



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Administrative Sanctions Procedure Guidelines

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Preface

Under the 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 (November 2014)
- Outline of the Administrative Sanctions Procedure (2018)
- ASP Sanctions Guidance (November 2019)

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

Part 1: Introduction

This Part gives an overview 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 13 December 2023. From that date, the Guidelines apply to the following:
 - All investigations commenced on or after 19 April 2023.¹
 - Subject to the transitional provisions in section 93 of the 2023 Act and to paragraph 4, all investigations commenced before 19 April 2023 that were ongoing on 13 December 2023.
 - Inquiries where the Notice of Inquiry was issued on or after 19 April 2023.

¹ 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 13 December 2023 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 (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 **Glossary** is to the Glossary of terms and statutes included in the Appendix of the Guidelines (see Table 8).
 - 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.
 - 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 terms **information** and **document** include “record” as defined in section 2 of the 1942 Act.
 - The term **inquiry** refers to an inquiry under the ASP as detailed in Part 4 (Inquiry), and **inquiry hearing** should be construed accordingly. Refer to Glossary.

- The term **investigation**, and any variation or derivation of that term, refers to an investigation under the ASP as detailed in Part 3 (Investigation). 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 (Sanction). 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 (Settlement), 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

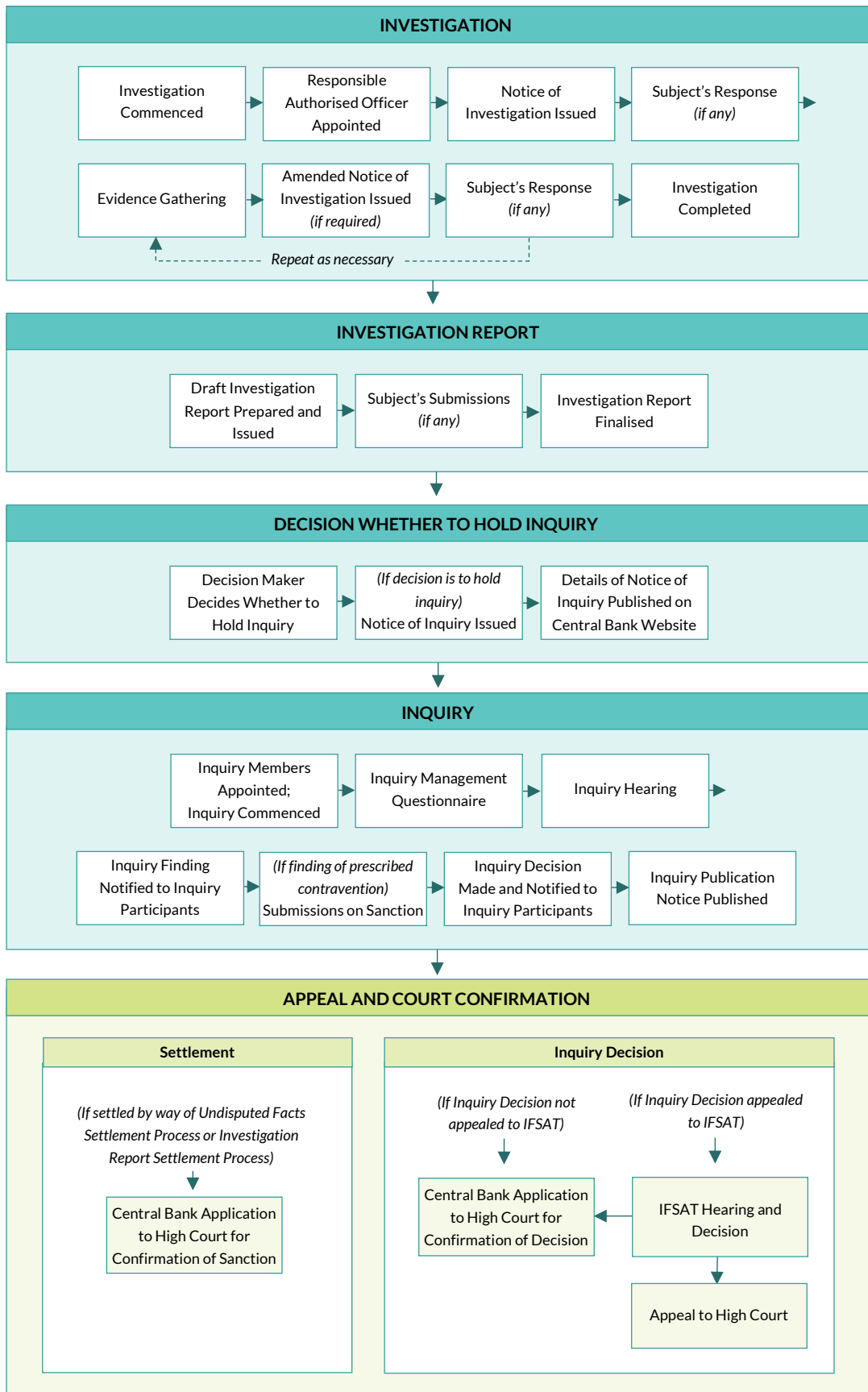
17. Under the ASP, the Central Bank has the power to investigate a prescribed contravention committed by a firm or individual, to impose a sanction in respect of a prescribed contravention, and to publicise its findings in this regard and the details of any sanction imposed.
18. Where the Central Bank 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. All investigations are confidential and all information and/or material related to an investigation is confidential information. Persons who receive confidential information are required to comply with their legal obligations in this regard.
20. The Central Bank will appoint a Responsible Authorised Officer with responsibility for 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.
21. During an investigation, the Central Bank will gather information and/or evidence. The Central Bank may conduct interviews with witnesses, who may include the Subject.
22. The Central Bank may resolve an investigation 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.

