



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2013

## Feedback on CP65

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





## **Introduction**

The Central Bank of Ireland (**“the Central Bank”**) received and published five submissions<sup>1</sup> to Consultation Paper 65 on the proposed Inquiry Guidelines to be prescribed pursuant to section 33BD of the Central Bank Act 1942 (as amended) (**“the Guidelines”**).

The Central Bank welcomes the submissions. The submissions have proved useful in refining the approach adopted in respect of the Guidelines.

The attached Schedule captures the proposals and key recurring themes in the submissions, and sets out whether there was a change in the position ultimately adopted in the Guidelines in light of the submissions. It also states where guidance has been requested and provided. The key points made in the submissions are referred to in summary form here. The full text of the submissions (received as at 24<sup>th</sup> June 2013) is available on the Central Bank website.

Having considered the submissions received, the Central Bank has:

- noted the issues which were generally agreed;
- clarified the Guidelines where respondents sought more clarity and where we thought further clarity was needed;
- provided guidance where respondents sought guidance and where we thought guidance was needed;
- revised the Guidelines where we were persuaded by the rationale put forward by respondents; and
- retained core parts of the Guidelines which we are satisfied properly reflect the legislative and appropriate procedural scheme for Inquiries held under Part IIIC of the Central Bank Act 1942, (as amended) (**“the Act”**).

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<sup>1</sup> They can be broken down as follows:

- three law firms;
- two representative bodies.

Where matters have been raised which are outside of the scope of the Consultation, this has been indicated.

### **Schedule of feedback summarising key changes to the Guidelines following the Consultation**

The following table sets out on a section by section basis a description of the proposed Guidelines contained in the Consultation Paper, details of the number of submissions received on each section and details of any changes to the Guidelines on foot of the submissions received. We have omitted sections of the Consultation Paper where no comments were received.

Generally where more than one respondent commented on a particular section we have also included a brief synopsis of the recurring themes arising in the submissions.

Reference in this document to a "*paragraph*" is a reference to a paragraph in the Guidelines.

Reference in this document to a "*new paragraph*" is a reference to a paragraph in the Inquiry Guidelines which will shortly be prescribed by the Central Bank pursuant to section 33BD of the Act.

**Feedback on Consultation Paper**

<u>Para. No.</u>	<u>Content</u>	<u>Comment No.</u>	<u>No. of Comments received</u>	<u>Summary of key comments</u>	<u>Nature of change (if any)</u>
N/A	The Guidelines (generally)	1.	1	Further information should be provided for credit unions on the procedures and guidelines when finalised.	<p>The Inquiry Guidelines 2013 and the Outline of the Administrative Sanctions Procedure 2013 outline the procedures to be followed when a matter is under investigation and if a matter is referred to Inquiry. We do not anticipate publishing further general information at this time.</p> <p>It is possible to subscribe to email news and developments related to the Enforcement Directorate (“ENF”), further details can be found on the Central Bank website.</p>
		2.	2	The circumstances in which the Guidelines will be amended and where such amendments will be published should be set out.	It is not possible to prescribe with any certainty the circumstances in which it may be necessary to amend the Guidelines. The Central Bank will consult, where the Central Bank considers it appropriate, on any such

					changes in line with the Central Bank's Policy on Consultation <sup>2</sup> .
		3.	2	The Guidelines must be strictly adhered to and may not be departed from, save where amended in writing under section 33BD(3) of the Central Bank Act 1942 ( <b>"the Act"</b> ). It is unclear what procedures will apply if the Inquiry Guidelines are deemed not to be appropriate in an individual case.	The Central Bank has the power to prescribe guidelines for the conduct of Inquiries under Part IIIC of the Act, and may amend or revoke those guidelines at any time in writing. Having regard to section 33AY(1) and (2) of the Act, the Inquiry is to be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before it will allow. The Inquiry must also observe the rules of procedural fairness. The Guidelines have therefore provided that departure from their express terms may be required in certain instances where compliance with the Guidelines is not appropriate in the circumstances of the individual case. Any departure will be a matter of discretion for the Inquiry; however any departure would need to be in accordance with fair procedures,

