



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2013

Consultation Paper :

**Inquiry Guidelines to be prescribed
pursuant to section 33BD of the Central
Bank Act 1942 (as amended)**

CP65



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Section 1: Making submissions

- 1.1 Please make your submissions in writing, and if possible, electronically as a Word document or a .pdf document by email on or before **24th June 2013**.
- 1.2 Submissions should be marked “**Inquiry Guidelines CP 65**” and sent by email to: ASPConsultationPaper@centralbank.ie
- 1.3 In the event that you are unable to send your response electronically, please forward it by post, marked “**Inquiry Guidelines CP 65**”, on or before **24th June 2013** to:

Enforcement 1 Division
Central Bank of Ireland
Block D Iveagh Court
Harcourt Road
Dublin 2
- 1.4 We invite comments on all aspects of this Consultation Paper (“**the Paper**”). If you are raising an issue that we have not referred to in the Paper, please indicate this in your submission.
- 1.5 We intend to make all submissions available on our website after the deadline for receiving submissions has passed. We shall not publish any information which we deem potentially libellous or defamatory.
- 1.6 The Central Bank of Ireland (“**the Central Bank**”) accepts no liability whatsoever in respect of any information provided which is subsequently released or in respect of any consequential damage suffered as a result.

Section 2: Introduction

- 2.1 Under Part IIIC of the Central Bank Act 1942 (“**the Act**”)¹, the Central Bank has the power to impose sanctions in respect of breaches of regulatory requirements² by regulated financial service providers and persons concerned in their management and to publicise the findings and sanctions imposed. This is known as the “**Administrative Sanctions Procedure**”. The Administrative Sanctions Procedure includes, in appropriate cases, the convening of an Inquiry by the Central Bank to determine whether or not a prescribed contravention has been or is being committed and to determine sanctions.
- 2.2 In 2011 the Central Bank published Consultation Paper 57 in relation to draft Inquiry Guidelines to be prescribed pursuant to section 33BD of the Central Bank Act 1942, as amended³. The Central Bank has now published Feedback to Consultation Process on CP57 on the proposed Inquiry Guidelines to be prescribed pursuant to section 33BD the Central Bank Act 1942 (as amended)⁴.
- 2.3 The Central Bank has considered the submissions made in respect of Consultation Paper 57 and has undertaken a further review of the Inquiry Guidelines. The draft Inquiry Guidelines have been amended in light of the submissions received and following the further review to reflect a more inquisitorial approach to Inquiry pursuant to Part IIIC of the Central Bank Act 1942 (as amended). The purpose of this Paper is to seek comments on the draft Inquiry Guidelines proposed⁵.

¹ Part IIIC of the Act was introduced by the Central Bank and Financial Services Authority of Ireland Act 2004. The Act has been further amended by the Central Bank Reform Act 2010.

² Breaches of regulatory requirements are referred to in the Act as “*prescribed contraventions*”.

³ Available [here](#)

⁴ Available [here](#)

⁵ As set out in further detail in Section 3 of the Paper.

Section 3: Inquiry Guidelines

- 3.1 Inquiry constitutes an integral part of the Administrative Sanctions Procedure. If there are reasonable grounds to suspect that a prescribed contravention is being or has been committed, and if settlement has not been agreed between the Central Bank and the regulated financial service provider and/or persons concerned in its management, the case may be referred to Inquiry⁶. If the Inquiry makes a finding that a prescribed contravention is being or has been committed, then sanctions may be imposed at Inquiry.
- 3.2 Section 33BD(1) of the Act provides that the Central Bank may prescribe guidelines for the conduct of Inquiries. The draft Inquiry Guidelines are included in this Paper at Appendix 1. The Inquiry Guidelines, once finalised, will replace the Administrative Sanctions Guidelines published by the Central Bank in 2005. A copy of the finalised Inquiry Guidelines will be made available on the Central Bank's website.
- 3.3 The draft Inquiry Guidelines provide significant detail in terms of the practice and procedure to be adopted during an Inquiry. The draft Inquiry Guidelines are divided into four sections:
1. Referral
 2. Preliminary Inquiry Procedures
 3. The Inquiry Hearing
 4. The Findings of the Inquiry Members
- 3.4 The Central Bank will exercise its powers in respect of the Inquiry process in accordance with the finalised Inquiry Guidelines. However, it may be necessary to depart from the finalised Inquiry Guidelines in certain instances where the circumstances of the individual case demand. The finalised Inquiry Guidelines may be amended or revoked by the Central Bank at any time⁷. Any such amendments will be in writing and published in a manner determined by the Central Bank⁸.
- 3.5 Comment is invited on all aspects of the draft Inquiry Guidelines. Following the conclusion of the consultation process, the Central Bank will consider all representations received and issue finalised Inquiry Guidelines.

⁶ Section 33AO of the Act.

⁷ Section 33BD(2) of the Act.

⁸ Section 33BD(3) of the Act.

APPENDIX – DRAFT INQUIRY GUIDELINES

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Note: These Inquiry Guidelines are published pursuant to section 33BD of the Central Bank Act 1942, as amended. The Inquiry Guidelines repeal and replace the previous Administrative Sanctions Guidelines published by the Central Bank in October 2005.