23. Settlement with a Subject may occur in a number of ways and at various stages of the process during both investigation and inquiry. 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).
24. When an investigation is completed, the Responsible Authorised Officer will prepare a Draft Investigation Report. The Draft Investigation Report (including the materials that form part of it) will be provided to the Subject, who will be invited to make submissions within a specified period. Having considered any such submissions, the Responsible Authorised Officer will make any revisions to the report that in their opinion are warranted. The Responsible Authorised Officer will then finalise the report.
25. The Final Investigation Report (including the materials that form part of it), and any submissions received from the Subject in relation to the Draft Investigation Report, will be referred to a Central Bank decision maker. The decision maker will have had no involvement in carrying out the investigation. If, having considered the Final Investigation Report and submissions, the 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).
26. 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.

27. 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.
28. There is a statutory presumption that inquiries will 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.
29. 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. An Inquiry Decision may be appealed to the Irish Financial Services Appeals Tribunal (IFSAT). See Part 7 (Confirmation by High Court and Appeal).
30. Following the issue of an Inquiry Decision in which the Inquiry Member(s) have made findings that a prescribed contravention has been committed, and subject to any appeal, the Central Bank will apply to the High Court for confirmation of the findings and sanctions (if any) to be imposed. Where the matter 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).
31. The Central Bank will publish annually, in summary form, information on its actions under the ASP.
32. A diagram illustrating the key processes under the ASP is included below.

ASP Process Diagram



SETTLEMENT PROCESSES

At the Central Bank's discretion, settlement may be available at different stages of an ASP matter.

See Part 5 for details on the Central Bank's settlement processes.

6. Single Supervisory Mechanism

33. 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.
34. 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

35. 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.
36. In accordance with the 1942 Act, the Central Bank has the power to institute summary proceedings for certain breaches of financial services legislation. 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 imposed under the ASP pursuant to sections 33AQ or 33AR of the 1942 Act.
37. Where circumstances suggest that a criminal offence and a prescribed contravention may arise from the same set of facts, investigations by relevant authorities may be carried out in parallel. However, 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.