<sup>2</sup> Available at: <http://www.centralbank.ie/regulation/poldocs/Documents/Consultation%20Protocol%20Final.pdf>

					and would need to be justified in the circumstances.
		<b>4.</b>	1	The role of ENF during the Inquiry procedure is not sufficiently clear in the Guidelines.	The role of ENF at Inquiry is to assist the Inquiry with its inquiries, as and when requested, as outlined in the Guidelines, (in particular see new paragraphs 2.11-2.13). ENF's role outside of the Inquiry is set out in more detail in the Outline of the Administrative Sanctions Procedure 2013.
<b>1.1</b>	Introduction	<b>5.</b>	1	A specific timeframe should be provided for the conduct of Inquiries.	The nature, scale and complexity of the matters before an Inquiry may vary significantly. It is therefore not possible to provide a specific timeframe for the conduct of Inquiries generally. However, Inquiries will be carried out with as much expedition as a proper consideration of the matters before the Inquiry will allow, in accordance with fair procedures.
<b>1.4</b>	Introduction	<b>6.</b>	1	What is the statutory basis for the use of the phrase " <i>regulated entities</i> ", in particular can it include " <i>present and former</i> " regulated entities?	The phrase " <i>regulated entity</i> " was constructed as shorthand for " <i>regulated financial service providers</i> " and " <i>persons concerned in the management of</i>

					<i>regulated financial service providers” collectively. Section 5 of the Central Bank (Supervision and Enforcement) Act 2013 (“the 2013 Act”) amends section 2 of the Act to clarify that “regulated financial service provider shall, unless the context otherwise requires, be read as including a person who was a regulated financial service provider at the relevant time”.</i>
<b>2.1</b>	Referral to Inquiry	<b>7.</b>	1	It is unclear if the regulated entity will be advised that a decision has been taken to hold an Inquiry.	A regulated entity will be notified of a decision to hold an Inquiry in the Notice of Inquiry, which will be sent to the regulated entity by the Regulatory Decisions Unit (“RDU”) following referral from ENF.
<b>2.2</b>	Referral to Inquiry	<b>8.</b>	1	A specific timeframe should be provided for ENF to inform the RDU of a decision to hold an Inquiry.	Where a decision is made to refer a matter to Inquiry, ENF will inform the RDU of this decision as soon as reasonably possible.
<b>2.4</b>	Appointment of Inquiry Members	<b>9.</b>	2	A timeframe should be provided for the appointment of the Inquiry Members.	Following the notification to the RDU of a decision to hold an Inquiry, the RDU will arrange for the appointment of Inquiry Members. This will be done with as much expedition as possible, taking



					into account the relevant enquiries which will need to be made of any prospective Inquiry Members, including in relation to any potential conflicts of interest (see new paragraph 2.5). It should be noted, in any event, that no Inquiry may commence before the Inquiry Members have been appointed.
		<b>10.</b>	2	The appointment of a “sole member” to an Inquiry may not be appropriate. A minimum of three members should be provided for.	The nature, scale and complexity of the matters before an Inquiry may vary significantly. It may be appropriate in certain circumstances to appoint a sole member to an Inquiry. It is therefore proposed to retain this flexibility in the Guidelines.
		<b>11.</b>	2	Specific provision should be made providing that Inquiry Members will not have had any prior involvement in the matters subject to Inquiry, in particular the ability of internal employees of the Central Bank to be Inquiry Members should be limited. Further, specific requirements in relation to independence, expertise and experience of Inquiry Members should apply.	It is confirmed that any Inquiry Members will not have had any prior involvement in the matters which are the subject of the Inquiry. This requirement applies equally to both internal and external Inquiry Members. Persons will be appointed as Inquiry Members on the basis of their expertise and/or experience to perform this particular function.

2.5	Appointment of Inquiry Members	12.	2	What is the procedure for challenging the appointment of Inquiry Members on the basis of perceived bias? The regulated entity should be notified of the Inquiry Members prior to Inquiry.	The regulated entity will be notified of the Inquiry Members when it is sent the Notice of Inquiry and accompanying documentation. Any issues with the Inquiry Members should be raised in the Inquiry Management Questionnaire, and may be subsequently raised at an Inquiry Management meeting.
		13.	1	It is unclear to whom individual confirmations in relation to conflicts of interest are provided.	Any proposed Inquiry Members will be required to inform the Central Bank in writing of any potential conflicts of interest. This statement will be provided by the RDU to the regulated entity together with the Notice of Inquiry The Guidelines have been amended to reflect this (see new paragraph 3.1).
2.6	Appointment of Inquiry Members	14.	1	Will a multi-member Inquiry require there to be an odd number of Inquiry Members or will the Chairperson have a casting vote?	We anticipate that a multi-member Inquiry will comprise an odd number of Inquiry Members.
2.7	Appointment of Inquiry Members	15.	1	Inquiry Members should not meet with supervisory or ENF staff without the regulated entity being offered the	Paragraph 2.7 of the Guidelines provides expressly that, once appointed, Inquiry Members will not meet with, correspond