1. Introduction

- 1.1 The Central Bank of Ireland (**“the Central Bank”**) may conduct an Inquiry under Part IIIC of the Central Bank Act 1942, as amended (**“the Act”**) where it suspects on reasonable grounds that a prescribed contravention is being or has been committed. Such Inquiries will be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the Inquiry will allow¹.
- 1.2 These Inquiry Guidelines, published pursuant to section 33BD of the Act, (**“the Guidelines”**) set out the procedure which the Central Bank ordinarily proposes to follow when holding an Inquiry under Part IIIC of the Act. It may be necessary to depart from the Inquiry Guidelines in certain instances where compliance with the Inquiry Guidelines is not appropriate in the circumstances of the individual case.
- 1.3 The Guidelines should be read in conjunction with another information publication - *Outline of the Administrative Sanctions Procedure* (**“the Outline”**), which provides a general overview of the Administrative Sanctions Procedure operated by the Central Bank. The Guidelines and the Outline do not purport to represent a definitive legal interpretation of Part IIIC of the Act and in case of doubt it is recommended that reference be made to the text of the legislation itself and/or individual legal advice sought, as appropriate.
- 1.4 For the purposes of these Guidelines reference to **“regulated entities”** or a **“regulated entity”** can be taken to include both present and former regulated financial service providers, as well as persons presently or formerly concerned in their management. Similarly, in this regard, reference to regulated entities or a regulated entity having committed a prescribed contravention, can be taken to include situations where persons presently or formerly concerned in the management of a regulated entity have participated in that prescribed contravention.

¹ Section 33AY(1) of the Act

2. Referral

Referral to Inquiry

- 2.1 Where the Central Bank suspects on reasonable grounds that a prescribed contravention is being, or has been committed, it may decide to hold an Inquiry².
- 2.2 The Enforcement Directorate (“**ENF**”) will inform the Regulatory Decisions Unit (“**RDU**”) within the Central Bank of a decision to hold an Inquiry and will refer the case to the RDU. The work and role of the RDU is outlined in further detail at paragraph 2.9 below.
- 2.3 At the time of referral ENF will provide the RDU with the following:
- an outline of the prescribed contraventions that the regulated entity is suspected of committing or having committed and the grounds upon which the suspicions are based;
 - an Investigation Report, which will detail the Investigation carried out by Enforcement and contain a schedule of the categories of materials and information gathered during the Investigation;
 - copies (hard copy or electronic) of supporting documentation relied upon in preparing the Investigation Report; and
 - copies of any Investigation Letter(s) issued to the regulated entity and any responses.

Appointment of Inquiry Members

- 2.4 One or more persons, internal officers or employees of the Central Bank and/or external individuals³, will be appointed to an Inquiry, (“**the Inquiry Members**”). Following the notification to the RDU of the decision to hold an Inquiry, the RDU will arrange for the appointment of the Inquiry Members. Where appropriate, the RDU will arrange the nomination of a presiding person on the Inquiry, who shall be known as the Chairperson. In certain

² Either under section 33AO or, if the prescribed contravention is admitted, but the sanction cannot be agreed, under section 33AR of the Act.

³ Section 33BE(2) of the Act provides that: “Without prejudice to the generality of subsection (1), the Bank may for the purposes of that subsection designate a person who is not an officer or employee of the Bank. A person so designated is an agent of the Bank for performing and exercising the functions and powers of the Bank under this Part or the part of those functions and powers for which the Bank designated him or her”.

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

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

Regulatory Decisions Unit

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

Enforcement

- 2.11 ENF will be available during the Inquiry to provide any assistance requested by the Inquiry Members. Such assistance might include asking ENF to explain or provide any or all of the following:

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

2.12 At least one representative of ENF will attend any Inquiry management meetings, the Inquiry hearing and any sanctions hearing.

Legal Representation

2.13 The regulated entity may choose to be represented at the Inquiry by a legal practitioner or, with the leave of the Inquiry Members, any other person.⁴

Legal Practitioner

2.14 The Act provides that the Inquiry may be assisted by a legal practitioner⁵. Any decision to appoint a legal practitioner will be a matter for the Inquiry Members.

⁴ Section 33AY(4) of the Act.

⁵ Section 33AY(3) of the Act.

3. Preliminary Inquiry Procedures

Notice of Inquiry

- 3.1 The RDU will send a written **Notice of Inquiry**⁶ to the regulated entity by registered post at least 25 working days in advance of an Inquiry hearing being held. The Notice of Inquiry shall:
- (a) set out the suspected prescribed contravention(s) and the grounds upon which the suspicions are based, as outlined by ENF at referral;
 - (b) specify the date, time and place of the Inquiry hearing;
 - (c) invite the regulated entity to attend the Inquiry hearing and/or to make written submissions; and
 - (d) set out the procedure that is envisaged.

The Notice of Inquiry will be accompanied by a copy of all documentation provided to the RDU by ENF at the time of the referral.

- 3.2 The Inquiry (including any Inquiry management meetings) will usually be held in public.⁷ An Inquiry may only be held in private in the following circumstances:⁸
- *by agreement*: the Inquiry and the regulated entity agree that the Inquiry should be held in private; or
 - *by decision of the Inquiry*: the Inquiry decides that the Inquiry shall be held in private being satisfied that:
 - (a) evidence may be given, or a matter may arise during the Inquiry that is of a confidential nature or relates to the commission, or the alleged or suspected commission, of an offence against a law of the State, or
 - (b) a person's reputation would be unfairly prejudiced.