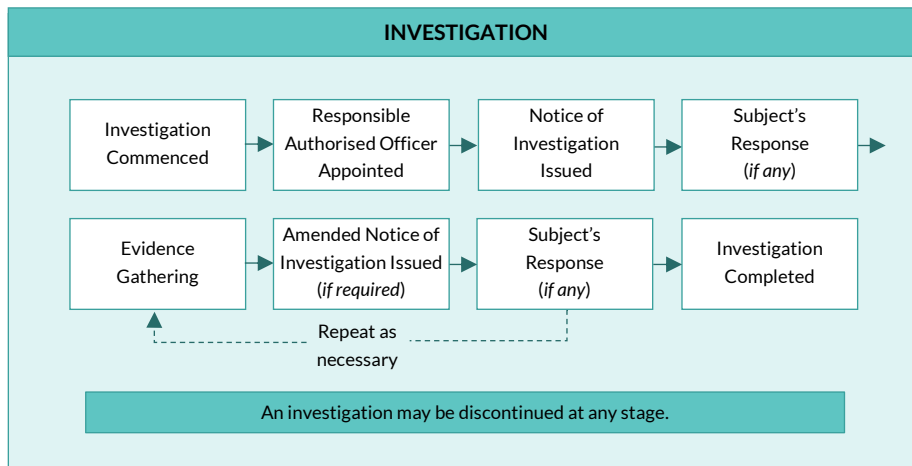
Part 3: Investigation

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. In general, a Subject remains under the 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. A diagram illustrating the investigation process is included below.

Investigation Process Diagram



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 and the relevant prescribed contravention, 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.

10. Responsible Authorised Officer

45. Following a decision being made by the Central Bank to carry out an investigation, a Responsible Authorised Officer will be appointed. The Responsible Authorised Officer is the authorised officer with responsibility for a particular investigation. In general, the Responsible Authorised Officer will be a member of Enforcement.
46. The main responsibilities of the Responsible Authorised Officer are as follows:
- In relation to a **Notice of Investigation**:
 - Issuing the Notice of Investigation and any amended Notice of Investigation.

- Determining the period within which any response of the Subject to the contents of a Notice of Investigation will be taken into account.
- Including with a Notice of Investigation a copy of such materials relating to the prescribed contravention, and the conduct of the Subject, as the Responsible Authorised Officer considers appropriate.
- Taking such steps as they consider reasonable to **keep the Subject informed as to the progress** of an investigation.
- Where an **investigation is discontinued**, giving the Subject notice in writing of, and the reason for, the discontinuance as soon as practicable.
- In relation to a **Draft Investigation Report**:
 - Preparing a Draft Investigation Report as soon as practicable when an investigation is completed and after considering all required matters (see Section 16 (Investigation Report)).
 - Including in the Draft Investigation Report any material that 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 to hold an inquiry.
 - Giving a copy of the Draft Investigation Report to the Subject, together with a copy of section 33ANK of the 1942 Act and a notice in writing stating that the Subject may make submissions in writing on the Draft Investigation Report within the period stated.
 - Considering any request received from the Subject for an extension of time for making submissions in response to the Draft Investigation Report.
 - Considering any request received from the Subject for further information and/or documents following the Subject's receipt of the Draft Investigation Report.

- In relation to a **Final Investigation Report**:
 - Finalising the Final Investigation Report as soon practicable having considered any submissions made by the Subject on the Draft Investigation Report and having made any revisions to the report that in the opinion of the Responsible Authorised Officer are warranted.
 - Including in the Final Investigation Report any material that 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 to hold an inquiry.
 - Providing a copy of the Final Investigation Report, and a copy of any submissions made by the Subject on the Draft Investigation Report, to the Subject and to the Central Bank's decision maker appointed to decide whether to hold an inquiry.
- 47. The Responsible Authorised Officer will carry out their duties fairly and proportionately, in accordance with the applicable legislation, and having regard to the particular circumstances of the investigation.
- 48. The Responsible Authorised Officer also has a role in relation to the confidentiality of the investigation and the investigation report process, as explained below.

11. Confidentiality

Investigation and Investigation Report Process

- 49. The Central Bank may provide confidential information to any person for the purposes of an investigation (for example, for the purposes of an interview or for the purposes of an information request); or for the purposes of the investigation report process (see Section 16 (Investigation Report)). The person to whom the Central Bank provides such confidential information is referred to in this context as "the recipient".
- 50. In general, the Responsible Authorised Officer will notify the recipient that the relevant information is confidential. However, all investigations are confidential and all

information and/or material related to an investigation is confidential information.