				<p>opportunity to be present and seven days' notice be given for such a meeting.</p>	<p>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. Where such a meeting is proposed it will be a matter for the Inquiry to offer the regulated entity an opportunity to attend. However the amount of notice which may be given in relation to such a meeting is a matter of discretion for the Inquiry, to be exercised in accordance with fair procedures.</p>
<b>2.10</b>	Regulatory Decisions Unit	<b>16.</b>	1	<p>Can members of staff previously engaged in supervision or authorising the regulated entity, or involved through ENF, provide administrative support as part of the RDU, and can such staff be Inquiry Members.</p>	<p>Members of staff previously engaged in the supervision or authorisation of the relevant regulated entity will not act as Inquiry Members.</p> <p>The RDU is a separate unit within the Central Bank. The RDU will have no role in deciding matters before the Inquiry and the RDU staff assigned to an Inquiry will have had no prior involvement in the subject matter of the Inquiry or the supervision or authorisation of the regulated entity.</p>

2.11	Enforcement	17.	1	How does the assistance to be provided by ENF interact with the requirement that ENF not meet with, correspond or discuss matters relating to the Inquiry with Inquiry Members? Does this mean that all information in paragraph 2.11 will be available to a regulated entity?	ENF will be present at an Inquiry to provide assistance to the Inquiry as and when requested. This may involve providing information in relation to any of the matters set out in paragraph 2.11. Where such information is provided to the Inquiry, this will also be provided to the regulated entity in the interests of fair procedures. The Guidelines have been amended to reflect this (see new paragraph 2.12).
		18.	1	Any legal interpretation put forth by ENF under paragraph 2.11(iii) is only ENF's view and is not definitive. The Guidelines should reflect that alternative interpretations could be put forth by the regulated entity.	The regulated entity will be afforded an opportunity to respond (see new paragraph 2.12).
		19.	1	It is imperative that the regulated entity should have full and complete access to the materials gathered by ENF at the Inquiry stage.	It is agreed that a regulated entity should be provided with sufficient information to allow it to respond to any allegations at Inquiry. The Notice of Inquiry will be accompanied by a copy of all documentation provided to the RDU by ENF at the time of referral (see paragraphs 2.3 and 3.1). If the regulated

					entity requires further documentation it may raise this at the Inquiry Management stage.
<b>2.13</b>	Legal Representation	<b>20.</b>	1	Regulated entities should be able to choose to be represented by a legal practitioner or any other person(s).	New paragraph 2.14 mirrors section 33AY(4) of the Act which provides that a regulated entity is entitled to be represented at the Inquiry by a legal practitioner, or, with leave of the Inquiry, by any other person.
		<b>21.</b>	1	In what circumstances might leave for a non-legal practitioner to represent a regulated entity be refused?	This is a matter of discretion for the Inquiry, to be exercised in accordance with fair procedures. It is not possible, to state in the abstract the particular circumstances where it may be appropriate for the Inquiry to refuse leave for a non-legal practitioner to represent a particular regulated entity.
<b>3.1</b>	Notice of Inquiry	<b>22.</b>	1	The on-going obligation for the RDU and ENF to provide the regulated entity and the Inquiry with all further relevant information which becomes available should be expressly stated.	Should further relevant information come to the attention of ENF during the course of the Inquiry it will be provided to the Inquiry. The Guidelines have been amended to reflect this (see new paragraph 2.13).