⁶ Section 33AP of the Act

⁷ Section 33AZ(1) of the Act provides that except as provided by section 33AZ(2), the Central Bank shall hold its inquiries in public.

⁸ See section 33AZ(2) of the Act.

Inquiry management

- 3.3 Appended to the Notice of Inquiry will be an Inquiry Management Questionnaire (“**the Questionnaire**”) which must be completed and returned to the RDU by the regulated entity within the time specified in the Questionnaire (allowing at least 10 working days for response). If the regulated entity fails to respond within the time specified, the RDU will notify the Inquiry Members and may proceed to confirm the date and arrangements for the hearing without further consultation with the regulated entity.
- 3.4 The purpose of the Questionnaire is to enable the Inquiry Members to establish whether an Inquiry management meeting is required for the purpose of issuing directions prior to the Inquiry hearing. The Questionnaire may seek responses on the following topics:
- Inquiry arrangements (confirmation of suggested dates when the Inquiry will sit, estimated length of the Inquiry, legal representation);
 - any submissions in relation to the public nature of the Inquiry;
 - whether the regulated entity intends to deliver written submissions;
 - matters of evidence;
 - proposed witnesses; and
 - any other relevant matters.
- 3.5 Where the Inquiry Members decide that an Inquiry management meeting is required, the regulated entity will be invited to attend and may make submissions to the Inquiry. The Inquiry Members may agree to hold the Inquiry management meeting in private where the regulated entity wishes to make submissions in relation to the public nature of the Inquiry.
- 3.6 It should be emphasised that the purpose of an Inquiry management meeting is to assist in the timely and efficient running of the Inquiry. It ensures that the issues to be determined at Inquiry are narrowed to the greatest extent possible. Effective Inquiry management meetings enable, for example:
- the issues disputed by the regulated entity to be identified at an early stage;
 - arrangements to be put in place to ensure that evidence, whether disputed or not, is presented clearly and effectively;
 - the needs of any witnesses to be taken into account; and
 - an effective programme and timetable to be established for the conduct

of the Inquiry.

- 3.7 Prior to the commencement of the Inquiry hearing the Inquiry Members will issue directions to the regulated entity together with a timeframe for compliance.
- 3.8 The regulated entity will have the opportunity to provide written legal submissions in accordance with the timetable laid down in any directions given by the Inquiry Members. All submissions must be accompanied by a copy of the case law to be relied upon in the course of legal submissions.
- 3.9 If the regulated entity fails to comply with a direction made by the Inquiry Members and the Inquiry Members are satisfied of adequate notification to the regulated entity, the Inquiry hearing may proceed on the date set out in the Notice of Inquiry or on any other date which has been notified to the regulated entity by the RDU.
- 3.10 The Inquiry Members may direct the RDU to furnish a copy of correspondence issued to and received from the regulated entity to ENF. The Inquiry Members may also direct the RDU to furnish a copy of any written submissions received from the regulated entity to ENF and may seek ENF's response to any submissions. A copy of any response from ENF will be sent to the regulated entity.
- 3.11 A sample running order for Preliminary Inquiry Procedures is set out at **Appendix 1**.

4. The Inquiry Hearing

Form and order of proceedings

- 4.1 The Inquiry is not a court of law, and the procedure at the Inquiry hearing will be kept as informal as possible. The Central Bank has a statutory duty to undertake the Inquiry with as little formality and technicality, and with as much expedition, as proper consideration of the matter will allow⁹. However, an Inquiry into suspected prescribed contravention(s) is a serious matter and the procedure at Inquiry must reflect this fact. The Inquiry will at all times observe the rules of procedural fairness, but is not bound by the rules of evidence.¹⁰
- 4.2 The Inquiry shall be held in public, subject to certain exceptions (see paragraph 3.2).¹¹ If the Inquiry is held in public, a notice will appear on the Central Bank website advising of the time and location of the Inquiry hearing. The public and media will be able to watch and listen to the proceedings in a public gallery located within the Inquiry Room or adjacent to it. No notice will appear if the Inquiry is to be held in private.
- 4.3 The Central Bank is not proposing that the Inquiry necessarily adopts the approach of a hearing adducing oral evidence. In exercising its discretion whether to hold such a hearing, the Inquiry Members will consider whether oral evidence is necessary for a fair determination of the suspected prescribed contravention(s), taking into account any submissions by the regulated entity on the matter.

Standard of proof

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

⁹ Section 33AY(1) of the Act

¹⁰ Section 33AY(2) of the Act

¹¹ Section 33AZ(1) of the Act states the general rule, subject to the exceptions contained in section 33AZ(2) of the Act.

Legal submissions

- 4.5 As outlined in paragraph 3.8, the regulated entity will have the opportunity to provide written legal submissions prior to the Inquiry hearing date and in accordance with the directions of the Inquiry. In the context of a hearing, with or without oral evidence, the regulated entity will also be afforded the opportunity of making oral legal submissions.