51. Where the Central Bank provides confidential information to a recipient, the recipient must not disclose that information unless authorised to do so by the Central Bank in writing or required to do so by law.² A failure by a recipient to comply with their legal obligations in relation to confidentiality could have serious consequences, including those set out at paragraphs 57 and 58 (Failure to Comply).
52. The recipient is not prevented from disclosing the confidential information to their legal representative.
53. The Central Bank will authorise disclosure where it is considered reasonably necessary in the circumstances. Any request by a recipient for such authorisation will be considered by the Central Bank in a timely manner.

Final Investigation Report

54. In addition, the legislation imposes an obligation on any person who receives a copy of a Final Investigation Report (which includes any materials provided with it) or related submissions not to disclose the existence of or content of that report or those submissions unless authorised to do so by the Central Bank in writing or required to do so by law.³ See paragraph 107 et seq. for further information in relation to the Final Investigation Report. A failure by a person to comply with this obligation may have serious consequences including those set out at paragraphs 57 and 58 (Failure to Comply).
55. The person is not prevented from disclosing the Final Investigation Report or related submissions to their legal representative.
56. The Central Bank will authorise disclosure where it is considered reasonably necessary in the circumstances. Any request by a person for such authorisation will be considered by the Central Bank in a timely manner.

² Section 33ANL of the 1942 Act.

³ Section 33ANK of the 1942 Act.

Failure to Comply

57. A failure by a person to comply with their legal obligations in relation to confidentiality could have serious consequences, including the following:
- Non-compliance may constitute a prescribed contravention in itself.
 - 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.
 - Non-compliance in the case of a Subject may be an aggravating factor taken into account in determining any sanction that may be imposed on the Subject.
58. In addition, a person who, without reasonable excuse, discloses the existence of or content of a Final Investigation Report (which includes any materials provided with it) or related submissions, may be guilty of a criminal offence.⁴

12. Notice of Investigation

59. As soon as practicable after a decision is made by the Central Bank to carry out an investigation, the Responsible Authorised Officer will provide the Subject with a Notice of Investigation.
60. The Notice of Investigation will be in writing. It will be provided in electronic form and will include 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. While the Responsible Authorised Officer may include copies of any such material, circumstances could arise where the Responsible Authorised Officer may not consider it appropriate to do so. For example, where the

⁴ Section 33ANK(9) of the 1942 Act.

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.

- 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 period stated in the Notice of Investigation or such longer period as the Responsible Authorised Officer may allow.

61. The Guidelines will also be notified to the Subject.
62. Any responses from the Subject to the Notice of Investigation should be full and complete and should be provided in open correspondence and not on a “without prejudice” basis.

Amended Notice of Investigation

63. 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 60), 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.
64. An amended Notice of Investigation will include the statements and materials described in paragraph 60 in relation to the Notice of Investigation.

Progress of Investigation

65. 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.

13. Gathering Evidence

66. 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.
67. When attending interview, an interviewee may be, though is not expected or required to be, accompanied by an independent legal representative. The role of such a representative is advisory only and they will not be permitted to respond to questions on behalf of the interviewee.
68. To enable the Central Bank to carry out the investigation in an effective and timely manner, a Subject or any other person who receives an information request from the Central Bank must submit considered, accurate and timely responses to the information request. The Central Bank expects recipients of information requests to engage and cooperate fully with the evidence gathering process. A failure by a Subject to do so may be considered an aggravating factor when determining any sanction that may be imposed (see Part 6 (Sanction)). Further, a failure by a Subject or any other recipient of an information request to engage and fully cooperate 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

69. Any timeframe set by the Central Bank for complying with an information request must be complied with.

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

Use of Information

72. Information gathered in the course of an investigation can be used by the Central Bank in the performance of any of its statutory functions. Examples of such uses include, but are not limited to, the following:
- Uses in relation to Central Bank investigations such as when interviewing witnesses, who may include past or present employees of a firm. Such investigations include the investigation in which the information was gathered; any other ASP investigation whether related or not; and any other kind of investigation carried out by the Central Bank.
 - The preparation of a Draft Investigation Report and Final Investigation Report when an investigation is completed.
 - Uses in other contexts, such as the following:
 - Any inquiry, whether or not such inquiry is subsequent to, or otherwise related to, the investigation in which the information was gathered.

