any stage before an Inquiry Decision issues and the inquiry is complete. See Part 5 (Settlement).
206. Where a Subject wishes to settle the matter immediately prior to or during the course of the inquiry, the Subject and/or their

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<sup>9</sup> Section 33AK(6) and 33AZB(1) of the 1942 Act.

<sup>10</sup> Section 33BAA of the 1942 Act.

legal representative should contact Enforcement.

Enforcement may apply to the Inquiry Members for an adjournment of the inquiry in order to facilitate settlement discussions. The Inquiry Members will have no other role in relation to settlement.

207. Where a settlement is reached, the Inquiry Members will be informed of the fact of settlement and the inquiry will be discontinued. Where an inquiry has been adjourned to facilitate settlement and no settlement is reached, the Inquiry Members will be informed only of the fact that no settlement was reached and the inquiry will be resumed.

### **Referral to High Court on Point of Law**

208. The Inquiry Members may, on their own initiative or at the request of the Inquiry Participants, refer a question of law arising at an inquiry to the High Court for decision. 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.
209. If the Inquiry Members decide that a question of law should be referred to the High Court, the inquiry or the part of it that relates to the question of law will be adjourned temporarily until the High Court has made its decision.
210. The question of law will be drafted by or for the Inquiry Members taking into account any submissions of the Inquiry Participants and will be lodged with the High Court, accompanied by all documents before the inquiry that are relevant to the matter in question.

## **26. Inquiry Hearing**

### **Form of Inquiry Proceedings**

211. An inquiry need not necessarily adopt the approach of a hearing adducing oral evidence. However, a Subject should be afforded the opportunity to be heard, if they wish to make oral submissions or adduce oral evidence before an inquiry.

212. The options available to Inquiry Members in determining the appropriate form of inquiry proceedings include the following:
- To conduct the inquiry by way of written procedure, without oral witness evidence or oral submissions.
  - To hold a hearing with oral submissions only and no oral witness evidence.
  - To hold a hearing with oral witness evidence and oral submissions.
213. Further detail is set out below on how an inquiry may proceed using one of these options. These three options are intended to serve as a guide for how inquiry hearings could be run. However, it is open to Inquiry Members to adopt a mixed oral/written procedure, depending on the circumstances of a particular inquiry.
214. In exercising their discretion whether to hold a hearing with oral evidence and/or oral submissions, the Inquiry Members will consider whether oral evidence is necessary for a fair determination of a suspected prescribed contravention, having considered any submissions by the Inquiry Participants on the matter. The Inquiry Members will also have regard to each of the following, as applicable:
- The responses to the Inquiry Management Questionnaire.
  - Whether the Subject has indicated that they do not intend to make oral submissions.
  - Whether the Subject has indicated that they do not wish for oral evidence to be heard.
  - Whether the Subject has failed to participate in the inquiry, having been given an opportunity to attend the inquiry or to lodge written submissions, and the inquiry is proceeding in the absence of the Subject.

### **Inquiry Hearing: Written Procedure**

215. If the Inquiry Members determine that an oral hearing is not required, the Inquiry Members may invite written submissions

from the Inquiry Participants and may request that any witness evidence be submitted by way of written statements.

## **Inquiry Hearing: Procedure for Oral Hearing**

### **Opening by Inquiry Chair**

216. At the beginning of an inquiry hearing, the Inquiry Chair will state the purpose of the inquiry, introduce the Inquiry Members and explain the manner and order of the inquiry.
217. The Inquiry Chair will set out the suspected prescribed contravention identified in the Notice of Inquiry. Any minor or clerical amendments to be made to the Notice of Inquiry will be raised at this stage. If a substantive amendment is required and the Inquiry Participants have not agreed to such an amendment in advance, an inquiry hearing may be adjourned to give the Inquiry Participants adequate time to consider the matter.

### **Preliminary Submissions**

218. The Inquiry Chair will first invite Enforcement to make preliminary submissions and then invite the Subject to make preliminary submissions.

### **Taking of Oral Evidence**

219. As outlined at paragraph 196, the Inquiry Members will make directions with regard to those witnesses whom they wish to call to give oral evidence and/or to produce specified documents. The Inquiry Participants or their representatives may lead evidence or cross-examine witnesses as appropriate. In addition, Inquiry Members may question witnesses as appropriate.

### **Closing Submissions**

220. Following all witnesses being called and examined, the Inquiry Members will offer the Inquiry Participants an opportunity to make closing submissions, including providing any written submissions.

## 27. Witnesses

### Summoning of Witnesses

221. Where the Inquiry Members invite a witness to provide oral evidence at inquiry or attend an inquiry to produce specified documents, RDU will ask the witness to confirm by a specified date that they are willing to attend the hearing to give oral evidence. In the absence of this confirmation, the Inquiry Members may issue a summons requiring that witness to give evidence and/or to produce specified documents and/or to attend the inquiry from day to day.
222. Notwithstanding the above process, at any time during the course of an inquiry, the Inquiry Members may, in writing, summons a witness to appear 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.

### Taking of Evidence

223. The oral evidence of witnesses will be given on oath or by affirmation and such oath or affirmation will be administered by the Inquiry Chair.
224. The wording of the oath will be as follows:
- “I swear by ..... (according to religious belief) that the evidence I shall give to the inquiry shall be the truth, the whole truth and nothing but the truth.”
225. The wording of the affirmation will be as follows:
- “I do solemnly, sincerely and truly declare and affirm that the evidence I shall give to the inquiry shall be the truth, the whole truth and nothing but the truth.”
226. The Inquiry Chair may also allow a witness at the inquiry to give evidence by tendering a written statement, verified by oath or affirmation, and the witness may be required to attend an inquiry hearing for the purposes of examination.
227. The Inquiry Chair may also do any of the following:

- Require a witness at the inquiry to answer a question put to the witness.
- Require a witness appearing at the inquiry pursuant to a summons to produce any document specified in the summons.

228. An answer to a question put to a witness, or information provided by a witness, in response to a requirement, will not be admissible as evidence against the witness in criminal proceedings, other than proceedings for perjury, if the information was provided on oath or affirmation.

## 28. Concluding an Inquiry

229. Following any closing submissions and a review of all the evidence, the Inquiry Members will prepare the Inquiry Finding as to whether or not the Subject committed the prescribed contravention to which the inquiry relates.

230. When determining the sanctions, if any, to be imposed, the Inquiry Members will send the Inquiry Finding to the Inquiry Participants and invite submissions on the nature of any sanctions to be imposed.

231. It is expected that the Inquiry Members will determine the sanctions to be imposed, if any, by way of written procedure. However, either of the Inquiry Participants may request an oral hearing on the issue of sanctions.

232. Once the Inquiry Members have determined the issue of sanctions, they will prepare the Inquiry Decision, which is comprised of the Inquiry Finding and the sanction, if any, to be imposed.

233. The right to appeal arises when the Inquiry Members notify the Inquiry Decision to the Subject.<sup>11</sup>

234. Further detail of the concluding stages of an inquiry is outlined below.

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<sup>11</sup> Section 33AQ(8A) of the 1942 Act.

## 29. Inquiry Finding

### Standard of Proof

235. The Inquiry Members shall make findings as to whether the Subject has committed the prescribed contravention to which the inquiry relates on the balance of probabilities.

### Inquiry Finding

236. The Inquiry Finding will set out the following:

- The finding of the Inquiry Members as to whether or not the Subject committed a prescribed contravention to which the Inquiry relates.
- The grounds on which the finding is based.

237. When making the Inquiry Finding, the Inquiry Members will have regard to all relevant matters, including the following:

- The Final Investigation Report and any submissions made by the Subject on the Draft Investigation Report.
- Any evidence adduced or submissions made during the inquiry.

238. The Inquiry Members will make the Inquiry Finding as soon as is practicable following the conclusion of the evidentiary stage of the inquiry. The Subject will be kept informed of progress in the preparation of the Inquiry Finding.

### Notification

239. As soon as the Inquiry Finding has been prepared, the Inquiry Members will deliver it to the Inquiry Participants.

240. If the Inquiry Members make a finding that a prescribed contravention has been committed, the Inquiry Members will issue, in addition to the Inquiry Finding, a notification to the Inquiry Participants inviting written submissions on sanctions, as outlined below.

241. If the Inquiry Members make a finding that no contravention has been committed, there will be no determination on sanctions and the Inquiry Members will proceed to



immediately issue the Inquiry Decision in accordance with the procedure outlined at Section 33 (Inquiry Decision).

## 30. Determination of Sanction

### Submissions on Sanction

242. Before determining any sanction to be imposed following the making of an Inquiry Finding, the Inquiry Members will invite written submissions from the Inquiry Participants by reference to Part 6 (Sanction) and/or the relevant statutory provisions.
243. The Inquiry Members will first invite Enforcement to make submissions and then invite the Subject to make replying submissions. Enforcement will have a right of final reply. Either of the Inquiry Participants may furnish, or append to any written submissions provided, documentation deemed relevant to the determination of sanctions. The Inquiry Members may seek further submissions from either of the Inquiry Participants, as appropriate.
244. The Central Bank's general approach to sanctioning is outlined in Part 6 (Sanction). The Inquiry Members may further specify the matters to be addressed by the Inquiry Participants in making submissions on sanctions, and these may include the following, where relevant:
- Whether a sanction is warranted.
  - The type of sanction or combination of sanctions that is appropriate in the circumstances.
  - The appropriate quantum, duration and/or details of any sanction to be imposed.
  - The proportionality of sanctions in their totality.
  - By reference to the above, any relevant sanctioning factors that may apply.
  - An estimate of costs incurred by the Central Bank in investigating the matter to which the inquiry relates.
  - An estimate of costs incurred by Enforcement in participating in the inquiry.

- Any other information relevant to the Inquiry Members' consideration of the sanctions to be imposed.
- Whether an oral hearing is required to hear submissions on sanctions (if applicable), and whether there are grounds for not holding such hearing in public.

### Written Procedure

245. It is expected in the ordinary course that the Inquiry Members will consider the written submissions of the Inquiry Participants and determine, by way of written procedure, the sanctions (if any) to be imposed on the Subject, subject to a request for an oral hearing as outlined below.

### Procedure for Oral Hearing

246. If an Inquiry Participant requests an oral hearing on the determination of an appropriate sanction, the Inquiry Members will decide whether or not an oral sanctions hearing is required and, if so, whether such hearing should be held otherwise than in public.
247. If the Inquiry Members determine that an oral sanctions hearing is required, they will convene such a hearing. At the hearing, the Inquiry Participants will be entitled to make oral submissions (in addition to their written submissions). Following the conclusion of the hearing, the Inquiry Members will decide what, if any, sanction to impose on the Subject.

### Sanctions

248. Where the Inquiry Members have made a finding that a Subject has committed a prescribed contravention, the Inquiry Members may impose one or more of the sanctions outlined in Section 44 (Available Sanctions).
249. The Inquiry Members will have regard to the Central Bank's statutory guidelines on the determination of sanctions and the methodologies for the determination of any monetary penalties to be imposed as set out in Part 6 (Sanction), subject to their discretion to depart from these guidelines in certain instances where they are not appropriate in the circumstances of a particular case.