		<b>23.</b>	1	The argument required to match the facts to the law should be provided at the outset rather than left to the conduct of the Inquiry.	The Investigation Report, which the regulated entity will receive with the Notice of Inquiry, will clearly set out the suspected prescribed contraventions and facts supporting these suspicions.
		<b>24.</b>	1	The period of 25 working days for the Notice of Inquiry may not be sufficient.	It is considered that 25 working days is sufficient time to prepare as the Notice of Inquiry will have been preceded by substantive engagement between the regulated entity and ENF in relation to the suspected contraventions. It should also be noted that the period of 25 days represents the minimum notice period, and longer periods may be granted in more complex cases. Whether further time will be afforded may be dealt with at the Inquiry Management meeting, and will be a matter of discretion for the Inquiry, to be exercised in accordance with fair procedures.
<b>3.2</b>	Notice of Inquiry	<b>25.</b>	1	Further clarification should be provided on who can attend Inquiry Management meetings.	Save for the regulated entity, the identity of persons who may attend Inquiry Management meetings will be a matter for the Inquiry. The regulated entity will of course be present at any Inquiry Management meeting, and a representative of ENF will also attend

					(see new paragraph 2.13). If the Inquiry Management meeting is being held in public then any member of the public may attend.
		<b>26.</b>	1	Inquiry Management meetings should be held in private.	As the Inquiry Management meeting forms part of the Inquiry, it will generally be held in public in accordance with section 33AZ of the Act. However the Inquiry Members may agree to hold the Inquiry Management meeting in private, (see new paragraph 3.2). Whether the Inquiry Management meeting will be held in public or private is a matter of discretion for the Inquiry, to be exercised in accordance with section 33AZ of the Act and fair procedures.
		<b>27.</b>	1	An appeal mechanism or right of redress should be provided for when an Inquiry decides that it should be held in public.	The decision to hold all or part of an Inquiry in private is a matter of discretion for the Inquiry, to be exercised in accordance with section 33AZ of the Act and fair procedures. It is a matter for the regulated entity to decide what legal action to take if the Inquiry Members refuse to hold the Inquiry in private.

		<b>28.</b>	1	Provision should be made for an Inquiry to change from public to private during its course.	The Inquiry has the power to hold all or part of the Inquiry in public or private. The Inquiry may, at any time, decide to change its approach in light of the particular materials or matters to be heard (see section 33AZ(3) of the Act). New paragraph 3.2 has been amended to clarify this.
<b>3.3</b>	Inquiry management	<b>29.</b>	1	The period of 10 working days for response to the Inquiry Management Questionnaire may not be sufficient.	It is considered that 10 working days is sufficient time to prepare as the Inquiry Management Questionnaire will have been preceded by substantive engagement between the regulated entity and ENF in relation to the suspected contraventions. It should also be noted that the period of 10 working days represents the minimum notice period, and longer periods may be granted where requested. Whether further time will be afforded will be a matter of discretion for the Inquiry, to be exercised in accordance with fair procedures.
<b>3.5</b>	Inquiry	<b>30.</b>	1	Provision should be made in the	Whether an Inquiry Management



	management			Guidelines for the Inquiry Members to direct and hold an Inquiry Management Meeting if requested by the regulated entity.	meeting is required will be a matter of discretion for the Inquiry, to be exercised in accordance with fair procedures.
		<b>31.</b>	1	Further details of the Inquiry Management meeting should be provided.	The exact details of an Inquiry Management meeting will be a matter for the Inquiry and will vary in individual circumstances, depending on the matters raised in the Inquiry Management Questionnaire.
<b>3.7</b>	Inquiry management	<b>32.</b>	1	The Inquiry should have the power to issue directions to ENF as well as the regulated entity to ensure the efficient running of the case.	The Inquiry may request ENF to provide it with any information, documentation or materials which it requires. ENF will provide such assistance as requested by the Inquiry in a timely and comprehensive manner.
<b>4.1</b>	Form and order of proceedings	<b>33.</b>	1	It is problematic that an Inquiry could make findings against a regulated entity without the rules of evidence being applied.	Section 33AY(2) of the Act provides that the Inquiry is not bound by the rules of evidence, but shall observe the rules of procedural fairness. All efforts have been made to ensure that fair procedures are afforded to the regulated entity in the presentation of evidence before the Inquiry, including the ability to cross-examine and make submissions