- Any appeal to the Irish Financial Services Appeals Tribunal or any application to the High Court.
- The Central Bank's authorisation, supervision, and fitness and probity functions.

14. Privilege

Legal Professional Privilege

73. 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.
74. 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.
75. 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 on a voluntary basis.

Disclosure Agreement

76. Under a voluntary disclosure agreement, the privilege owner opts to waive legal professional privilege on a limited basis 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.

77. If the Central Bank considers a disclosure agreement to be appropriate in a particular investigation, any such 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 for any other purpose specified in the agreement. Some examples of such uses include, but are not limited to, the following:
- Uses in relation to Central Bank investigations such as when interviewing witnesses, who may include past or present employees of a firm. Such investigations include the investigation in which the information was gathered; any other ASP investigation whether related or not; and any other kind of investigation carried out by the Central Bank.
 - The preparation of a Draft Investigation Report and a Final Investigation Report when an investigation is completed.
 - Uses in other contexts, such as the following:
 - Any inquiry, whether or not such inquiry is subsequent to, or otherwise related to, the investigation in which the information was gathered.
 - Any appeal to the Irish Financial Services Appeals Tribunal or any application to the High Court.
 - The Central Bank's authorisation, supervision, and fitness and probity functions.
78. Statutory protection is provided to the legal privilege in the disclosed material.⁵ 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

⁵ Section 34A of the 2013 Act.

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

79. All proceedings of an investigation, including any statement or submission made by or on behalf of any person in the course of the investigation, and all communications of an authorised officer (including the Responsible Authorised Officer) in relation to 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 16 (Investigation Report) for further details in relation to the investigation report process.

15. Options During an Investigation

80. 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 do any of the following:
- 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 appointed to decide whether to hold an inquiry.

- Discontinue the investigation.

81. Supervisory action, settlement and discontinuance are outlined below in this Section. The preparation of an investigation report and the decision whether to hold an inquiry are detailed in Sections 16 (Investigation Report) and 17 (Deciding Whether to Hold an Inquiry).

Supervisory Action

82. 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

83. 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.

84. There are three distinct settlement processes:

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

85. 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

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

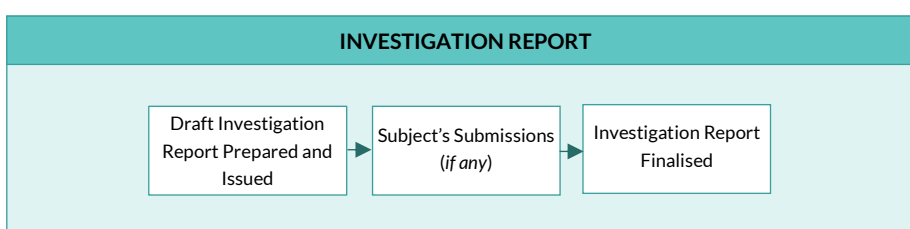
87. When an investigation is discontinued in respect of all prescribed contraventions, the Responsible Authorised Officer will inform the Subject of this as soon as practicable by notice in writing.

88. 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.
89. 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.
90. 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.

16. Investigation Report

91. A diagram illustrating the investigation report process is included below.

Investigation Report Process Diagram



Confidentiality of Report

92. As noted in Section 11 (Confidentiality), all investigations are confidential and all information and/or material related to an investigation is confidential information. This includes all information and/or material relating to the investigation report process. See Section 11 for further information in relation to legal obligations concerning confidentiality and the potentially serious consequences of failing to comply with those obligations.
93. Section 11 also provides further information in relation to the legal obligation on persons who receive a copy of a Final Investigation Report (which includes any materials provided with it) or related submissions not to disclose the existence of or content of that report or those submissions save in certain circumstances provided for in legislation. A failure to comply with this obligation may constitute a criminal offence.⁶

Draft Investigation Report

94. When the Central Bank has completed an investigation, the Responsible Authorised Officer will prepare a Draft Investigation Report as soon as practicable.
95. The Draft Investigation Report will set out details of the investigation and include an outline of the prescribed contravention. 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 or

⁶ Section 33ANK(9) of the 1942 Act.

statement made by the Subject during the course of the investigation.