250. The Inquiry Members will also have regard to the sanctioning factors set out in the 1942 Act.<sup>12</sup>
251. The Inquiry Members will notify the Subject of their determination of any sanctions to be imposed and the grounds for that determination when issuing the Inquiry Decision, as outlined in Section 32 (Inquiry Decision).

### 31. Inquiry to Determine Sanctions Only

252. Where a Subject has acknowledged the commission of a prescribed contravention under the Undisputed Facts Settlement Process or the Investigation Report Settlement Process, the Central Bank may decide to hold an inquiry to determine sanctions only (see Part 5 (Settlement) and paragraph 101 regarding the decision whether to hold an inquiry).<sup>13</sup> Such an inquiry has as its sole purpose the determination of what, if any, sanction to impose. Where the Central Bank decides to hold such an inquiry, Enforcement will issue a Notice of Inquiry to the Subject. See Section 17 (Notice of Inquiry).
253. The inquiry will commence on the day on which the Inquiry Members are appointed.
254. The following documents will be delivered by Enforcement to RDU who will then share the documents with the Inquiry Members:
- Notice of Inquiry, as delivered to the Subject.
  - Outline of the prescribed contravention of which the Subject has acknowledged commission.
  - Either the Final Investigation Report or Statement of Undisputed Facts agreed between the Subject and Enforcement.
255. The Inquiry Members will invite written submissions on sanctions from the Inquiry Participants. The process for exchanging submissions, the matters to be addressed, and the procedure for holding an oral hearing will be the same as

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<sup>12</sup> Section 33ARA of the 1942 Act.

<sup>13</sup> Section 33AR(2)(b) of the 1942 Act.

those required for the determination of sanctions following a full, substantive inquiry as outlined in Section 30 (Determination of Sanction), including whether such hearing should be held otherwise than in public.

## 32. Inquiry Decision

### Form of Inquiry Decision

256. Once the Inquiry Members have determined the issue of sanctions, if any, they will prepare the Inquiry Decision.
257. The Inquiry Decision will contain either or both of the following:
- The Inquiry Finding previously issued by the Inquiry Members in accordance with Section 29 (Inquiry Finding), which will comprise the finding and the grounds on which that finding is based.
  - The determination of the sanction to be imposed on the Subject, if any, which will include the grounds on which the sanction is being imposed.

### Notification of Inquiry Decision

258. The Inquiry Members will then deliver the Inquiry Decision to the Inquiry Participants.
259. The Inquiry Decision is an ‘appealable decision’ for the purposes of Part VIIA of the 1942 Act. This means that the Inquiry Decision may be appealed to the Irish Financial Services Appeals Tribunal.
260. The right to appeal arises when the Inquiry Members notify the Inquiry Decision to the Subject. The notification will include the following:
- A statement that the Subject may appeal against the Inquiry Decision in accordance with section 33AW of the 1942 Act.
  - Information on the timeframe for lodging an appeal.
  - Details of the High Court confirmation process.

- Notification that publication may occur prior to confirmation of the Inquiry Decision by the High Court, and prior to the expiration of the time period to appeal the Inquiry Decision.
- A draft of the Inquiry Publication Notice.
- Invitation to make submissions on the draft Inquiry Publication Notice, if the Inquiry Members consider it necessary to do so.

261. Once the Subject has been notified of the Inquiry Decision, RDU will arrange for the website to be updated to reflect the fact that the inquiry has concluded and that the Inquiry Decision has been sent to the Inquiry Participants.

### 33. Publication

#### Central Bank Approach

262. Publication is an important tool in promoting the transparency of the Central Bank's enforcement decision-making processes. It informs the general public as well as the market, and helps to maximise the deterrent and educational effect of enforcement action. The Central Bank expects that a public statement will be issued in all cases where a finding is made at inquiry that a Subject has committed a prescribed contravention and/or a decision is made to impose a sanction on a Subject.

#### Inquiry Publication Notice

##### Publication of Finding of Prescribed Contravention

263. When the Inquiry Members have made a finding that a prescribed contravention has been committed, and have notified the Inquiry Decision to the Inquiry Participants, the Inquiry Members will publish an Inquiry Publication Notice setting out details of the finding and any of the following particulars that they consider appropriate:
- The name of the firm or individual to whom the finding relates or on whom the sanction is imposed.
  - The grounds on which the finding is based.

- Details of the prescribed contravention in respect of which the sanction has been imposed.
- Details of the sanction imposed.

264. The Inquiry Members will consider the proposed content of the Inquiry Publication Notice at the same time as they are preparing the Inquiry Decision. In doing so the Inquiry Members will have regard to the requirement not to publish a finding or particulars if they determine that any of the following applies:

- The finding or particulars are of a confidential nature or relate to the commission of an offence against a law of the State.
- Publication of the finding or particulars would unfairly prejudice a person's reputation.
- Publication of the finding or particulars would involve the disclosure of certain confidential information.<sup>14</sup>

265. As outlined at paragraph 260, when the Inquiry Members notify the Inquiry Decision to the Inquiry Participants, they will also do the following:

- Inform the Inquiry Participants that publication may occur prior to confirmation of the Inquiry Decision by the High Court and prior to the expiration of the time period to appeal the Inquiry Decision.
- Provide the Inquiry Participants with a draft Inquiry Publication Notice.

266. The Inquiry Members will determine the information that should be published. In making this determination, the Inquiry Members will, if they consider it necessary, invite submissions from the Inquiry Participants and/or any third party that may be affected by material in the Inquiry Publication Notice, on all or any of the requirements at paragraph 264 above.

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<sup>14</sup> Confidential information in this context means any information which the Rome Treaty, the ESCB Statute or any of the supervisory EU legal acts (within the meaning of section 33AK of the 1942 Act) prohibits from being disclosed or requires to be prohibited from disclosure.

267. The Inquiry Members will request that any submissions be made within a specified time following the notification of the Inquiry Decision. The Inquiry Members will also notify the Inquiry Participants that publication may occur soon after submissions have been received, or in the case of no submissions, soon after the time for delivery of submissions has expired.
268. The Inquiry Members will determine the final form and content of the Inquiry Publication Notice, having regard to the relevant legislative provisions set out in section 33BC and any submissions received. The Inquiry Members will then instruct RDU to publish the final Inquiry Publication Notice as soon as practicable. The Inquiry Publication Notice will note that the Inquiry Decision is subject to confirmation by the High Court, or appeal, as the case may be, and it will be updated with the outcome of the confirmation or appeal procedure.

#### **Publication of Finding of No Prescribed Contravention**

269. As a matter of law, there is no requirement on the Central Bank to publish a public statement at the conclusion of an inquiry where the Inquiry Members have made a finding that no prescribed contravention has been committed. A public statement may be made in these circumstances.

#### **Market Commentary**

270. Separate to the publication of information relating to the Inquiry Members' findings, the Central Bank may issue a market commentary on the outcome of the inquiry. This prepared statement by the Central Bank will be on the market aspects of the case and how it corresponds with the Central Bank's objectives. The wording of any market commentary is a matter for the Central Bank alone.

## Part 5: Settlement

We may seek the early resolution of an ASP matter by settlement with a Subject where we consider it appropriate and in the public interest to do so. This Part explains our settlement processes.

### 34. Introduction

271. In certain cases the Central Bank may consider that it is appropriate and in the public interest to seek the early resolution of an ASP matter by way of settlement with a Subject. The Central Bank operates a settlement scheme in this regard. Under this scheme, subject to the Central Bank's discretion, a Subject may be offered a discount to any monetary penalty proposed as part of a settlement, subject to certain criteria set out below in this Part. A settlement may conclude with the Central Bank and the Subject entering into a settlement agreement, which will be binding on both parties. See Section 40 (Finalising Settlement and Settlement Agreement).
272. A Subject does not have a legal entitlement to settlement. The Central Bank is under no obligation to enter into a settlement agreement with a Subject at any stage. The Central Bank will only resolve an ASP matter by way of settlement where it is satisfied that it is appropriate in all of the circumstances taking account of the Central Bank's policy and expectations around settlement.
273. There are three distinct settlement processes:
- Undisputed Facts Settlement
  - Investigation Report Settlement
  - No Admissions Settlement
274. Further detail on each of these processes is set out in this Part.



## 35. Central Bank Approach

275. The Central Bank may enter into various types of settlements of investigations and inquiries. In order to exercise the power to resolve an ASP matter through settlement or inquiry, the Central Bank must suspect on reasonable grounds that a Subject has committed a prescribed contravention. Once the Central Bank has formed this suspicion, the Central Bank may seek the consent of the Subject to the imposition of a sanction by way of agreement in order to conclude the matter by way of settlement.
276. There can be circumstances where the public interest is best served by early resolution of an investigation or inquiry. Settling appropriate cases as early as possible may achieve regulatory objectives including the effective use of time and resources and the minimisation of costs.
277. Settlement can occur at any point of an investigation or inquiry up to the point of the making of an Inquiry Decision although not all settlement processes will be available throughout this time.
278. In order for settlement to be considered as an option, the Central Bank must be satisfied that the basis for settlement is appropriate taking into account all relevant matters including, without limitation, the following:
- The relevant facts and circumstances in each case.
  - Whether all concerns have been or are being addressed to the Central Bank's satisfaction.
  - The nature and quality of engagement by the Subject with the Central Bank during an investigation and/or inquiry.
279. A settlement will only be concluded where all of the following apply:
- The basis for settlement is consistent with the Central Bank's mission to serve the public interest by maintaining monetary and financial stability while ensuring that the financial system operates in the best interests of consumers and the wider economy.

- Agreeing to conclude by way of settlement is proportionate having regard to all the known facts.
- Settlement will contribute to the efficient, effective and economic use of resources and minimisation of costs.
- An appropriate sanction has been determined by reference to all relevant considerations as set out in Part 6 (Sanction).

280. In order to assess whether or not in the circumstances settlement is an acceptable regulatory outcome and in the public interest, it is incumbent on a Subject to ensure that timely and prompt responses to information requests, full disclosure of relevant facts and, where appropriate, evidence of steps taken to correct/remediate failures have been provided to the Central Bank. As outlined in Part 3 (Investigation), the Central Bank expects full co-operation with an investigation through open and transparent engagement. The Central Bank will not consider engaging in settlement until such time as full information in response to Central Bank information requests, whether pursuant to a Notice of Investigation or the exercise of information gathering powers generally, has been provided in open correspondence.
281. The settlement processes can be beneficial to both the Subject and the Central Bank by offering a means of achieving an earlier resolution of appropriate ASP matters and avoiding the additional costs, time commitment and administrative burden involved in the lengthier processes of completion of an investigation and/or inquiry.
282. The Central Bank's general policy in relation to settlement is to require admissions from a Subject of the commission of a prescribed contravention and to publish the details of the admitted prescribed contravention and the sanction imposed once a settlement has been concluded.

## 36. Settlement Scheme

283. As previously noted, the Central Bank considers that, in appropriate cases, it may be in the public interest for an

investigation or inquiry to be settled, and to be settled as early as possible.