					on matters before the Inquiry.
<b>4.2</b>	Form and order of proceedings	<b>34.</b>	1	The Guidelines should provide a mechanism for the protection of confidential information should the Inquiry be held in public.	See response to question 28 above.
<b>4.4</b>	Standard of proof	<b>35.</b>	1	The criminal standard of beyond reasonable doubt, rather than the civil standard, should apply to Inquiries.	The standard of proof to be applied at Inquiry is on the balance of probabilities. This is consistent with the civil nature of the proceedings.
<b>4.9</b>	Commencement of Inquiry hearing	<b>36.</b>	1	Where substantive amendments are required to the suspicions against a regulated entity, there should be a discretion for the Inquiry to adjourn, rather than a compulsory adjournment.	The question of whether the Inquiry will in fact be adjourned will be a matter of discretion for the Inquiry, to be exercised in accordance with fair procedures. New paragraph 4.8 contains an amendment to clarify this.
<b>4.12</b>	Hearing with oral evidence	<b>37.</b>	1	A stenographer should be provided for all Inquiry hearings, not just those where oral evidence is adduced.	Agreed. New paragraph 3.5 clarifies this point.
<b>4.13</b>	Procedures for the taking of evidence	<b>38.</b>	3	Does the regulated entity have a right to call witnesses in support or rebuttal of its case?	As the Inquiry is inquisitorial in nature all witnesses are called by the Inquiry. The regulated entity is however provided with an opportunity to indicate to the Inquiry which witnesses

					may provide pertinent evidence before the Inquiry in the Inquiry Management Questionnaire, and may make submissions at any point during the Inquiry in relation to the hearing of particular witnesses (including requesting a witness in support or rebuttal of matters before the Inquiry). The decision to call a particular witness to appear before the Inquiry is, however, a matter of discretion for the Inquiry, to be exercised in accordance with fair procedures.
<b>4.18</b>	No oral hearing or evidence	<b>39.</b>	1	Provision should be made that Inquiry Members will proceed to hear oral submissions and/or evidence where asked to do so by the regulated entity.	A regulated entity may make submissions at any point during the Inquiry on the manner in which submissions and evidence should be heard. However, the manner in which submissions and evidence are made is ultimately a matter of discretion for the Inquiry, to be exercised in accordance with fair procedures.
<b>4.19</b>	Referral to the High Court on a point of law	<b>40.</b>	1	Clarification should be provided on who pays costs in the event of a referral to the High Court on a point of law.	This is a matter for the courts and is therefore outside of the scope of the Guidelines.

4.22	Applications for an adjournment to pursue settlement	41.	1	In the context of settlement, please define “ <i>completion of Inquiry</i> ”.	In accordance with section 33AV(3)(b) of the Act, the Central Bank may enter into settlement with a regulated entity “ <i>after the beginning (but not after completing) ... an inquiry</i> ”. An Inquiry is considered to be complete once the Inquiry Members issue their written findings, see paragraph 4.2.5 of the Outline of the Administrative Sanction Procedure 2013.
4.23	Applications for an adjournment to pursue settlement	42.	1	Details of any settlement reached during an Inquiry should be disclosed to the Inquiry Members in the interests of transparency.	The Central Bank’s settlement policy and procedures are set out more fully in Part 4 of the Outline of the Administrative Sanctions Procedure 2013. The Central Bank will issue a public statement at the conclusion of a settlement. The Inquiry will be made aware of this public statement.
		43.	2	The Guidelines should confirm that settlement discussions are on a “ <i>without prejudice</i> ” basis and as such will not be referred to the Inquiry.	This is confirmed. Settlement discussions are held between the regulated entity and ENF; the Inquiry has no role in settlement, save that it may be informed that discussions are underway so as to facilitate an adjournment where appropriate, see new paragraph 4.24. Discussions in

					<p>pursuance of settlement are conducted on a “<i>without prejudice basis</i>”. The Central Bank’s settlement policy and procedures are set out more fully in Part 4 of the Outline of the Administrative Sanctions Procedure 2013.</p>
		<b>44.</b>	1	<p>The Guidelines should expressly provide that settlement may be instigated by the regulated entity as well as the Central Bank.</p>	<p>The regulated entity may indicate its willingness to settle at any point before the conclusion of the Inquiry to ENF. The Central Bank’s settlement policy and procedures are set out more fully in Part 4 of the Outline of the Administrative Sanctions Procedure 2013.</p>
<b>5.3</b>	Written findings	<b>45.</b>	1	<p>A specific timeframe should be provided within which the Inquiry Members should be required to set out their findings.</p>	<p>Given that Inquiries may involve varying levels of evidence and/or complexity and/or allegations it would be inappropriate to impose a strict time limit in this regard. The procedure adopted is nonetheless designed to ensure that the regulated entity is kept appraised of the situation.</p> <p>The written findings will be delivered to the regulated entity as soon as available and the regulated entity will be kept informed of any delays in the</p>