96. The Draft Investigation Report will include material that, 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 to hold an inquiry. Such material may include documents and other information.
97. The Responsible Authorised Officer will, in deciding whether material is relevant in this regard, bear in mind that material may be relevant either because it supports or because it undermines that a prescribed contravention has been committed.
98. The Draft Investigation Report will outline how the Responsible Authorised Officer identified the relevant material for the purposes of preparing the Draft Investigation Report.
99. The Responsible Authorised Officer will provide the Draft Investigation Report to the Subject in electronic form, together with 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 within the period stated in the notice.⁷ The period stated will vary from case to case but will not be less than 7 days. The period stated will be set by the Responsible Authorised Officer following consideration of matters such as the complexity of the issues, the contents of the Draft Investigation Report, the period necessary to give the Subject a fair opportunity to respond, and the timely progression of the investigation report process.

⁷ The legislation provides that the period stated in the notice shall be either 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 person an opportunity to respond. The Central Bank expects that a period of longer than 7 days will be necessary in most cases.

Timeframe for Making Submissions

100. 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.
101. 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 considering any request for an extension, the Responsible Authorised Officer will have regard to the length of the period that was stated in the notice provided with the Draft Investigation Report referred to in paragraph 99. In the event that an extension is granted, the Responsible Authorised Officer will issue a written notice specifying the revised timeframe for making submissions.
102. 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

103. 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.
104. 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.
105. 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.

106. 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

107. Following the consideration of any submissions made, the Responsible Authorised Officer will make any revisions to the Draft Investigation Report that may, in the opinion of the Responsible Authorised Officer, be warranted. The Responsible Authorised Officer will then finalise the investigation report. Any response of the Responsible Authorised Officer to the Subject's submissions will be incorporated in the Final Investigation Report together with any revisions made.
108. 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.
109. 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, if any, and subject to the receipt of any further information and/or clarifications that the Responsible Authorised Officer may have requested from the Subject.
110. The Final Investigation Report will include an outline of the prescribed contravention and may include material that, in the

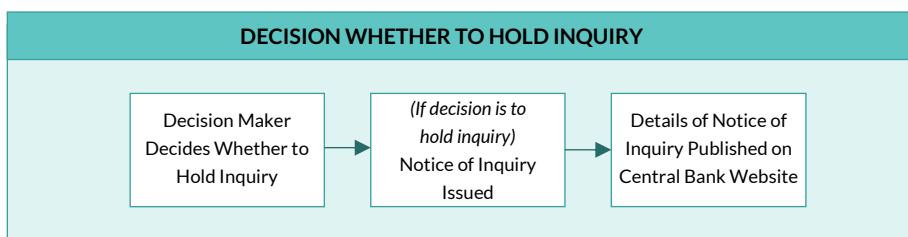
opinion of the Responsible Authorised Officer, is relevant to the consideration of the Final Investigation Report by the Central Bank's decision maker appointed to decide whether to hold an inquiry. Such material may include documents and other information.

111. The Responsible Authorised Officer will, in deciding whether material is relevant in this regard, bear in mind that material may be relevant either because it supports or because it undermines that a prescribed contravention has been committed. The Final Investigation Report will outline how the Responsible Authorised Officer identified the relevant material for the purposes of preparing the Final Investigation Report.
112. 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 to hold an inquiry. See Section 17 (Deciding Whether to Hold an Inquiry).
113. 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 and submissions have been provided to the decision maker.

17. Deciding Whether to Hold an Inquiry

114. A diagram illustrating the decision process and certain steps that may follow it is included below.

Decision Process Diagram



115. The Central Bank will appoint a decision maker to decide whether to hold an inquiry.
116. The decision maker will have had no involvement in carrying out the investigation. The decision maker will consider the Final Investigation Report and any submissions made by the Subject on the Draft Investigation Report and determine whether there are reasonable grounds to suspect that the Subject has committed a prescribed contravention.
117. The 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.
118. 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 32 (Inquiry to Determine Sanctions Only).

18. Notice of Inquiry

119. Where a decision has been made to hold an inquiry, Enforcement will issue a Notice of Inquiry to the Subject in advance of the commencement of the inquiry. Enforcement will also send a copy of the Notice of Inquiry to the Regulatory Decisions Unit (RDU) as registrar to the inquiry.
120. The Notice of Inquiry will include the following:
 - Details of the suspected prescribed contravention.