284. Where a Subject admits a prescribed contravention and resolves a matter at an early stage with the Central Bank, having met the conditions detailed in Section 35 (Central Bank Approach), a discount may be applied to any monetary penalty under the Central Bank’s settlement scheme.
285. Under the settlement scheme, the Central Bank may allow a discount up to a set maximum to be applied to any proposed monetary penalty in recognition of the public interest served by settlement of an appropriate case. The reduced figure following application of the discount will be the amount actually payable by the Subject in respect of the prescribed contravention. A maximum percentage discount for monetary penalties will be available in cases where a settlement agreement is concluded, as follows:

**Table 1 | Settlement Scheme Discounts**

Process under which agreement reached	Percentage discount of monetary sanction
Undisputed Facts Settlement Process	Up to 30%
Investigation Report Settlement Process (Pre-Notice of Inquiry)	Up to 10%
Investigation Report Settlement Process (Post-Notice of Inquiry)	0%
No Admissions Settlement Process	0%

286. As noted, there is no obligation on the Central Bank or the Subject to explore or engage in any of the settlement processes or to resolve a matter by way of settlement, even where engagement in respect of any one of the settlement processes may have commenced. Similarly, there is no corresponding right of a Subject to have an investigation or

inquiry relating to them settled. The Central Bank will decide in its sole discretion whether a particular case is suitable for settlement and where suitable, which of the particular settlement processes is appropriate in all of the circumstances.

287. An indication of willingness to enter into a settlement process by the Subject does not cause the suspension of any ongoing investigation or inquiry. While an inquiry may be adjourned to facilitate settlement, the investigation or inquiry will only conclude by settlement upon the signing of a final agreement as part of the settlement process.
288. The three distinct settlement processes are set out in the Sections that follow. The application of a settlement process in a given ASP matter will depend on a number of factors including but not limited to the prevailing stage of the process and the severity of the underlying prescribed contravention.

### **37. Undisputed Facts Settlement Process**

289. In this Section, a reference to a Subject is to an Investigation Subject only.
290. The Central Bank may enter into the Undisputed Facts Settlement Process with a Subject where there are undisputed facts that render an investigation and/or the continuation of an investigation unnecessary. As a matter of law, the Undisputed Facts Settlement Process is no longer an option once an investigation has been completed. The successful conclusion of a settlement under the Undisputed Facts Settlement Process is dependent on all of the following conditions being met:
- The Subject has agreed to the undisputed facts provided by the Central Bank for the purposes of the Undisputed Facts Settlement Process.
  - The undisputed facts are such that, in the reasonable opinion of the Central Bank, an investigation and/or the continuation of an investigation is unnecessary.
  - The Subject has admitted in writing to the prescribed contravention as set out by the Central Bank.

- The Subject has consented in writing to the sanction proposed by the Central Bank.
- The Subject has acknowledged the proposed publication of the details of the admitted prescribed contravention and the sanction proposed.

### Commencement of Process

291. Where a Subject has indicated a willingness to engage in the Undisputed Facts Settlement Process, the Central Bank may commence the process by way of a letter issued to the Subject on a “without prejudice” basis. Such a letter may not issue until such time as the Central Bank has sufficient factual information to understand the nature and gravity of the prescribed contravention to allow the Central Bank to make an assessment of the suitability of the case for the Undisputed Facts Settlement Process. The letter will contain the following:
- A Statement of Undisputed Facts to be admitted and agreed by the Subject.
  - A timeframe within which the Subject’s admission and agreement to the Statement of Undisputed Facts should be provided to the Central Bank on a “without prejudice” basis.
292. Once the “without prejudice” admission and agreement have been received by the Central Bank, the Central Bank may provide the Subject with the proposed terms of settlement under the Undisputed Facts Settlement Process. The proposed terms will set out the details of the proposed sanction and any potential discount offered under the settlement scheme (where the proposed sanction is a monetary penalty), and will include a requirement to consent to the proposed sanction and to acknowledge the proposed publication of the details of the admitted prescribed contravention and the sanction proposed in a public statement. The proposed terms will be on a “without prejudice” basis and will stipulate the date on which the settlement must be concluded.

### Application of Settlement Scheme

293. A Subject who enters into a settlement under the Undisputed Facts Settlement Process may, at the sole discretion of the

Central Bank, and subject to the timing of the settlement, be offered a potential discount to any monetary penalty proposed up to a maximum of 30% under the settlement scheme outlined in Section 36 (Settlement Scheme).

294. Where appropriate, in order to avail of the potential discount, the Subject will be required, within the timeframe specified by the Central Bank in the letter referred to in paragraph 291, to enter into the Undisputed Facts Settlement Process and to comply with the requirements set out therein. The potential discount may become available after the letter has issued for such period as the Central Bank indicates when setting out the proposed terms of settlement.
295. Where the required agreement and admission of the Subject to the prescribed contravention have not been provided within the timeframe, or where there is no agreement as to the proposed terms of settlement, including the proposed sanction, or where the settlement has not concluded within the stipulated timeframe, the Central Bank will continue working towards completion of the investigation and the Undisputed Facts Settlement Process and any associated discount offered will no longer be available.

### Conclusion of Process

296. Where a settlement has been concluded under the Undisputed Facts Settlement Process, the Central Bank will promptly publish a statement. In addition to the details outlined above, the public statement will note that the sanction imposed is subject to confirmation by the High Court.
297. The Central Bank will apply to the High Court for confirmation of any sanction that has been agreed. A confirmed sanction will take effect from the day on which the High Court's decision is given or such other date as the High Court may order. See Section 41 (Publication) and Section 47 (Confirmation by High Court) for further information.

## 38. Investigation Report Settlement Process

298. After an investigation has completed, the Central Bank may, after considering a Final Investigation Report and any

submissions from a Subject, enter into the Investigation Report Settlement Process with the Subject.

299. The Investigation Report Settlement Process can, as a matter of law, only occur after the completion of an investigation and after a Final Investigation Report has been prepared and considered by the Central Bank, together with any submissions received from the Subject, as being appropriate for settlement.
300. The process may be available during the course of an inquiry until an Inquiry Decision has been made. The successful conclusion of a settlement under the Investigation Report Settlement Process is dependent on all of the following conditions being met:
- The Central Bank has provided to the Subject a copy of the Final Investigation Report (see paragraph 91 et seq. (Final Investigation Report) for further details) and a copy of any submissions received from the Subject.
  - The Central Bank has considered both the Final Investigation Report and the submissions and suspects on reasonable grounds that the Subject has committed a prescribed contravention.
  - The Subject has admitted in writing to the prescribed contraventions as set out in the Final Investigation Report.
  - The Subject has agreed in writing to dispense with an inquiry, including any ongoing inquiry.
  - The Subject has consented in writing to the sanctions proposed by the Central Bank.
  - The Subject has acknowledged the proposed publication of the details of the admitted prescribed contravention and the sanction proposed.

### Commencement of Process

301. Where a Subject has indicated a willingness to engage in the Investigation Report Settlement Process, the Central Bank may commence the process by way of a letter issued to the

Subject on a “without prejudice” basis. The letter will contain the following:

- Details of the prescribed contravention to be agreed and admitted to by the Subject.
- A timeframe within which the Subject’s admission and agreement to the prescribed contravention outlined in the letter should be provided to the Central Bank on a “without prejudice” basis.

302. Once the “without prejudice” admission and agreement have been received by the Central Bank, the Central Bank may provide the Subject with the proposed terms of settlement under the Investigation Report Settlement Process. The proposed terms will set out the details of the proposed sanction and any potential discount offered under the settlement scheme (where the proposed sanction is a monetary penalty), and will include a requirement to consent to the proposed sanction and to acknowledge the proposed publication of the details of the admitted prescribed contravention and the sanction proposed in a public statement. The proposed terms will be on a “without prejudice basis” and will stipulate the date on which the settlement must be concluded.

### **Application of Settlement Scheme**

303. A Subject who enters into a settlement under the Investigation Report Settlement Process may, at the sole discretion of the Central Bank, and subject to the timing of the settlement, be offered a potential discount to any monetary penalty proposed up to a maximum of 10% under the settlement scheme outlined in Section 36 (Settlement Scheme).

304. Where appropriate, in order to avail of the potential discount, the Subject will be required within the timeframe specified by the Central Bank in the letter referred to in paragraph 301 to enter into the Investigation Report Settlement Process and to comply with the requirements set out therein. The potential discount may become available after the Final Investigation Report has been sent to the Subject and the letter has issued



for such period as the Central Bank indicates when setting out the proposed terms of settlement.

305. Where the required agreement and admission of the Subject to the prescribed contravention have not been provided within the stipulated timeframe, or where there is no agreement as to the proposed terms of settlement including the proposed sanction, or where the settlement has not concluded within the stipulated timeframe, the Investigation Report Settlement Process and any associated discount offered will no longer be available and the Central Bank may decide to refer the matter to inquiry and proceed to issue a Notice of Inquiry.
306. Where the Investigation Report Settlement Process occurs during the course of an inquiry, the Central Bank may apply to the Inquiry Members for an adjournment of the inquiry to facilitate settlement. The settlement process will be carried out in private and where a settlement is concluded under the Investigation Report Settlement Process, the Inquiry Members will be notified in writing by the Central Bank of the fact of settlement, following which the inquiry can be discontinued. There will be no discount available to any monetary penalty proposed after a Notice of Inquiry has issued. Where an inquiry has been adjourned to facilitate settlement and no settlement is reached, the Inquiry Members will be informed only of the fact that no settlement was reached and the inquiry will be resumed.

### Conclusion of Process

307. Where a settlement has been concluded under the Investigation Report Settlement Process, the Central Bank will promptly publish a public statement. In addition to the details outlined above, the public statement will note that the sanction imposed is subject to confirmation by the High Court.
308. The Central Bank will apply to the High Court for confirmation of any sanction agreed. A confirmed sanction will take effect from the day on which the High Court's decision is given or such other date as the High Court may order. See Section 41

(Publication) and Section 47 (Confirmation by High Court) for further information.

### 39. No Admissions Settlement Process

309. The Central Bank's policy of requiring that in most cases admissions are provided in relation to prescribed contraventions serves the public interest through accountability and transparency. The recognition by the Subject of the underlying facts and contraventions committed, together with the acceptance of the imposition of sanctions, promotes public trust and credibility by showing the public that those who contravene financial services legislation will be held accountable and penalised for those contraventions. This policy provides important regulatory messaging of expected standards of behaviour in financial services and deters reoccurrence of such behaviours both by the Subject and by other firms and individuals.
310. Notwithstanding the Central Bank's general policy of requiring admissions as a pre-condition for considering settlement of an ASP matter, in certain very limited circumstances the Central Bank may consider utilising the No Admissions Settlement Process. Having regard to the particular circumstances of an ASP matter, the Central Bank may conclude that it is appropriate and in the public interest that the matter be resolved on the basis of a settlement whereby the Subject is not required to make admissions in respect of the commission of a prescribed contravention.
311. While the Central Bank may determine at its sole discretion whether or not an ASP matter is suitable for the No Admissions Settlement Process, it is expected that the use of this process will seldom arise in practice. The Central Bank may have regard to a number of factors, including but not limited to those set out below, in making a determination as to the lack of suitability of a matter for the No Admissions Settlement Process:
- Whether the behaviour was egregious.
  - The extent of any customer harm.

- Whether the subject matter of the prescribed contravention has posed a risk to the market and/or customers and the extent of any such risk.
- The extent to which admissions to the prescribed contraventions would aid customers and other market participants in determining whether to deal with a particular firm or individual in the future.
- Where the matters that are the subject of the investigation or inquiry are such that accountability and acceptance of responsibility for the contraventions are in the public interest.
- The extent to which admissions would send an important message to the market and would amplify the deterrent effect of the enforcement action.
- Such other circumstances that in the opinion of the Central Bank make the utilisation of the No Admissions Settlement Process inappropriate in the particular ASP matter.