Applications during an Inquiry

- 4.6 The Inquiry Members must act fairly and must consider and deliberate upon such applications as may be made to them in the course of the Inquiry.
- 4.7 The Inquiry Members may be required to deal with a number of preliminary applications and issues, including *inter alia*:

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

The Inquiry may proceed in the absence of the regulated entity provided that the regulated entity has been given an opportunity to participate in an Inquiry or to make written submissions to it.¹²

2. A request for an adjournment

The Inquiry Members may adjourn any Inquiry hearing but in so doing shall ensure that the regulated entity is notified of the date, time and place at which any Inquiry hearing is to be resumed.¹³

The Inquiry Members have the discretion to grant or refuse an application for an adjournment. That discretion shall be exercised fairly, in accordance with fair procedures.

Commencement of the Inquiry Hearing

- 4.8 At the beginning of a hearing, the Chairperson shall state the purpose of the Inquiry and introduce the Inquiry Members and explain the manner and order of the Inquiry. **Appendices 2 and 3** outline sample running orders but these formats are flexible and, as the Inquiry Members may adopt their own procedures, may vary.

¹² Section 33AP(5) of the Act.

¹³ Section 33AP(4) of the Act.

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

Hearing without oral evidence

- 4.10 In circumstances where the matter is suited to resolution without adducing oral evidence, the Inquiry Members will conduct their review based on relevant documents, any witness statements and any oral or written submissions. No witnesses shall be called at this form of Inquiry, but a hearing may be convened and oral submissions at any such hearing may be held in public.
- 4.11 A sample running order for this type of Inquiry is set out at **Appendix 2**.

Hearing with oral evidence

- 4.12 A stenographer will be in attendance at all Inquiry hearings where oral evidence is adduced. A copy of the transcript will be made available to the Inquiry Members and the regulated entity as soon as practicable.

Procedures for the taking of evidence

- 4.13 Once the suspicions against the regulated entity have been set out and the regulated entity has been invited to make preliminary submissions, witnesses may be called. The Inquiry Members will call such witnesses as they wish to hear from to give evidence at the Inquiry; such witnesses may also be examined by or on behalf of the regulated entity.
- 4.14 During the course of an Inquiry, at any time from the appointment of the Inquiry Members to the conclusion of the Inquiry, the Inquiry Members may, in writing:

- summons a person to appear before the Inquiry Members to give evidence and/or produce specified documents; and
- require the person to attend each day of the hearing unless excused or released from attendance.¹⁴

4.15 The Chairperson may require the oral testimony of a witness to be given on oath. He or she may also:

- require a witness at the Inquiry to answer a question put to the witness; and
- require a person appearing at the Inquiry pursuant to a summons to produce any document specified in the summons.¹⁵

4.16 The Chairperson may also allow a witness at the Inquiry to give evidence by tendering a written statement, verified by oath.¹⁶ The witness may be required to attend the Inquiry hearing for the purposes of examination.

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

No oral hearing or evidence

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

- i) the regulated entity has indicated in the Questionnaire that it does not intend to make oral submissions; or
- ii) the regulated entity has been afforded an opportunity to be present at the Inquiry hearing, but has failed to appear¹⁷.

Referral to the High Court on a point of law

4.19 The Inquiry Members may, on their own initiative or at the request of the regulated entity, refer a question of law arising during the Inquiry to the High Court for decision.¹⁸ This procedure constitutes a consultative case-

¹⁴ Section 33BA(1) of the Act.

¹⁵ Section 33BA(2)-(4) of the Act specifically reserves these powers to the person presiding at the Inquiry.

¹⁶ Section 33BA(5) of the Act also specifically reserves this power to the person presiding at the Inquiry.

¹⁷ In accordance with section 33AP(5) of the Act.

¹⁸ Section 33BB(1) of the Act.

stated procedure, the main purpose of which is to seek clarification on a point of law. The Inquiry Members are not obliged to state a case upon being requested to do so.

- 4.20 Where a question of law is referred to the High Court, the Inquiry will be temporarily stayed in full or in part (depending on whether the question is relevant to all of the prescribed contraventions), pending a decision by the High Court.
- 4.21 The question of law shall be drafted by the Inquiry Members taking into account any submissions of the regulated entity and shall be sent by the RDU to the High Court, accompanied by all documents before the Inquiry that are relevant to the matter in question.¹⁹

Applications for an adjournment to pursue settlement

- 4.22 The Central Bank has authority and discretion to enter into a settlement agreement with the regulated entity at any stage before completion of the Inquiry.²⁰
- 4.23 Where the regulated entity wishes to settle the matter immediately prior to or during the course of the Inquiry, the regulated entity and/or its legal adviser should contact ENF. The Inquiry Members may adjourn any hearing in order to facilitate settlement but shall have no other role in relation to settlement. The settlement discussions shall be carried out in private. The details of any settlement discussions should not be disclosed to the Inquiry Members. Where the matter is successfully settled, the Inquiry Members shall be informed of the fact of settlement. Where settlement negotiations are unsuccessful, the Inquiry shall, where it has been adjourned, be resumed.
- 4.24 Settlement agreements will be concluded only where the basis for settlement is consistent with the general approach to regulation adopted by the Central Bank, is fair having regard to all the facts known, and will contribute to the efficient, effective and economic use of resources.

¹⁹ Section 33BB(3) of the Act.

²⁰ Section 33AV of the Act.