- The grounds on which the Central Bank’s suspicions are based.

121. 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. See Section 32 (Inquiry to Determine Sanctions Only).
122. 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.
123. Inquiry Hearing Notices 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. A notice will also be placed on the Central Bank’s website advising of the date, time and location of the hearing.

Part 4: Inquiry

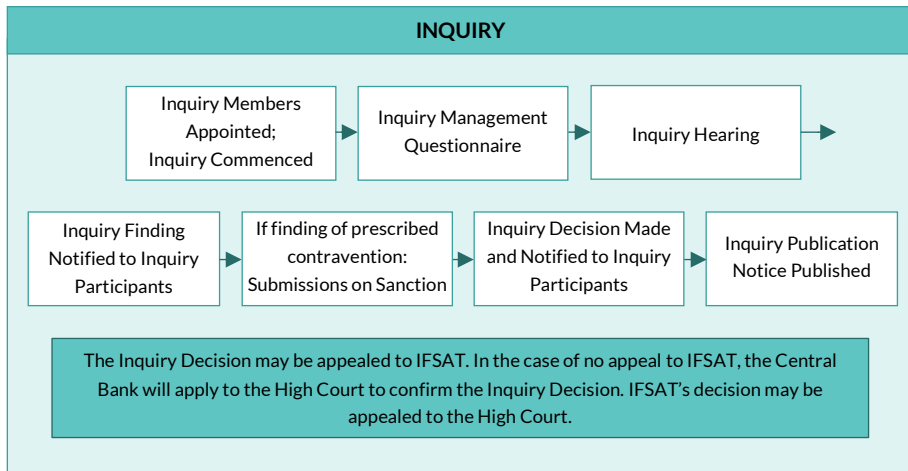
If, following an investigation, we suspect the commission of a prescribed contravention, we may hold an inquiry. This Part explains our inquiry process.

19. Introduction

124. 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.
125. The purpose of the inquiry (other than an inquiry to determine sanctions only – see Section 32) will be to determine whether or not the Subject has committed a prescribed contravention.
126. 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.
127. 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.
128. 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.

129. A diagram illustrating the inquiry process is included below.

Inquiry Process Diagram



130. 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.

20. Inquiry Members

Appointment of Inquiry Members

131. 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.
132. Prior to a member of the Regulatory Decisions Panel being appointed as an Inquiry Member, the member will be required to review relevant inquiry information and sign a declaration confirming that they are not aware of any actual or potential conflicts. Inquiry Members are under a continuing obligation to notify RDU as soon as they become aware of any actual or perceived conflict arising during an inquiry.

Functions and Powers of Inquiry Members

133. 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.
134. 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.
135. 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.
136. 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. This role will be carried out by Enforcement.

Inquiry Chair

137. Certain functions and powers at inquiry may only be exercised by the person presiding at inquiry⁸, which role will be held by the Inquiry Chair.
138. Where the Central Bank appoints a committee of Inquiry Members, a legally qualified chairperson will be appointed to act as the Inquiry Chair.
139. Where there is an uneven number of Inquiry Members appointed, any decisions made by them can be made by simple

⁸ 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.

majority. If for any reason there is an even number of Inquiry Members, the Inquiry Chair will have a casting vote, where necessary.

140. Where the Central Bank appoints a sole Inquiry Member, that person will be the Inquiry Chair. There is no requirement that a sole Inquiry Member be legally qualified. All Inquiry Members may seek legal advice from their legal advisors, as outlined below.

Replacement of Inquiry Member

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

21. Inquiry Participants

Enforcement

142. 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

143. 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.
144. The Subject may choose to be 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.
145. 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 157).

22. Other Inquiry Roles

Regulatory Decisions Unit (RDU)

146. 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.
147. 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

148. 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.
149. 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.
150. 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

151. 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.

152. 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.
153. 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

154. 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. See paragraphs 218 to 220 (Disclosure of Confidential Information).
155. 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.
156. 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.
157. 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 to

attend to give evidence, with a flat rate payment for expenses (i.e. a viaticum).