					preparation of the written findings (see paragraph 5.3).
<b>5.8</b>	Sanctions	<b>46.</b>	1	When calculating any monetary penalty, due consideration should also be had to the amount of any direction to pay all or part of the Central Bank's costs incurred in holding the Inquiry and investigating the matter. In particular the combined sum should not be of such an amount to cause the regulated entity to cease business or be declared bankrupt.	In imposing sanctions, the Inquiry will take into account all of the circumstances of the case, and will have regard to the totality of sanctions proposed to be imposed. Under section 33AS of the Act, the Inquiry may not impose a monetary penalty which is likely to cause a regulated entity to cease business or be declared bankrupt.
		<b>47.</b>	1	The Guidelines should clearly state the exposure of the regulated entity in relation to the costs of the Inquiry specifically where only a caution or reprimand is issued.	Sections 33AQ(3)(f) and 33AQ(5)(e) of the Act provide that where the Inquiry has found that a contravention has been committed it may direct the payment of all or part of the costs of investigating holding the Inquiry by the regulated entity.
		<b>48.</b>	1	Discretion should be afforded to the Inquiry to deal with costs, particularly <i>"where there is some blatant flaw in the Central Bank's case"</i> .	The Act does not provide for a costs order in favour of a regulated entity where the Inquiry finds that the regulated entity did not commit the suspected contraventions.
		<b>49.</b>	1	The scope of the Central Bank's ability to	See responses 47 and 48 above.

				order costs is unclear.	
5.9	Sanctions	50.	1	When considering the appropriate sanctions, regard should be had to any admissions made by the regulated entity in the context of settlement.	<p>All settlement will be conducted by ENF on behalf of the Central Bank. The Inquiry Members will have no involvement in settlement and will only be informed of the fact of the settlement discussions and their outcome, so as to facilitate any adjournment required (see new paragraph 4.24). Without prejudice correspondence is appropriate so that the regulated entity is not prejudiced during settlement negotiations. It would not be appropriate to place admissions made on a “without prejudice” basis before the Inquiry.</p> <p>It might also be noted that should the regulated entity wish to admit the contraventions, but does not accept the proposed sanction at settlement, an Inquiry may be heard into sanctions only under section 33AR of the Act.</p>
		51.	1	Recognition should be given to the voluntary nature of the Board of Directors for credit unions, in particular setting “a lower ceiling of accountability	Whilst all of the circumstances of the regulated entity will be taken into account in determining sanctions, and the voluntary nature of a regulated

				<i>for volunteers”.</i>	entity’s position may be a relevant consideration in this regard, the question of accountability for a particular prescribed contravention is a matter for the relevant financial services legislation, and is not a procedural matter which could be prescribed in the Guidelines pursuant to section 33BD of the Act.
<b>5.11</b>	Sanctions	<b>52.</b>	1	Does the prohibition in section 33AT of the Act apply where sanctions are agreed at settlement rather than following an Inquiry?	Section 33AT of the Act applies if the Central Bank imposes a monetary penalty in accordance with section 33AQ or 33AR and the prescribed contravention in respect of which the sanction is imposed is an offence under a law of the State, the financial service provider or other person concerned is not liable to be prosecuted or punished for the offence under that law. Further, where a regulated entity has been charged with having committed an offence under a law of the State and has either been found guilty or not guilty of having committed the offence, and the offence involves a prescribed contravention, the Central Bank may not



					impose a monetary penalty on the regulated entity in accordance with section 33AQ or 33AR of the Act.
<b>5.16</b>	When a decision of the Inquiry takes effect	<b>53.</b>	1	Will a decision take effect pending an appeal before the Supreme Court?	This is a matter for the Courts and is therefore outside the scope of the Guidelines.
<b>5.20</b>	Publication	<b>54.</b>	1	The Inquiry's decision should not be published before all avenues of appeal have been exhausted.	Subject to section 33BC(4) of the Act, the Inquiry is required to publish its decision where it finds that a regulated entity has committed a prescribed contravention. Further, transparency requires that the decision be public. Any errors or other matters contained in the decision can be subjected to appeals, whose decisions will also be public. It is a matter for the regulated entity to decide what legal action to take if it considers that the Inquiry's decision should not be published following Inquiry.

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