312. The greater the extent to which factors such as these are present, the less likely it will be that the No Admissions Settlement Process will be appropriate.

313. As a matter of law, the No Admissions Settlement Process can occur at any time prior to an Inquiry Decision being made. The successful conclusion of the No Admissions Settlement Process is dependent on all of the following matters being agreed:

- The Subject has agreed in writing not to deny the commission of the prescribed contravention.
- The Subject has consented in writing to the sanction proposed by the Central Bank.
- The Subject has acknowledged the proposed publication of details of the prescribed contravention, even though this is neither admitted nor denied, and the sanction proposed.

314. There will be no discount offered under the settlement scheme to any monetary penalty agreed as part of a

settlement under the No Admissions Settlement Process at any stage of an ASP.

315. Once a settlement has concluded under the No Admissions Settlement Process, the Central Bank will promptly publish a public statement. See Section 41 (Publication) for further information. Any sanction agreed under the terms of such a settlement does not require confirmation by the High Court before it takes effect.

## 40. Finalising Settlement and Settlement Agreement

316. Engagement in each of the settlement processes may conclude with the Central Bank and the Subject entering into a settlement agreement, which will be binding on both parties. The settlement agreement will represent the final agreed position between the parties and, where a monetary penalty has been agreed, it will contain details as to the manner in which such monetary penalty is to be paid.
317. Any settlement agreement between the Central Bank and the Subject will include a statement as to any discount applied to a monetary penalty in accordance with the settlement scheme.
318. The Subject will be required to adhere to the terms of the settlement agreement. If the Subject fails to comply with the terms of the settlement agreement, the Central Bank may, depending on the particular settlement process, do any or all of the following:
- Apply to the High Court for an order requiring the Subject to comply with the terms of the High Court order confirming the sanction accepted as part of the settlement agreement.
  - Seek to recover any monetary amount agreed to in a court of competent jurisdiction as a debt due to the Central Bank.
  - Seek to set aside the settlement agreement and re-open the investigation and/or inquiry.

- Exercise any other of its powers that it considers appropriate to secure compliance with the terms of the settlement agreement.
319. Further, should additional material information emerge related to the matters the subject of a settlement agreement, which was not brought to the attention of the Central Bank during the course of settlement engagement, the Central Bank may, if the circumstances warrant it, set aside the settlement agreement and/or commence a further investigation into the Subject.
320. Where agreement cannot be reached in relation to the conditions for concluding a settlement process, a settlement agreement cannot be entered into and any existing investigation or inquiry will continue.
321. Where all matters are agreed other than the proposed sanction, the Central Bank may decide that the matter be referred to a more limited form of inquiry which has as its sole purpose the determination of what, if any, sanction to impose. For further details on such inquiries see Section 31 (Inquiry to Determine Sanctions Only).
322. A settlement agreement will form part of a Subject's compliance record.
323. The fact and contents of a settlement agreement may be taken into account by the Central Bank in the performance of any of its functions under financial services legislation. As such, it may influence any Central Bank decision to commence future enforcement action in relation to the Subject.
324. Settlement agreements may be considered cumulatively by the Central Bank and may be indicative of a Subject's compliance culture. Similarly, settlement agreements with different subsidiaries of the same parent company may be considered cumulatively where the concerns which gave rise to those settlement agreements relate to control issues or other common issues.
325. A settlement agreement entered into with an individual may be considered by the Central Bank in assessing that

individual's fitness and probity to perform a controlled function, including but not limited to a pre-approval controlled function, under Part 3 of the 2010 Act.

326. Previous settlement agreements may be taken into account in determining appropriate sanctions in other enforcement actions involving the Subject.

## 41. Publication

327. As part of the terms of a settlement agreement between the Central Bank and a Subject, the Central Bank will prepare a statement for publication. A public statement may provide a detailed account of any prescribed contravention that is the subject of a settlement agreement, and will generally contain the following:
- The name of the Subject.
  - The prescribed contravention.
  - The facts of the case and the details of the commission of the prescribed contravention.
  - Details of the investigation and/or inquiry.
  - Admissions to the prescribed contravention.
  - The agreed sanction, including any discount applied arising from the settlement scheme (where applicable), and a statement that the agreed sanction is subject to confirmation by the High Court.
  - Details of any aggravating or mitigating factors taken into account in determining the agreed sanction.
  - Any other relevant considerations and/or statements.
328. Details of enforcement actions concluded by way of the various settlement procedures are available on the Central Bank's website.
329. The Central Bank expects that a public statement will be issued in all cases which are resolved pursuant to settlement processes. In certain limited cases to be determined at the sole

discretion of the Central Bank, the Central Bank may decide not to issue a public statement.

330. The timing and manner of the release of a public statement will be within the sole discretion of the Central Bank. The public statement will generally be published promptly by the Central Bank.

### Market Commentary

331. Separate to the publication of a public statement following a settlement, the Central Bank may issue a market commentary on the outcome of the settlement. This prepared statement by the Central Bank will be on the market aspects of the case and how it corresponds with the Central Bank's objectives. The wording of any market commentary is a matter for the Central Bank alone.

## Part 6: Sanction

The Central Bank may impose sanctions on firms and individuals by way of settlement or following an inquiry. This Part explains the Central Bank's general approach to sanctions.

### 42. Introduction

332. This Part sets out how the Central Bank generally approaches the determination of sanctions under the ASP in order to:
- Provide clarity in this regard to firms, individuals and the public
  - Support proportionality and consistency in the determination of sanctions.
333. In this Part, all references to the Central Bank include the Inquiry Members.
334. This Part applies to the determination of sanctions for firms and individuals, whether such sanctions are imposed at settlement or inquiry. Sanctions imposed in the Undisputed Facts Settlement Process (Section 37), the Investigation Report Settlement Process (Section 38), or at inquiry (Part 4) are subject to confirmation by the High Court (Section 47).
335. The Central Bank may depart from the procedures set out in this Part where they are not appropriate in the circumstances of a particular case.

### 43. Central Bank Approach

#### General Principles

336. When determining what sanctions to impose (if any) in a particular case, the Central Bank will bear in mind its overall mission, which is to serve the public interest by safeguarding monetary and financial stability and by working to ensure that the financial system operates in the best interests of consumers, investors and the wider economy. The imposition of sanctions plays an important role in deterring misconduct, promoting public trust and confidence in regulation and the



financial system, and in protecting investors, consumers and market integrity.

337. In its approach to determining sanctions, the Central Bank considers the overarching general principles of proportionality, deterrence, and totality. These general principles are explained below.

### **Proportionality**

338. When determining sanctions, the Central Bank has a duty to act proportionately. This means deciding on the appropriate sanction or combination of sanctions to impose having regard to the particular prescribed contravention, the circumstances of the contravention, and the circumstances of the relevant firm or individual.

### **Deterrence**

339. Enforcement action is essential to deter poor practices, achieve compliance, and promote the behaviours that the Central Bank expects in the regulated financial services sector. The Central Bank delivers effective enforcement outcomes by imposing sanctions that are meaningful and that deter the relevant firms and/or individuals concerned (specific deterrence), or any other firm or individual (general deterrence), from committing the same or similar prescribed contravention.

### **Totality**

340. The Central Bank may determine that one sanction or multiple sanctions should be imposed in a particular case. When the Central Bank determines that a combination of sanctions is warranted, it will consider, in light of all of the circumstances, the appropriateness of each sanction individually and as part of the overall suite of sanctions to be imposed.

### **General Approach to Sanctioning**

341. The Central Bank's general approach to sanctioning is to consider the following matters:
- Whether a sanction is warranted.
  - The type of sanction or combination of sanctions that is appropriate in the circumstances.

- The appropriate quantum, duration and/or details of any sanction to be imposed.
- The proportionality of sanctions in their totality.

342. In considering these matters, the Central Bank will have regard to a range of sanctioning factors set out in Section 45 (Sanctioning Factors). The Central Bank will also consider any other factors that it considers to be relevant to a particular case. At every stage of its considerations, the Central Bank will be cognisant of its obligation to ensure that enforcement outcomes are proportionate, dissuasive and appropriate in their totality.

## 44. Available Sanctions

343. The availability of particular sanctions depends on a number of factors, including whether the Subject is a firm or individual, whether the Subject is a firm authorised by the ECB, and whether a given prescribed contravention is a contravention of a provision of an EU financial services regulatory framework that applies in domestic law and is designated for the purposes of the ASP.

### Firms and Individuals

344. The Central Bank may impose one or a combination of the following sanctions on a firm or individual:<sup>15</sup>

- **A caution or reprimand.**
- A direction to pay to the Central Bank a **monetary penalty** not exceeding a prescribed amount. For individuals, the monetary penalty cannot exceed €1,000,000 or an amount prescribed by regulations. For firms, the monetary penalty cannot exceed €10,000,000, or an amount equal to 10% of the annual turnover of a firm, whichever is the greater, or an amount prescribed by regulations.<sup>16</sup>
- A direction to **cease committing the prescribed contravention.**

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<sup>15</sup> Sections 33AQ(3) and (5) of the 1942 Act.

<sup>16</sup> Section 33AQ(4) of the 1942 Act.

- A direction to pay to the Central Bank all or a specified part of the **costs** incurred by the Central Bank in holding the inquiry and in investigating the matter to which the inquiry relates.

### Firms Only

345. In addition to the sanctions at paragraph 344, the Central Bank may impose one or a combination of the following sanctions on a firm:

- 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 firm.
- A **suspension of authorisation**, in respect of any one or more of a firm's activities, for a period not exceeding 12 months, as the Central Bank considers appropriate.
- A **revocation of authorisation**.

### Individuals Only

346. In addition to the sanctions at paragraph 344, the Central Bank may impose one or a combination of the following sanctions on an individual:

- A direction imposing such **conditions** as the Central Bank considers appropriate on the performance by an individual, in relation to all firms or such firm(s) as may be specified in the direction, of any controlled function, specified controlled function(s), or specified part(s) of controlled function(s).
- A direction **disqualifying** an individual, for such a period as the Central Bank considers appropriate, from performing, in relation to all firms or such firm(s) as may be specified in the direction, any controlled function, a particular controlled function, or a specified part of a controlled function or functions.

### Firms Authorised by the ECB

347. In addition to the sanctions at paragraph 344, the Central Bank can impose the following sanctions on a firm authorised by the ECB under the SSM:

- Submission of a proposal to the ECB to **suspend the authorisation** of a firm, in respect of any one or more of its activities for such period, not exceeding 12 months, as the Central Bank considers appropriate.
- Submission of a proposal to the ECB to **withdraw the authorisation of a firm**.

### Sanctions Prescribed by Certain EU Regulatory Frameworks

348. In addition to the sanctions set out above, which derive from the 1942 Act, certain EU financial services regulatory frameworks, which apply in domestic law and are designated for the purpose of the ASP, incorporate particular sanctions to be applied to certain contraventions of those frameworks. In such cases, although the Central Bank will follow the approach to sanctioning set out in the Guidelines, the sanctions which will be imposed are those contained in the EU frameworks.<sup>17</sup>

## 45. Sanctioning Factors

349. The sanctioning factors used by the Central Bank for the determination of sanctions fall under four broad headings, which are dealt with in turn below:
- The nature, seriousness and effect of the prescribed contravention (see Table 2 at page 85 et seq.).
  - The conduct of a firm or individual during and after the commission of a prescribed contravention (see Table 3 at page 90 et seq.).
  - The previous record of a firm or individual (see Table 4 at page 100 et seq.).
  - Other relevant considerations (see Table 5 at page 102 et seq.).

