



Central Bank of Ireland
Enforcement 1 Division
Block D, Iveagh Court
Harcourt Road
Dublin 1

Re: Consultation Paper 57 - Inquiry Guidelines to be prescribed pursuant to section 33BD of the Central Bank Act 1942 (as amended) (CP 57)

Date: 13 January, 2012

Dear Sir/Madam

We are writing in response to CP 57 which was issued by the Central Bank on the 25th November 2011. It has been noted by a number of IFIA member firms that due to the nature of the matters raised in CP 57 and the short response period over the yearend holiday, it is difficult to make a detailed submission in respect of the consultation.

Nevertheless, we felt that we ought to inform you that we are aware that a number of IFIA member firms have significant concerns relating to the proposals contained within CP 57. These concerns range from whether proposed procedures are constitutional, to how costs will be dealt with (particularly in respect of a respondent who has not been found to have committed a prescribed contravention or is found to have committed only a minor contravention).

In addition, the following specific points have been brought to our attention:

1. If the Central Bank has not already done so it should consider the European Court of Human Rights case of Dubus SA v France (June 11 2009) (the "Dubus case") and whether the views of the court in that case should alter any of the proposed procedures.
2. Arising from the Dubus case the French Banking Commission amended its equivalent procedures and we understand that those procedures allow a regulated entity to challenge the independence of the adjudicators, in this case it would be members of the Panel. We note that while paragraph 1.7 requires each person nominated to the Panel to confirm that there is no conflict of interest there is no mechanism to allow a regulated financial services provider ("RFSP") to challenge this assertion.
3. We suggest that "correspond" be added to paragraph 1.9 to read

"Once appointed, the Panel will not meet with, correspond or discuss matters relating to the Inquiry with Central Bank staff..."

4. Some of the specific timeframes referred to could in some cases be too restrictive. For example paragraph 2.1 refers to 28 days, (this is not business days as elsewhere) which might be relatively little time to brief counsel, ensure appropriate senior executives are available and preparations completed for an Inquiry. We suggest that the Guidelines specifically indicate that more complex cases a longer period of notice will normally be given.

In paragraph 2.8 provides that the Panel and the parties will only be given a copy of the Book of Documents at least 5 working days before the Inquiry. As above in more detailed or complex cases this would appear to be very little time.

5. Paragraph 4.6 lists out the possible sanctions as currently provided for in the Central Bank (Supervision and Enforcement) Bill 2011. Clearly these Guidelines cannot be finalised until this Bill is passed. Though we appreciate it is a matter for the Oireachtas and not the Central Bank we would question whether the revocation of an authorisation is a mere administrative sanction.

6. As regards the criteria for determining the particular sanction to be imposed:

- (a) Para 4.7(1)(e): This refers to the "extent to which the contravention departs from the required standard". We do not believe this should be included as currently worded. The phrase "required standard" implies there is a clear standard whereas this is often not the case, regulations often use phrases such as "adequate" or "reasonable" which are necessarily subjective. We suggest the following as an alternative

"The extent to which the contravention breached the letter of the relevant regulatory requirement"

- (b) Para 4.7(1)(h) This refers to "vulnerable consumers". This is a defined term in the new Consumer Protection Code but is not generally used so we suggest that an appropriate definition or cross-reference be added.

- (c) Para 4.7(1)(j) This refers to the nature and extent of any financial crime facilitated. By definition the Inquiry cannot make a finding that any crime was committed so we do not believe this is a permissible criterion.

- (d) Para 4.7(1)(k) This refers to any potential or pending criminal proceedings. It seems to us that this is a matter for the Central Bank itself in deciding whether to initiate and pursue administrative sanction proceedings. It is for the Panel decide an appropriate sanction. It should not be for the Panel to consider any wider policy issues, which as we say are matters for the Central Bank itself.

- (e) Para 4.7(2)(p) We suggest that this be amended to read:

"Whether the facts constituting the contravention were admitted or denied"

We think this is important because in many cases a RFSP will not dispute the facts of a particular case but it will deny any contravention on the basis that it does not agree with the interpretation being applied by the Central Bank. It does not appear fair to in effect punish a RFSP which reasonably held a view, albeit subsequently not upheld by the Panel, that it did not commit a contravention.

On the other hand we agree where a RFSP disputes facts this should be taken into account.

- (f) Para 4.7(3)(r) We do not believe it is permissible to have regard to whether the respondent had previously been requested to take remedial action. This seems to us to be potentially a separate allegation of a prescribed contravention which unless the allegation is made at the Inquiry could not be taken into account in considering the sanction for a different contravention,
- (g) Para 4.7(4) We do not understand the phrase "prevalence of the contravention", is it in the RFSP or industry generally? Unless individual cases are found by a Panel, how can the Panel determine that there is a prevalence of a particular contravention? We believe this should be deleted.
- (h) Para 4.7(4)(x) Is it intended that this would be a mitigating factor? That is, if a contravention was very difficult to detect the sanction should be lesser than if it was obvious and easy to see. If this is the case we suggest it would be helpful to clarify.

Due to the nature of the consultation, we expect that the Central Bank may receive responses directly from some IFIA member firms and if there is anything that we can further assist with in relation to this please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink that reads "Kieran Fox". The signature is written in a cursive style with a large, stylized 'F'.

Kieran Fox