5. The Findings of the Inquiry Members

Written Findings

- 5.1 Following any closing submissions and a review of all the evidence, the Inquiry Members shall set out in writing their finding(s) as to whether the regulated entity is committing or has committed the prescribed contravention(s) to which the Inquiry relates.²¹
- 5.2 In all circumstances, the Inquiry Members shall produce written findings, which shall set out:
- their findings as to whether or not the regulated entity:
 - (a) is committing or has committed a prescribed contravention, or
 - (b) is participating or has participated in the commission of the prescribed contravention to which the Inquiry relates; and
 - the grounds on which its findings are based.
- 5.3 The written findings will be delivered to the regulated entity by registered post (and email, if agreed in advance with the regulated entity) as soon as the written findings are available. The regulated entity will be kept informed of any delays in the preparation of the written findings.
- 5.4 If necessary, the Inquiry Members will invite the regulated entity to attend before them on a specified date for a sanctions hearing.

Sanctions

- 5.5 A sanctions hearing will either: (a) follow the Inquiry Members' written findings; or (b) constitute a standalone hearing (in circumstances where the regulated entity acknowledges the contravention and consents to dispensing with an Inquiry).²²
- 5.6 The Inquiry Members will invite submissions regarding sanctions.
- 5.7 The regulated entity will be entitled to submit any documentation relevant to the Inquiry Members' decision on sanctions once the Inquiry Members have delivered their findings on the prescribed contravention(s). Oral submissions may also be made directly to the Inquiry Members at the

²¹ Section 33AQ(1) and (2) of the Act.

²² Section 33AR of the Act.

sanctions hearing.

5.8 If the Inquiry Members find that a regulated entity is committing or has committed a prescribed contravention, or is participating or has participated in the commission of such a contravention, the Inquiry Members may impose one or more of the following sanctions:

- (a) a caution or reprimand;
- (b) a direction to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service by the regulated financial service provider;
- (c) a direction to pay to the Central Bank a monetary penalty (not exceeding the prescribed maximum amount, see paragraph 5.10 below);
- (d) a direction disqualifying a person from being concerned in the management of a regulated financial service provider for such period as is specified in the order;
- (e) if the contravention is found to be on-going, a direction ordering the contravention to cease;
- (f) a direction to pay the Central Bank all or a specified part of the costs incurred by it in holding the Inquiry and investigating the matter.²³

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

1. The Nature, Seriousness and Impact of the Contravention

- (a) whether the contravention was deliberate, dishonest or reckless;
- (b) duration and frequency of the contravention;
- (c) the amount of any benefit gained or loss avoided due to the contravention;
- (d) whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of the business;
- (e) the extent to which the contravention departs from the required standard;
- (f) the impact or potential impact of the contravention on the orderliness of the financial markets, including whether public

²³ See sections 33AQ(3) and (5) of the Act.

- confidence in those markets has been damaged or put at risk;
- (g) the loss or risk of loss caused to consumers or other market users;
- (h) the effect, if any, of the contravention on vulnerable consumers;²⁴
- (i) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;
- (j) whether there are a number of smaller issues which individually may not justify administrative sanction, but which do so when taken collectively;
- (k) any potential or pending criminal proceedings in respect of the contravention which will be prejudiced or barred if a monetary penalty is imposed pursuant to the Administrative Sanctions Procedure.

2. The Conduct of the Regulated entity after the Contravention

- (a) how quickly, effectively and completely the regulated entity brought the contravention to the attention of the Central Bank or any other relevant regulatory authority;
- (b) the degree of co-operation with the Central Bank or other agency provided during the investigation of the contravention;
- (c) any remedial steps taken since the contravention was identified, including identifying whether consumers have suffered loss and compensating them, taking disciplinary action against staff involved (where appropriate), addressing any systemic failures, and taking action designed to ensure that similar problems do not arise in the future;
- (d) the likelihood that the same type of contravention will recur if no administrative sanction is imposed;
- (e) whether the contravention was admitted or denied.

3. The Previous Record of the Regulated entity

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

²⁴ The term “vulnerable consumer” has the same meaning as the definition set out in Chapter 12 (‘Definitions’) of the Consumer Protection Code 2012 at p.75.

take remedial action, and the extent to which such action has been taken.

4. Other General Considerations

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

5.10 Where a monetary penalty is imposed, the amount shall not exceed:²⁵

- (a) in the case of a body corporate or an unincorporated body, €5,000,000;
- (b) in the case of a natural person, €500,000; or
- (c) such other amount as may be prescribed by regulations.

The monetary penalty shall not be of an amount that would be likely to cause the regulated entity to cease business, or in the case of a natural person would be likely to cause the person concerned to be adjudicated bankrupt.²⁶ If more than one contravention is found in respect of the same conduct, only one monetary penalty may be imposed.²⁷

5.11 If a monetary penalty is imposed in respect of a contravention which is also an offence under the law of the State, the regulated entity is not liable to be otherwise prosecuted or punished for the offence.²⁸ Where a regulated entity has already been tried for an offence and found either guilty or not guilty, and the offence involved a prescribed contravention, a monetary penalty may not be imposed.²⁹

5.12 At the conclusion of a sanction hearing the Inquiry Members shall issue their written decision, which will set out their findings, the sanctions, if any, imposed and the reasons for same.³⁰

²⁵ Section 33AQ of the Act

²⁶ See sections 33AS(1) and (2) of the Act

²⁷ Section 33AS(3) of the Act

²⁸ Section 33AT(1) of the Act

²⁹ Section 33AT(2) of the Act

³⁰ Section 33AQ(7) & (8) of the Act.