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<sup>17</sup> These frameworks include but are not limited to the following EU Directives and Regulations transposed into domestic law by their corresponding statutory instruments: Markets in Financial Instruments Directive (see S.I. No. 375 of 2017); Securitisation Regulation (see S.I. No. 656 of 2018); Benchmarks Regulation (see S.I. No. 415 of 2021); and Securities Financing Transactions Regulation (see S.I. No. 631 of 2017).

350. The majority of sanctioning factors apply to both firms and individuals. However, the legislation prescribes certain sanctioning factors that are relevant to individuals only.<sup>18</sup> These factors are identified as such in the tables below. See Factor 12 of Table 2 (Nature, Seriousness and Effect Factors) and Factors 4 and 5 of Table 5 (Other Relevant Considerations). There are no factors that apply solely to firms.
351. Not all of the factors listed will apply in every case. In addition, the factors are not exhaustive and cannot cater for every eventuality. There may be additional factors that are not provided for below or in the legislation that influence the determination of a sanction in a particular case.<sup>19</sup>
352. As set out above in paragraph 348 (Sanctions Prescribed by Certain EU Regulatory Frameworks), certain EU financial services regulatory frameworks apply in domestic law and are designated for the purposes of the ASP. These frameworks are accompanied by bespoke sanctioning factors that apply when sanctioning certain contraventions of those frameworks. The Central Bank will have regard to the prescribed EU sanctioning factors where appropriate.

### Nature, Seriousness and Effect

353. The Central Bank will assess the severity of the contravention by looking at what happened, how and with what impact. In doing so, the Central Bank commonly considers factors including but not limited to those set out in Table 2 below.

**Table 2 | Nature, Seriousness and Effect Factors**

No.	Factor and Guidance
1.	<b>Whether the prescribed contravention or conduct by the firm or individual was intentional, negligent or dishonest.</b> <sup>20</sup>

<sup>18</sup> Section 33ARA of the 1942 Act.

<sup>19</sup> Section 33ARA of the 1942 Act.

<sup>20</sup> Section 33ARA(1)(a)(iii) of the 1942 Act.

	<p>This factor applies to firms and individuals. Proven dishonesty is always at the most serious end of the spectrum of the gravity of a prescribed contravention. If a contravention involves dishonesty and/ or was committed intentionally, the matter will ordinarily be treated more seriously by the Central Bank.</p>
2.	<p><b>Whether the prescribed contravention or conduct by the firm or individual was reckless.</b></p> <p>This factor applies to firms and individuals. In general, conduct which is reckless will be treated more seriously by the Central Bank.</p>
3.	<p><b>The duration of the prescribed contravention on the part of the firm or individual.<sup>21</sup></b></p> <p>This factor applies to firms and individuals. In general, contraventions that occur over a longer period of time will be treated by the Central Bank as more serious than contraventions of a shorter duration. However, a one-off contravention that occurred at a point in time or which occurred for a short duration can also be serious, depending on other factors and its effect.</p>
4.	<p><b>Whether there is more than one prescribed contravention, or repeated commission of a prescribed contravention by a firm or individual.<sup>22</sup></b></p> <p>This factor applies to firms and individuals. In general, the commission of more than one prescribed contravention or a repeated commission of the same prescribed contravention will be viewed by the Central Bank as more serious than a one-off contravention, particularly where this reveals systemic issues or cultural problems. However, the commission of a single</p>

<sup>21</sup> Section 33ARA(1)(a)(v) of the 1942 Act.

<sup>22</sup> Section 33ARA(1)(a)(vi) of the 1942 Act.

	<p>prescribed contravention can be serious depending on other factors and its effect.</p>
5.	<p><b>Any benefit gained or loss avoided by the individual or firm or any other person.<sup>23</sup></b></p> <p>This factor applies to firms and individuals. Any benefit gained or loss avoided as a result of the commission of a prescribed contravention will be treated as serious. The greater the benefit gained or loss avoided the more serious it will be treated by the Central Bank for the purposes of determining a sanction. Even if a benefit is not realised, or a loss is not avoided, the potential benefit or potential loss can be taken into account and will be treated by the Central Bank, for the purposes of assessing seriousness, in the same way as if the benefit or loss had actually occurred.</p>
6.	<p><b>The extent to which the firm or individual has departed from any standard to which they are subject.<sup>24</sup></b></p> <p>This factor applies to firms and individuals. Seriousness will be determined based on the nature and extent of the departure from the standard to which the firm or individual is subject. This will be determined objectively by reference to best practice and will not simply be based on standards commonly observed in the sector. For individuals, the extent of the departure from the standards set out in the common conduct standards, the additional conduct standards and any associated guidance will also be a relevant consideration by the Central Bank in assessing seriousness.</p>
7.	<p><b>Whether the prescribed contravention by the firm or individual has affected or may affect the orderliness of</b></p>

<sup>23</sup> Section 33ARA(1)(a)(vii) of the 1942 Act.

<sup>24</sup> Section 33ARA(1)(a)(ii) of the 1942 Act.

	<p><b>the financial markets, including public confidence in those markets.<sup>25</sup></b></p> <p>This factor applies to firms and individuals. A prescribed contravention which affects or potentially affects:</p> <ul style="list-style-type: none"> <li>(a) The financial markets;</li> <li>(b) Public confidence in the markets; and/or</li> <li>(c) Public confidence in the Central Bank,</li> </ul> <p>will be viewed more seriously by the Central Bank.</p>
8.	<p><b>The loss or detriment or potential loss or detriment caused as a result of the prescribed contravention by a firm or individual to a regulated financial service provider, or to customers, consumers, other market users or third parties, where that prescribed contravention is committed by a firm or individual.<sup>26</sup></b></p> <p>This factor applies to firms and individuals. The protection of consumers and other market users is central to the Central Bank’s mission. Where there has been widespread loss or detriment or the risk of loss or detriment, the prescribed contravention will ordinarily be viewed more seriously by the Central Bank.</p>
9.	<p><b>Whether any loss or detriment as a result of the prescribed contravention by the firm or individual has affected or may affect vulnerable persons.<sup>27</sup></b></p> <p>This factor applies to firms and individuals. Where the prescribed contravention affects vulnerable consumers, customers or investors, such as:</p>

<sup>25</sup> Section 33ARA(1)(b)(i) of the 1942 Act.

<sup>26</sup> Section 33ARA(1)(b)(ii) of the 1942 Act.

<sup>27</sup> Section 33ARA(1)(b)(iii) of the 1942 Act.



	<ul style="list-style-type: none"> <li>▪ those who have the capacity to make their own decisions but, because of their individual circumstances, may require assistance to do so; or</li> <li>▪ those who have limited capacity to make their own decisions and require assistance to do so,</li> </ul> <p>the prescribed contravention will ordinarily be viewed more seriously by the Central Bank.</p>
10.	<p><b>Whether the conduct underlying the prescribed contravention by the firm or individual involved or facilitated the commission of an offence, and the nature and seriousness of any such offence.<sup>28</sup></b></p> <p>This factor applies to firms and individuals. Where the conduct of the firm or individual, underlying the prescribed contravention was an offence or facilitated the commission of an offence, the contravention(s) will ordinarily be viewed more seriously by the Central Bank.</p>
11.	<p><b>Whether the prescribed contravention committed by the firm or individual reveals any serious weakness or systemic issues in all or in part of the firm.</b></p> <p>This factor applies to firms and individuals. Serious weakness or systemic issues, particularly where they result in widespread or severe actual or potential detriment to consumers, customers or investors, or a threat to financial stability, will ordinarily mean that the matter is viewed more seriously by the Central Bank.</p> <p>This factor is relevant to an individual where they have facilitated these systemic weaknesses, including by a failure of supervision or oversight.</p>
12.	<p><b>The individual’s seniority and level of responsibility, and the nature of any role performed by the</b></p>

<sup>28</sup> Section 33ARA(1)(a)(iv) of the 1942 Act.

**individual, at the time of the individual’s commission of or participation in the prescribed contraventions.<sup>29</sup>**

This factor applies to individuals only. In general, prescribed contraventions by individuals in more senior roles will be viewed more seriously by the Central Bank.

### Conduct of the Firm or Individual

354. The conduct of the Subject will often be a key aspect of the sanctions assessment in terms of how the firm or individual behaved during the contravention and how they behaved afterwards in their interactions with the Central Bank or other relevant third parties such as consumers or investors. Third parties could also include other regulators, market participants or any other impacted party.
355. The Central Bank commonly considers factors which include but are not limited to those set out in Table 3 below. However, for certain of the factors, the individual’s conduct will be assessed by reference to the extent to which that individual was responsible for how the firm committed and/or subsequently dealt with a particular issue.

**Table 3 | Conduct Factors**

No.	Factor and Guidance
1.	<p><b>How quickly, effectively and completely the firm or individual brought the prescribed contravention to the attention of the firm (in the case of individuals), the Central Bank or any other relevant regulatory authority, agency or criminal investigative body.<sup>30</sup></b></p> <p>This factor applies to firms and individuals. The firm or individual must be open and cooperative with the Central Bank.</p>

<sup>29</sup> Section 33ARA(1)(a)(i) of the 1942 Act.

<sup>30</sup> Section 33ARA(1)(c)(i) of the 1942 Act.

A failure to appropriately escalate or to report a contravention in full will ordinarily be treated as an **aggravating** factor. Examples of this include but are not limited to instances where the firm or individual:

- (a) knew about the behaviour that constituted the contravention, but failed to report it;
- (b) wilfully withheld information about wrongdoing by the firm or any other firm or individual;
- (c) failed to report the prescribed contravention, despite it being obvious;
- (d) failed to report the prescribed contravention, despite it continuing for a lengthy period of time;
- (e) failed to report the prescribed contravention within a reasonable time after it came to their attention; and/or
- (f) failed to disclose the full extent of the prescribed contravention, as it was known to it or them at the time of reporting.

Where the firm or individual has made adequate disclosure in a timely fashion but has not gone above and beyond this basic level of reporting, this will ordinarily be treated as a neutral factor that neither aggravates nor mitigates the conduct in question.

Where there has been exemplary self-reporting, this will ordinarily be treated as a **mitigating** factor. Examples of this include but are not limited to:

- (a) disclosure of all relevant information known to it or them, and adoption of an attitude of constructive

	<p>engagement and a willingness to facilitate the Central Bank’s supervision or investigation in whatever way possible;</p> <p>(b) immediately reporting when the prescribed contravention came to light; and/or</p> <p>(c) identification of other prescribed contraventions by the firm, the individual or by the firm in which the individual is employed.</p> <p>In order to be considered as a neutral or mitigating factor, any reporting by the firm or individual must be specific to the prescribed contravention, and open and transparent. Information contained within general reports will not be sufficient.</p>
2.	<p><b>The degree of cooperation by the firm or individual with the Central Bank or any other regulatory authority, agency or criminal investigative body provided during the investigation of the prescribed contravention.<sup>31</sup></b></p> <p>This factor applies to firms and individuals. The Central Bank expects the firm or individual to cooperate in an open manner at all times and to respond to requests promptly, effectively and accurately.</p> <p>In addition to potentially constituting a criminal offence and/or a further contravention, failure to cooperate adequately or at all or failure to engage cooperatively with the Central Bank will ordinarily be treated as an aggravating factor. Examples include but are not limited to:</p> <p>(a) provision of false, inaccurate and/or misleading information/documents to the Central Bank;</p>

<sup>31</sup> Section 33ARA(1)(c)(ii) of the 1942 Act.

- (b) failure to provide complete and timely information/documents/explanations in response to Notices of Investigation/statutory requests;
- (c) provision of responses by the firm or individual which require extensive or protracted engagement by the Central Bank;
- (d) provision of disordered, imprecise, ambiguous responses that lack clarity and are deliberately vague, possibly with a view to frustrating the Central Bank investigation;
- (e) failure by the firm or individual to preserve relevant information under its control including electronically stored information;
- (f) destroying information/documents or putting information/documents beyond the reach of the Central Bank;
- (g) engaging in evasive, misleading or obstructive conduct in the course of an interview;
- (h) giving advice or directions to others including other officers or employees not to cooperate openly or fully with an investigation; and/or
- (i) failing to comply with the legal obligations concerning confidentiality.

Providing the expected level of co-operation will ordinarily be treated as a neutral factor that neither aggravates nor mitigates the conduct in question. Examples include but are not limited to:

- (a) timely and complete responses to all requests from the Central Bank;
- (b) furnishing information/documents in a timely and orderly manner in response to a request;
- (c) the firm or individual regularly updates and engages with the Central Bank and adheres to timelines in relation to large document/e-data requests etc. Agreement with the Central Bank on a protocol to undertake matters such as e-data indexing, coding, hard copying etc.;
- (d) assisting in the identification and location of current/former employees for interview by the Central Bank and facilitating the attendance of staff at interview; and/or
- (e) being open and cooperative at interview.

Where there has been exemplary cooperation, this will ordinarily be treated as a mitigating factor. Examples include but are not limited to:

- (a) the firm or individual provides responses to correspondence that go above and beyond the basic provision of information/documents;
- (b) the firm or individual engages constructively with the investigation and seeks to facilitate the Central Bank's understanding of, for example, the firm and its structure, roles, responsibilities and governance structures and the factual matters under investigation;
- (c) the firm or individual proactively and voluntarily furnishes additional information to the Central Bank in order to assist the investigation, which, for

example, facilitates/expedites the review of documents previously requested;

- (d) the firm or individual engages with the investigation from the outset, seeking to assist the Central Bank wherever possible and aiding in time, cost and resource savings;
- (e) the firm or individual is proactive in establishing previously unknown relevant facts, identifying previously undetected issues and bringing them to the attention of the Central Bank and/or providing information about individuals potentially involved in the contravention(s);
- (f) the firm or individual makes early admissions to the prescribed contraventions. To be treated as such, admissions must be full, frank and made at the earliest opportunity;
- (g) the firm or individual shares the output of internal investigations and/or third party reviews; and/or
- (h) the firm or individual provides legally privileged material to the Central Bank.

3. **Any remedial steps taken since the prescribed contravention by the firm or individual was identified, including identifying whether customers have suffered loss or detriment and compensating them, taking disciplinary action against staff involved (where appropriate), or addressing any systemic failures, and taking action to ensure that similar problems do not arise in the future.**

This factor applies to firms and individuals. The Central Bank expects that the firm will take remedial steps to address a prescribed contravention. This factor is relevant to an individual where they have facilitated or

failed to facilitate the firm's remedial action, including where they have done so by way of supervision or oversight.

Failure to remediate adequately or at all will ordinarily be treated as an aggravating factor. Examples include but are not limited to:

- (a) despite knowledge of the issues that are the subject of the prescribed contravention, the firm fails to take or an individual fails to facilitate prompt remedial steps to address the prescribed contravention;
- (b) where a remediation plan has been put in place, the firm fails, or the individual facilitates the firm in failing, to test adequately its implementation and/or whether the steps taken are effective, requiring follow-up engagement/action by the Central Bank;
- (c) in seeking to identify affected consumers, customers or investors, the approach and/or methodologies adopted by the firm take a narrow interpretation of those affected and/or deliberately seeks to exclude potentially affected consumers, customers or investors from any remediation programme. In the case of an individual, the individual facilitates this narrow approach;
- (d) the firm's approach to calculating refunds and/or compensation which deliberately seeks to minimise unfairly any payment due to affected consumers, customers or investors. In the case of an individual, the individual facilitates this approach to calculation or refunds and/or compensation;
- (e) the firm adopts, or the individual facilitates the firm in adopting, an obstructive and/or deliberately



complex approach to remediation, including by failing to establish an appropriate and effective complaints process for affected consumers, customers or investors and/or an appropriate and effective appeals process for affected consumers, customers or investors to whom a refund and/or compensation is to be paid;

- (f) the firm fails to identify, or the individual fails to facilitate the firm in identifying, adequately whether consumers, customers or investors had suffered loss or detriment and to put in place an appropriate plan to redress and compensate those adversely affected or only does so in response to a statutory direction by the Central Bank;
- (g) the firm fails to take, or the individual fails to facilitate the firm in taking, appropriate disciplinary action against those responsible for wrongdoing;
- (h) the firm addresses the specific instance of non-compliance but fails to address any systemic weaknesses identified, including by failing to take action designed to ensure that similar problems do not arise in the future. In the case of an individual, the individual facilitates this failure to address systemic weaknesses; and/or
- (i) the firm was previously the subject of a risk mitigation programme in respect of the subject matter of the contravention but fails to take, or the individual fails to facilitate the firm in taking, appropriate remedial action.

Providing expected remediation will ordinarily be treated as a neutral factor that neither aggravates nor mitigates the conduct in question. Examples include but are not limited to:

- (a) after the prescribed contravention or the behaviour underlying it was identified, the firm immediately and voluntarily takes steps to remediate the issue without the Central Bank having to exercise its statutory powers;
- (b) the firm immediately commences an internal investigation tasked with examining the prescribed contravention and any individual wrongdoing;
- (c) the firm voluntarily and promptly seeks to identify whether consumers, customers or investors suffered loss or detriment and, where that occurred, puts in place an appropriate plan to redress and compensate those adversely affected;
- (d) the firm voluntarily and promptly establishes an appropriate and effective complaints process for affected consumers, customers or investors;
- (e) the redress and compensation paid is the minimum expected by the Central Bank;
- (f) the firm takes appropriate corrective action to address any systematic weaknesses or failures, including through the adoption of new policies and procedures, internal controls and mechanisms for monitoring ongoing compliance; and/or
- (g) the firm takes appropriate steps to promote changes to culture and values across its business including implementing staff training and taking appropriate disciplinary action.

Where there has been exemplary remediation, this will ordinarily be treated as a mitigating factor. Examples include but are not limited to:

- (a) in seeking to identify whether consumers, customers or investors have suffered loss or detriment and put in place an appropriate plan to redress and compensate those adversely affected, the firm goes, above and beyond the minimum expected by the Central Bank;
- (b) the redress and compensation paid is over and above the minimum expected by the Central Bank (by reference to, for example, the assumption underlying the remediation programme and the calculation methodologies);
- (c) the firm voluntarily and promptly establishes an appropriate and effective appeals process for affected consumers, customers or investors to whom redress and compensation is to be paid;
- (d) the firm develops customer-facing processes to remediate its conduct that go above and beyond those expected by the Central Bank including, for example, generous time periods for complaints and appeals, the waiver of its legal right to argue that certain claims are statute barred (either in civil litigation or before the Financial Services and Pensions Ombudsman) for a set period agreed with the Central Bank and/or the funding of independent legal advice for those affected;
- (e) the firm voluntarily and promptly engages internal staff or an independent third party to investigate and report on the prescribed contraventions and any individual wrongdoing, including wrongdoing at the most senior levels of the organisation;
- (f) the scope of the firm's internal/independent third party investigation goes beyond the specific

prescribed contravention(s) identified and seeks to identify and remediate broader governance, control and risk management issues within a particular business area or the firm generally;

- (g) the firm proactively and voluntarily implements additional internal controls, procedures, oversight and takes other reasonable steps specific to the conduct in question, in order to reduce the likelihood of recurrence of the conduct. For example:
- i. the steps taken by the firm in response to the Central Bank’s investigation, are not only those required to bring the firm into compliance and to seek to ensure compliance on an ongoing basis but rather reflect a ‘best practice’ approach; and/or
  - ii. the firm seeks to recruit new staff to improve standards of compliance and culture within the organisation, seeking to establish itself as ‘best in class’ from a management and governance perspective.

### Previous Record

356. The compliance or disciplinary history of a firm or individual may also be taken into account by the Central Bank when determining an appropriate sanction.
357. The factors which the Central Bank commonly considers relevant to the previous record of the Subject include but are not limited to those set out in Table 4 below.

**Table 4 | Previous Record Factors**

No.	Factor and Guidance
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1.	<p><b>Whether or not the Central Bank has previously imposed a sanction on the individual or firm or, in the case of an individual, the Central Bank or the Governor has issued a prohibition notice to the individual under section 43 of the 2010 Act.<sup>32</sup></b></p> <p>This factor applies to firms and individuals. The Central Bank will take previous enforcement action, including previous settlements, previous sanctions and prohibitions into account when considering sanction. Where the individual or firm has previously been the subject of enforcement action, and particularly where that enforcement action related to similar or identical prescribed contraventions, this will ordinarily be treated as an aggravating factor.</p>
2.	<p><b>Whether or not the individual has previously been convicted of an offence relevant to the performance of a controlled function or a firm has been convicted of a relevant offence.<sup>33</sup></b></p> <p>This factor applies to firms and individuals. The Central Bank will take relevant previous convictions into account when sanctioning an individual. When doing so, the Central Bank will consider the relevance of the offence. In doing so, the Central Bank will consider matters including the circumstances surrounding the conviction, the length of time since the conviction, and the explanation offered by the convicted firm or individual.</p> <p>Convictions for relevant offences will ordinarily be treated as an aggravating factor.</p>
3.	<p><b>The previous compliance history of the firm or individual.</b></p>

<sup>32</sup> Section 33ARA(1)(d)(i) of the 1942 Act.

<sup>33</sup> Section 33ARA(1)(d)(ii) of the 1942 Act.

This factor applies to firms and individuals. In imposing a sanction on a firm or individual, the Central Bank will take into account whether the firm or individual has previously undertaken not to act/ engage in particular behaviour and does so in contravention of this undertaking.

The Central Bank will also consider whether any remedial action that the firm or individual has previously been requested to take has been done in a timely fashion and to the required standard.

### Other Relevant Considerations

358. The Central Bank may also take into account other relevant considerations when determining an appropriate sanction. Some of these additional considerations are prescribed by legislation. Others have been included because they are viewed by the Central Bank as being relevant to ensuring that the assessment of the sanction achieves the right regulatory outcome, including that it is sufficiently dissuasive.
359. The additional considerations that the Central Bank commonly considers include but are not limited to those set out in Table 5 below.