Appeal to the Irish Financial Services Appeals Tribunal

5.13 A decision of the Inquiry may be appealed by the regulated entity to the Irish Financial Services Appeals Tribunal (“**IFSAT**”) within 28 days of being notified of that decision, or within such time as agreed with the Registrar and Chairperson of IFSAT.³¹ IFSAT may confirm, alter, amend or set aside the decision of the Inquiry, or remit the matter back to the Inquiry for reconsideration, together with any recommendation or direction as to the matters to be reconsidered.

Appeal to the High Court

5.14 The regulated entity or the Central Bank may appeal the decision of IFSAT to the High Court within 28 days of being notified of the decision, or within such time as the High Court may allow.³² An appeal to the High Court does not affect the operation of the IFSAT decision appealed against, or prevent the taking of action to implement the decision, unless the High Court otherwise orders.³³

5.15 The High Court may make such order as it sees fit in light of its decision, including, but not limited to, affirming or setting aside the decision of IFSAT, or remitting the matter to IFSAT with such directions as it sees fit. The decision of the High Court is final, save that an appeal may be brought to the Supreme Court on a point of law only, with leave of either Court.³⁴

When a decision of the Inquiry takes effect

5.16 A decision by the Inquiry Members to impose a **caution or reprimand** will take effect:³⁵

- if no appeal is lodged with IFSAT within the period allowed, at the end of that period (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT);³⁶ or
- if an appeal is lodged with IFSAT and the decision is confirmed by

³¹ Section 57L(1) of the Act

³² Section 57AK of the Act

³³ Section 57AM of the Act

³⁴ Section 57AL(3) of the Act

³⁵ Section 33AW(1) of the Act

³⁶ Section 57L(2)(b) of the Act

IFSAT (with or without variation), at the time when the period allowed for lodging an appeal with the High Court has ended, no appeal against IFSAT's determination having been lodged within that period (28 days after the affected person is notified of IFSAT's decision or such extended period as the High Court allows);³⁷ or

- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is subsequently made to the High Court against IFSAT's determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is subsequently made to the High Court against IFSAT's determination, and withdrawn, at the time of withdrawal.

5.17 A decision by the Inquiry Members directing payment of a **monetary penalty, a refund of money or costs** will take effect:³⁸

- if the amount is not paid to the Central Bank within the period allowed for appeals against such a decision (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT), and no appeal to IFSAT is lodged (or having been lodged, is withdrawn), at the time when the decision is confirmed by an order of a court of competent jurisdiction;³⁹ or
- where an appeal is lodged with IFSAT and the decision is confirmed by that Tribunal (with or without variation), at the time when the period allowed for lodging an appeal against IFSAT's determination with the High Court has ended (28 days after the affected person is notified of IFSAT's decision or such extended period as the High Court allows), no appeal having been lodged within that period; or
- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is lodged with the High Court against IFSAT's determination and the determination is confirmed (with or without

³⁷ Section 57AK(3) of the Act

³⁸ Section 33AW(2) of the Act

³⁹ Section 33AW(2)(a) of the Act

variation), at the time of confirmation; or

- where an appeal is lodged with the High Court against IFSAT's determination and withdrawn, at the time of withdrawal.

5.18 **A disqualification direction** will take effect:⁴⁰

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

5.19 **Any other decision by the Inquiry Members** will take effect:⁴¹

- if no appeal against the decision is lodged with IFSAT within the period allowed, at the end of that period (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT); or
- if an appeal is lodged with IFSAT and the decision is confirmed by IFSAT (with or without variation), at the time when the period allowed

⁴⁰ Section 33AW(3) of the Act

⁴¹ Section 33AW(4) of the Act

for lodging an appeal with the High Court has ended, no appeal against IFSAT's determination having been lodged within that period (28 days after the affected person is notified of IFSAT's decision or such extended period as the High Court allows); or

- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is subsequently made to the High Court against IFSAT's determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is subsequently made to the High Court against IFSAT's determination, and withdrawn, at the time of withdrawal.

Publication

5.20 Where the Inquiry Members have found that a regulated entity is committing or has committed a prescribed contravention and/or the Inquiry Members have imposed a sanction, the Central Bank must, subject to paragraph 5.21, publish in such form and manner as it considers appropriate the Inquiry Members' findings and the particulars of the contravention(s)⁴², which will ordinarily include:

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

5.21 Where the Inquiry Members determine that any findings or details are of a confidential nature or relate to the commission of an offence against a law of the State or would unfairly prejudice a person's reputation, they may decide not to publish all or part of the decision.⁴³ The regulated entity shall be entitled to make submissions in this regard. Such submissions on publication shall not affect the timeframe within which the regulated entity must appeal the decision.

5.22 Separate to the publication of the Inquiry Members' findings, the Central

⁴² Section 33BC(1) and (2) of the Act.