**Table 5 | Other Relevant Considerations**

No.	Factor and Guidance
1.	<p><b>The appropriate deterrent impact of the sanction on the firm or individual and on other firms or individuals.</b></p> <p>This factor applies to firms and individuals. In imposing a sanction that is meaningful and fair to firms and individuals, and which promotes high standards in financial services, the Central Bank considers deterrence both from the perspective of specific deterrence to the particular firm or individual, and</p>

	<p>general deterrence for the wider community of firms and individuals.</p> <p>If the Central Bank considers that the sanction or combination of sanctions arrived at, after making any adjustment to reflect any aggravating and mitigating factors, is insufficient to deter the particular firm or individual, or other firms or individuals, from committing a further or similar prescribed contravention, the Central Bank may adjust the sanction to ensure that the intended deterrent effect will be achieved.</p>
2.	<p><b>Action taken by the Central Bank in previous similar cases.</b></p> <p>This factor applies to firms and individuals. The Central Bank takes into account any relevant comparators to the extent practicable. In doing so, the Central Bank bears in mind that each case is unique, and that the weight to attach to comparators may therefore be limited.</p>
3.	<p><b>Any consideration relating to pending or possible criminal proceedings, including whether any such proceedings may be prejudiced by the imposition of a sanction.<sup>34</sup></b></p> <p>This factor applies to firms and individuals. The Central Bank will consider whether, in imposing any sanction, there may be prejudice to any pending or possible criminal proceedings. The Central Bank will also have regard to section 33AT of the 1942 Act which prohibits the imposition of a monetary penalty on a firm or individual who has also been criminally prosecuted for the same conduct. Section 33AT does not prevent the Central Bank from imposing other sanctions on firms or individuals.</p>

<sup>34</sup> Section 33ARA(1)(e) of the 1942 Act..

4.	<p><b>Any matter relevant to the financial position of the individual.<sup>35</sup></b></p> <p>This factor applies to individuals only. The Central Bank will, where relevant, consider the individual’s overall financial position, which may include their assets in appropriate cases. In assessing financial position, the Central Bank will rely on detailed, sworn financial information provided by an individual to ensure the accuracy of this assessment.</p>
5.	<p><b>In deciding whether to impose a sanction on an individual, what sanction to impose, or the level of any monetary penalty, in the case of a contravention of the common conduct standards and additional conduct standards, the Central Bank shall have regard to the importance of promoting a culture of compliance with these standards.<sup>36</sup></b></p> <p>This factor applies to individuals only. The common conduct standards and the additional conduct standards play an important role in driving improved behaviours and accountability across regulated firms and in contributing to better outcomes for consumers and a more sustainable financial system.</p> <p>Where individuals holding either a controlled function or a pre-approval controlled function fail to adhere to their obligations under the conduct standards, the Central Bank will consider the importance of promoting a culture of compliance with these standards in assessing the appropriate sanction(s).</p>

<sup>35</sup> Section 33ARA(1)(f) of the 1942 Act.

<sup>36</sup> Section 33ARA(2) of the 1942 Act. This factor must be taken into account when there has been a contravention of section 53C of the 2010 Act, namely a contravention of the conduct standards.



## 46. Determination of Monetary Penalties

360. If the Central Bank determines that a monetary penalty should be imposed, it will generally follow a stepped methodology to identify what it considers to be the appropriate monetary penalty. The methodology for firms is described in Table 6 below. The methodology for individuals is described in Table 7 below (page 109 et seq.).
361. As set out in paragraph 341 (Totality), when the Central Bank determines that the combination of sanctions which is warranted should include a monetary penalty, it will consider the appropriateness of the monetary penalty both individually and as part of the overall suite of sanctions to be imposed.
362. This guidance is not intended to provide an automatic or arithmetic mechanism for the calculation of monetary penalties but to provide general guidance on the process to be followed and considerations involved when calculating monetary penalties.

**Table 6 | Monetary Penalty Methodology for Firms**

Step	Guidance
1.	<p><b>Determine an appropriate Starting Point Figure.</b></p> <p>For the majority of cases, the Central Bank considers a firm’s revenue to be an appropriate starting point (the “<b>Starting Point Figure</b>”) for the calculation of a monetary penalty.</p> <p>Often, the appropriate revenue figure will be the revenue of the entire firm. However, the Central Bank may consider other matters, which may include the amount of revenue generated by a firm from a particular product line, service, business area and/or jurisdiction/geographical area. Where the firm has revenue from a number of jurisdictions, the Central Bank may identify and isolate relevant revenue where appropriate.</p>

	<p>There may be cases where revenue is not an appropriate starting point, and in those cases the Central Bank will use an appropriate alternative.</p>
2.	<p><b>Identify and apply the severity level to determine the Base Monetary Penalty.</b></p> <p>Having determined the Starting Point Figure (which will be rounded), the Central Bank will consider the nature, seriousness and effect of the prescribed contravention by reference to the factors in Table 2 (Nature, Seriousness and Effect Factors, page 85 et seq.) and any other relevant factors in order to assess the severity level of the prescribed contravention on a scale between 1 and 10.</p> <p>The more severe the prescribed contravention(s), the higher the severity level that will be assigned.</p> <p>Using that severity level, the Central Bank will then decide on an appropriate percentage of the Starting Point Figure to determine the base amount of the monetary penalty (the “<b>Base Monetary Penalty</b>”).</p>
3.	<p><b>Calculate any aggravation or mitigation.</b></p> <p>The Central Bank may then increase or decrease the Base Monetary Penalty to reflect the extent to which the firm aggravated or mitigated the prescribed contravention(s) by reference to the factors in Table 3 (Conduct Factors, page 90 et seq.) and Table 4 (Previous Record Factors, page 100 et seq.) and any other relevant factors.</p> <p>There are no upper or lower limits on the extent to which the Base Monetary Penalty can be increased or decreased as a result of aggravation or mitigation.</p>
4.	<p><b>Consider any further adjustment.</b></p>

	<p>The Central Bank then considers if the Base Monetary Penalty (as adjusted at Step 3) needs to be adjusted upwards or downwards by reference to the factors in Table 5 (Other Relevant Considerations, page 102 et seq.) or to any other factor which the Central Bank considers to be relevant such as deterrence.</p>
5.	<p><b>Consider whether any maximum penalty adjustment is required.</b></p> <p>The Central Bank must ensure that the figure does not exceed the maximum penalty of €10,000,000, or an amount equal to 10% of the annual turnover of a firm, whichever is the greater, or an amount prescribed by regulations.<sup>37</sup></p> <p>If an adjustment is necessary the Central Bank will adjust the Base Monetary Penalty (as adjusted at Step 4).</p>
6.	<p><b>Consider the sanction(s) to be imposed in their totality.</b></p> <p>The Central Bank will consider any other proposed sanction(s) to ensure that the Base Monetary Penalty (as adjusted at Step 5) is proportionate when considered in totality with those other sanction(s).</p>
7.	<p><b>Final monetary penalty.</b></p> <p>The final monetary penalty imposed will be the figure arrived at following Step 6.</p>

**Table 7 | Monetary Penalty Methodology for Individuals**

Step	Guidance
1.	<b>Determine an appropriate Starting Point Figure.</b>

<sup>37</sup> Section 33AQ(4) of the 1942 Act.

	<p>For the majority of cases, the Central Bank considers an individual’s income to be an appropriate starting point (the “<b>Starting Point Figure</b>”) for the calculation of a monetary penalty.</p> <p>Income may include but is not limited to, salary, bonus, pension contributions, share options and share schemes. However, there may be cases where income is not an appropriate starting point, and in those cases the Central Bank will use an appropriate alternative, including for example, an individual’s assets.</p>
2.	<p><b>Identify and apply the severity level to determine the Base Monetary Penalty.</b></p> <p>Having determined the Starting Point Figure (which will be rounded), the Central Bank will consider the nature, seriousness and effect of the prescribed contravention, by reference to the factors in Table 2 (Nature, Seriousness and Effect Factors, page 85 et seq.) and any other relevant factors in order to assess the severity level of the prescribed contravention on a scale between 1 and 10.</p> <p>The more severe the prescribed contravention(s), the higher the severity level that will be assigned.</p> <p>Using that severity level, the Central Bank will then decide on an appropriate percentage of the Starting Point Figure to determine the base amount of the monetary penalty (the “<b>Base Monetary Penalty</b>”).</p>
3.	<p><b>Calculate any aggravation or mitigation.</b></p> <p>The Central Bank may then increase or decrease the Base Monetary Penalty to reflect the extent to which the individual aggravated or mitigated the prescribed contravention(s) by reference to the factors in Table 3</p>

	<p>(Conduct Factors, page 90 et seq.) and Table 4 (Previous Record Factors, page 100 et seq.) and any other relevant factors.</p> <p>There are no upper or lower limits on the extent to which the Base Monetary Penalty can be increased or decreased as a result of aggravation or mitigation.</p>
4.	<p><b>Consider any further adjustment.</b></p> <p>The Central Bank then considers if the Base Monetary Penalty (as adjusted at Step 3) needs to be further adjusted upwards or downwards by reference to the factors in Table 5 (Other Relevant Considerations, at page 102 et seq.) or to any other factor which the Central Bank considers to be relevant such as deterrence or financial position.</p>
5.	<p><b>Consider whether any maximum penalty adjustment is required.</b></p> <p>The Central Bank must ensure that the figure does not exceed the maximum penalty of €1 million.<sup>38</sup></p> <p>If an adjustment is necessary, the Central Bank will adjust the Base Monetary Penalty (as adjusted at Step 4).</p>
6.	<p><b>Consider the sanction(s) to be imposed in their totality.</b></p> <p>The Central Bank will consider any other sanction(s) it proposes to impose, such as disqualification or condition(s) and will ensure that the Base Monetary Penalty (as adjusted at Step 5) is proportionate when considered with those other sanction(s).</p>
7.	<p><b>Final monetary penalty.</b></p>

<sup>38</sup> Section 33AQ(4) and (6) of the 1942 Act.

The final monetary penalty imposed will be the figure arrived at following Step 6.

### **Reduction of Monetary Penalty where it would Cause a Firm to Cease Trading or an Individual to be Adjudicated Bankrupt**

363. The legislation provides that the Central Bank will reduce a proposed monetary penalty if, following assessment, the Central Bank determines that the proposed penalty would be such as to force the firm to cease trading or cause the individual to be adjudicated bankrupt.<sup>39</sup> A firm or individual will be required to verify any claim in this regard with detailed, sworn financial information.
364. Where the Central Bank reduces a monetary penalty in such circumstances, it will generally publish this fact and the monetary penalty that would have been imposed but for the reduction.

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<sup>39</sup> Section 33AS of the 1942 Act.

# Part 7: Confirmation by High Court and Appeal

This Part explains the procedures that may apply following the conclusion of an inquiry or settlement, in particular the confirmation of certain matters by the High Court and the appeal of certain Central Bank decisions.

## 47. Confirmation by High Court

### Confirmation of Inquiry Decision

365. An Inquiry Decision will not take effect until such time as the Central Bank has applied to the High Court and the High Court has confirmed the sanction imposed.
366. Where an Inquiry Decision has not been appealed to IFSAT (see Section 48 (Appeal to IFSAT and High Court)), or an appeal was lodged with IFSAT but was later withdrawn, the Central Bank will apply to the High Court, as soon as practicable, for confirmation of the Inquiry Decision. With the Subject's written consent, such an application may proceed on an ex parte basis and the Subject's attendance in court for the confirmation hearing will not be required, such that the application will proceed in their absence. As part of the confirmation process, the Central Bank may write to the Subject seeking such written consent in advance of the confirmation hearing.
367. The High Court will confirm the Inquiry Decision unless it determines, based on the evidence before the inquiry when the Inquiry Decision was made, that one of the following applies:
- The inquiry made an error of law, which is manifest from the record of the decision and fundamental so as to deprive the decision of its basis.
  - Any sanction imposed is manifestly disproportionate.

### Confirmation of IFSAT Decision

368. Where an Inquiry Decision has been appealed to IFSAT and IFSAT has determined that appeal (and has not set it aside), the Central Bank will apply to the High Court, as soon as practicable, for confirmation of IFSAT's decision.
369. The High Court will confirm IFSAT's decision unless it determines, based on the evidence before IFSAT when IFSAT made its decision, that one of the following applies:
- IFSAT made an error of law, which is manifest from the record of the decision and fundamental so as to deprive the decision of its basis.
  - Any sanction imposed is manifestly disproportionate.

### Confirmation of Sanctions Agreed by way of Settlement

370. Where the Central Bank agrees a sanction by settlement agreement with a Subject under the Undisputed Facts Settlement Process or the Investigation Report Settlement Process, any such sanction will not take effect until such time as the Central Bank has applied to the High Court and the High Court has confirmed the sanction agreed.
371. As soon as practicable after a settlement under the Undisputed Facts Settlement Process or the Investigation Report Settlement Process has been concluded, the Central Bank will apply to the High Court for confirmation of the agreed sanction. With the Subject's written consent, such an application may proceed on an ex parte basis and the Subject's attendance in court for the confirmation hearing will not be required, such that the application will proceed in their absence. The Central Bank may write to the Subject seeking such written consent in advance of the confirmation hearing.
372. The High Court will confirm the decision to impose a sanction unless it is satisfied that any sanction imposed is manifestly disproportionate.
373. Any sanction agreed as part of a settlement agreement concluded under the No Admissions Settlement Process will not require confirmation by the High Court and will take effect from the date stipulated in the settlement agreement.



## Outcome of Confirmation by High Court

374. If the High Court confirms the Inquiry Decision or IFSAT's decision, the relevant decision will take effect as a court order (and may be enforced accordingly) on either of the following dates:
- The date the High Court's decision is given.
  - Such later date as the High Court may specify in its decision.
375. If the High Court does not confirm the Inquiry Decision or IFSAT's decision, it may do one of the following:
- Substitute the relevant decision for one that could lawfully have been made in the matter.
  - Set aside the relevant decision and remit the matter to the Inquiry Members or IFSAT for reconsideration.
376. If the High Court confirms the sanction agreed as part of a settlement agreement concluded under the Undisputed Facts Settlement Process or the Investigation Report Settlement Process, the imposition of a sanction will take effect as a court order (and may be enforced accordingly) on either of the following dates:
- The date the High Court's decision is given.
  - Such later date as the High Court may specify in its decision.
377. If the High Court does not confirm a sanction agreed as part of a settlement agreement concluded under the Undisputed Facts Settlement Process or the Investigation Report Settlement Process, it will remit the matter for reconsideration by the Central Bank and the Subject along with any recommendation the High Court has in respect of the matters to be reconsidered.

## 48. Appeal to IFSAT and High Court

### Irish Financial Services Appeals Tribunal (IFSAT)

378. The Inquiry Decision may be appealed to IFSAT within 28 days of the Subject being notified of that decision (or within such

other time as IFSAT may allow). An appeal against an Inquiry Decision may only be made on one of the following grounds:

- Any ground that could be relied on in an application seeking judicial review of the decision.
- To the extent not covered by the above ground, the ground that any sanction imposed is not proportionate.

379. IFSAT may decide to affirm, vary or substitute the Inquiry Decision, or it may set aside the Inquiry Decision and remit the matter for reconsideration by the Central Bank, together with any recommendation or direction as to the matters to be reconsidered.
380. Where an Inquiry Decision is remitted to the Central Bank for reconsideration, the Inquiry Members who made that Inquiry Decision will, where possible, reconsider the Inquiry Decision in light of any recommendation or direction of IFSAT. Where the Inquiry Members who made that Inquiry Decision are unavailable, the Central Bank will appoint such other suitably qualified person from the Regulatory Decisions Panel as the Central Bank considers appropriate to reconsider the Inquiry Decision in light of any recommendation or direction of IFSAT.

### High Court

381. The Subject or the Central Bank may appeal IFSAT's decision to the High Court within 28 days of being notified of that decision, or within such time as the High Court may allow.
382. An appeal to the High Court does not affect the operation of IFSAT's decision, or prevent the taking of action to implement the decision, unless the High Court otherwise orders.
383. Where there has been no appeal, the Central Bank must proceed to apply to the High Court for confirmation of IFSAT's decision as soon as practicable after IFSAT makes the decision.
384. 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 IFSAT's decision, 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 Court of Appeal on a point of law only, with leave of either Court.

# Appendix: Glossary of Terms and Statutes

Table 8 | Terms Used in the Guidelines

Term	Meaning
Administrative Sanctions Procedure, or ASP	The Central Bank's enforcement procedures under Part IIIC of the 1942 Act.
Central Bank	The Central Bank of Ireland.
Draft Investigation Report	The draft report of an investigation prepared by the Responsible Authorised Officer in accordance with section 33ANK of the 1942 Act.
ECB	The European Central Bank.
Enforcement	The division of the Central Bank primarily responsible for the discharge of the Central Bank's enforcement functions.
Final Investigation Report	The final report of an investigation prepared by the Responsible Authorised Officer in accordance with section 33ANK of the 1942 Act.
inquiry	An inquiry under the ASP. See section 33AN of the 1942 Act.
Inquiry Chair	The person presiding at inquiry, being the Inquiry Member appointed to chair the inquiry as defined by section 33AXA of the 1942 Act.
Inquiry Decision	A decision made by the Inquiry Members at the conclusion of an inquiry which comprises the Inquiry Finding and may comprise a determination of the sanction to be imposed on

	the Subject, if any, and the grounds on which that determination is based. See section 33AQ(1) and (2) of the 1942 Act.
<b>Inquiry Finding</b>	The finding of the Inquiry Members as to whether or not the Subject has committed a prescribed contravention, and the grounds on which the finding is based.
<b>Inquiry Management Meeting</b>	Meetings that take place at the direction of the Inquiry Members prior to a substantive inquiry hearing for the purpose of assisting with the timely and efficient running of an inquiry.
<b>Inquiry Management Questionnaire</b>	A questionnaire issued by the Inquiry Members to the Inquiry Participants shortly after an inquiry commences. The purpose of the questionnaire is to narrow the issues to be determined at the inquiry and to enable the Inquiry Members to establish whether an Inquiry Management Meeting is required to consider preliminary matters.
<b>Inquiry Member</b>	A person appointed by the Central Bank from the Regulatory Decisions Panel to exercise the functions of the Central Bank in conducting an inquiry, and to make findings and/or to determine sanctions at the conclusion of an inquiry. See sections 33AXA and 33BE(7) of the 1942 Act.
<b>Inquiry Participants</b>	Enforcement and the Inquiry Subject.
<b>Inquiry Publication Notice</b>	A notice to be published by the Inquiry Members following the issue of an Inquiry Decision, which will include certain details of the Inquiry Finding and sanction to be imposed, if any. See section 33BC of the 1942 Act.
<b>Inquiry Subject</b>	A firm or individual who is or was the subject of an inquiry, as the context requires.

<b>investigation</b>	An investigation under the ASP. See section 33ANI of the 1942 Act.
<b>Investigation Report Settlement Process</b>	The Central Bank’s procedure for settlement under section 33AR of the 1942 Act.
<b>Investigation Subject</b>	A firm or individual who is or was the subject of an investigation, as the context requires.
<b>Irish Financial Services Appeals Tribunal, or IFSAT</b>	The independent tribunal established by section 57C of the 1942 Act with jurisdiction to hear and determine appeals made against certain decisions of the Central Bank.
<b>No Admissions Settlement Process</b>	The Central Bank’s procedure for settlement under section 33AV of the 1942 Act.
<b>Notice of Inquiry</b>	A written notice of a proposed inquiry issued by the Central Bank to an Investigation Subject. See section 33AP(1) and (2) and section 33AR(7) of the 1942 Act.
<b>Notice of Inquiry Hearing</b>	A written notice issued by the Inquiry Members in advance of an inquiry hearing specifying the date, time and place at which the hearing will be held, and inviting the Subject to attend the hearing or to make submissions about a matter to which the hearing relates. See section 33AP(3) of the 1942 Act.
<b>Notice of Investigation</b>	The notice in writing of an investigation under section 33ANJ of the 1942 Act provided by a Responsible Authorised Officer to an Investigation Subject following a decision to investigate, including any such notice as amended in accordance with that section.
<b>prescribed contravention</b>	Has the meaning given to that term in section 33AN of the 1942 Act.

<b>Regulatory Decisions Unit, or RDU</b>	A unit of the Central Bank which acts as registrar to the Inquiry and also supports Inquiry Members by providing advice and guidance with regard to inquiry procedures.
<b>regulated financial service provider</b>	Has the meaning given to that term in section 2(1) of the 1942 Act.
<b>Regulatory Decisions Panel</b>	The panel of decision makers established by the Minister for Finance for the purposes of section 33BI of the 1942 Act from which Inquiry Members must be appointed. The panel comprises both externally recruited experts and Central Bank staff.
<b>Responsible Authorised Officer</b>	The authorised officer (within the meaning of section 33AN(1) of the 1942 Act) responsible for a particular investigation. See section 33ANI of the 1942 Act.
<b>sanction</b>	An administrative sanction imposed by the Central Bank under the ASP. The available sanctions are set out in section 33AQ of the 1942 Act and in various financial services legislation that transposes EU regulatory frameworks into Irish law or directly applicable EU law.
<b>settlement</b>	The early resolution of an ASP matter by agreement between the Central Bank and a Subject. See sections 33AR and 33AV of the 1942 Act.
<b>Single Supervisory Mechanism, or SSM</b>	The system of banking supervision in the euro area comprising the European Central Bank and the national supervisory authorities of participating countries such as Ireland.
<b>Statement of Undisputed Facts</b>	A statement prepared by the Central Bank, under the Undisputed Facts Settlement

	Process, setting out the prescribed contraventions and the undisputed facts.
<b>Subject</b>	An Investigation Subject or Inquiry Subject, as the context requires.
<b>Undisputed Facts Settlement Process</b>	The Central Bank's procedure for settlement under section 33AR of the 1942 Act.

### Table 9 | Abbreviations for Certain Statutes Used in the Guidelines

All references in this table are to the statutes as may be amended from time to time.

<b>Abbreviation</b>	<b>Title</b>
<b>1942 Act</b>	Central Bank Act 1942 (No. 22 of 1942)
<b>2010 Act</b>	Central Bank Reform Act 2010 (No. 23 of 2010)
<b>2013 Act</b>	Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013)
<b>2023 Act</b>	Central Bank (Individual Accountability Framework) Act 2023 (No. 5 of 2023)





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