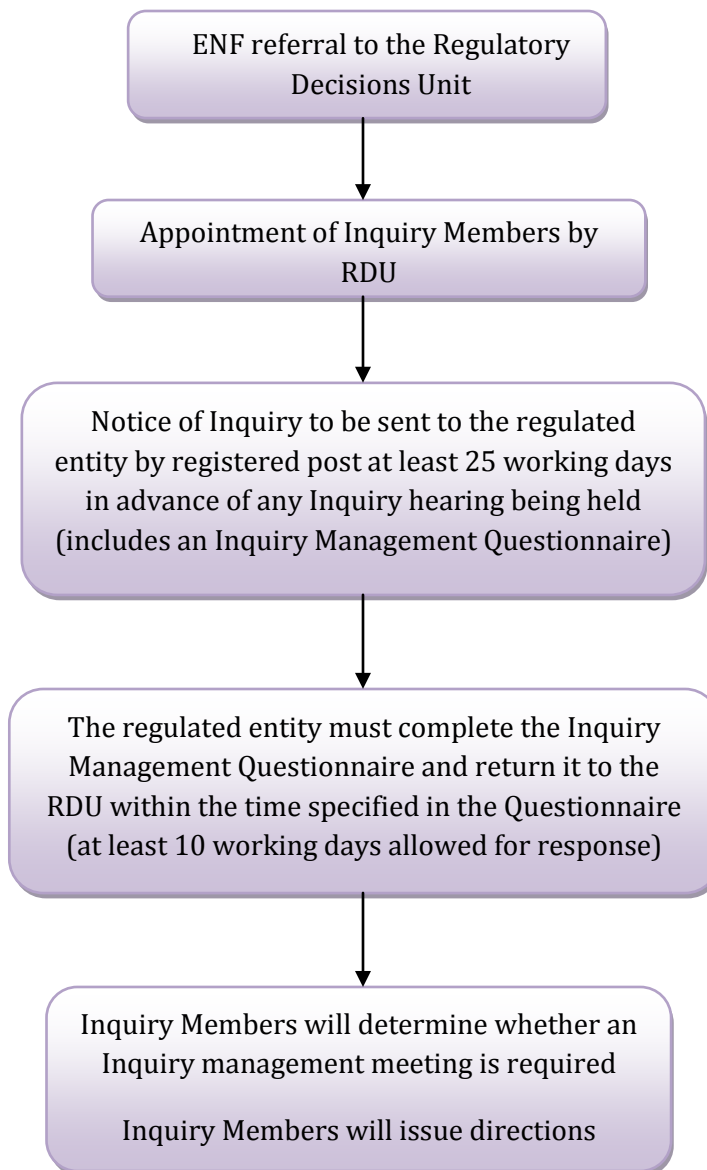
⁴³ Section 33BC(3) of the Act

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

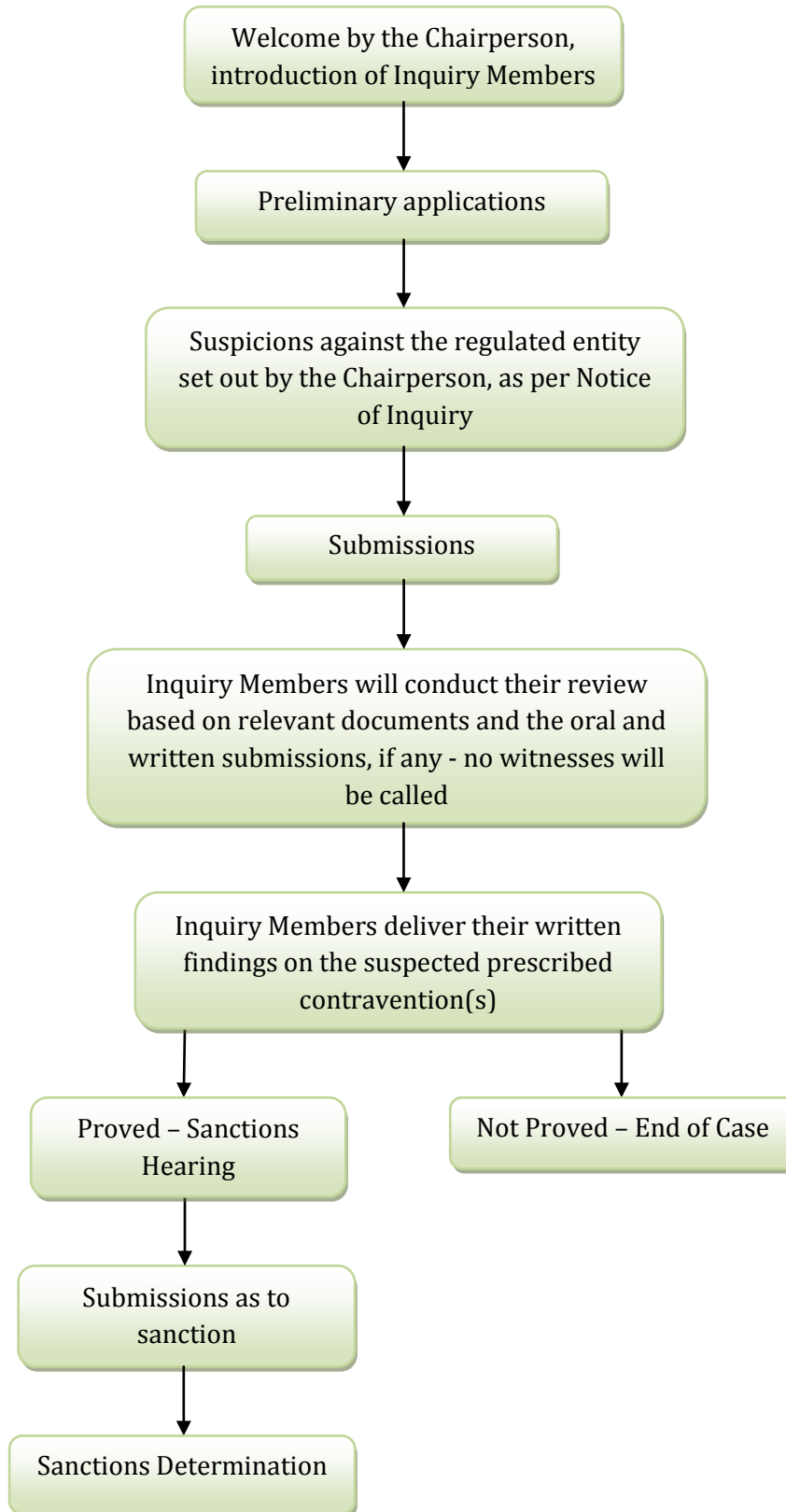
- 5.23 The Central Bank will publish annually, in summary form, information on its actions under Part IIIC of the Act⁴⁴, including on the decisions of any Inquiry conducted.

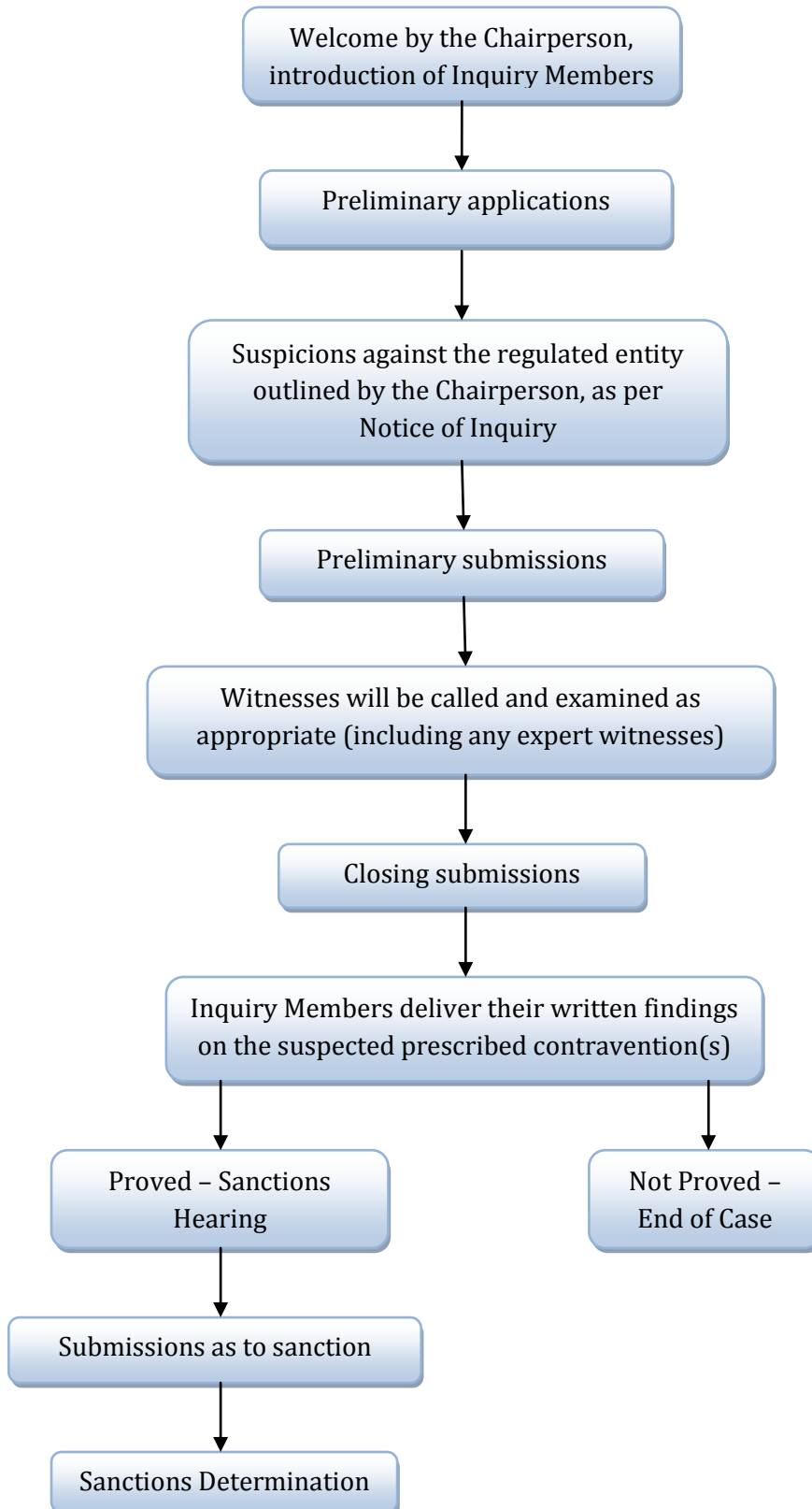
⁴⁴ Section 33BC(4) of the Act.

Appendix 1: Preliminary Inquiry Procedures



Appendix 2: Order of proceedings at hearing without oral evidence



Appendix 3: Order of proceedings at hearing with oral evidence

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