23. Commencing an Inquiry

Referral to Inquiry

158. 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.
159. RDU will write to the Inquiry Participants to confirm the appointment and identity 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.
160. RDU will also place a notice on the Central Bank's website confirming that an inquiry has commenced and identifying the Inquiry Members who have been appointed. 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

161. 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 107 et seq. (Final Investigation Report) for further details) and any submissions made by the Subject on the Draft Investigation Report.
162. A Subject will already have been given access to these documents before the commencement of an inquiry.

Inquiry Management Questionnaire

163. 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.
164. 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.
165. 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 to the Inquiry Members for permission to deliver their delayed response.
166. 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 accepts in the Final Investigation Report and what 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.

24. Inquiry Procedure

Paperless Inquiry

167. 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

168. 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.

169. 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.
170. 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.
171. Where a third party firm has succeeded in their application for a role in an inquiry (see paragraph 151 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

172. 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.
173. 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.
174. 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.

Inquiry Hearing Notice

175. Where the Inquiry Members have decided to hold a hearing (including an Inquiry Management Meeting), the Inquiry Members will issue an Inquiry Hearing Notice, 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.

176. A notice will be placed 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.
177. If the hearing or part of the hearing is to be held in private, a notice will be placed 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

178. 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

179. Similar to proceedings of an investigation, 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.⁹

Confidentiality

180. Where confidential information is provided to an Inquiry Participant and/or any other person for the purposes of an inquiry, the recipient must not disclose such information to any person unless authorised to do so by the Central Bank in writing or required by law to do so. The recipient is not prevented from disclosing information to their legal

⁹ Section 33BG of the 1942 Act.

representative. A failure to comply with these legal obligations may constitute a criminal offence.¹⁰

Obstructive Behaviour

181. 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.

182. 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 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.

25. Inquiry Management Meeting

Purpose

183. On receipt of the completed Inquiry Management Questionnaire, the Inquiry Members will consider the responses and determine whether an Inquiry Management Meeting is required.
184. 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

¹⁰ Section 33AZB of the 1942 Act.

- 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.

185. 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

186. 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.
187. The Inquiry Members may also inform the Inquiry Participants of the matters which they wish to have addressed at the Inquiry Management Meeting.
188. 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 204 et seq. (Application for Inquiry to be Held other than in Public).
189. 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.
190. 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.

191. Further information on the types of procedural applications and process for making such applications is outlined at Section 26 (Procedural Applications).

Directions

192. 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.

193. 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.

194. 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.

195. 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

196. 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.

197. 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.
198. 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.
199. 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.
200. 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.

26. Procedural Applications

Process for Making Procedural Applications

201. 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.
202. 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.

203. 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

204. There is a statutory presumption that all inquiries will be held in public.¹¹
205. 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 so agree.
206. 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.
 - A person's reputation would be unfairly prejudiced unless the hearing is held in private (or part in private).¹²
 - To maintain the confidentiality of legally privileged material disclosed to the Central Bank pursuant to any disclosure agreement.¹³
207. 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).
208. Irrespective of whether an inquiry is being held in public or private, the Inquiry Members may direct that any directions,

¹¹ Section 33AZ(1) of the 1942 Act.

¹² Section 33AZ(2) of the 1942 Act.

¹³ Section 34A(5) of the 2013 Act.

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.

209. 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

210. A Subject will have been provided with information and/or documents during the course of an investigation and in the context of an investigation report. It is expected that all requests for information and/or documents will have been made before the commencement of the inquiry.
211. However, a Subject may apply to the Inquiry Members for a direction that Enforcement make a further disclosure of information and/or documents.
212. 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.
213. 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.

214. 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

215. In their responses to the Inquiry Management Questionnaire (see paragraph 163 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.

216. 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

217. 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 at paragraph 213.

Disclosure of Confidential Information

218. 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.
219. In this regard, the Subject must seek written authorisation from the Inquiry Members prior to disclosing that confidential information to a witness. A Subject who discloses such confidential information without written authorisation is guilty of an offence.¹⁴
220. Where either Inquiry Participant discloses confidential information to a witness, such disclosure is on a confidential basis.

Application to Admit Documentary Evidence

221. 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.¹⁵ 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.
222. 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.

¹⁴ Section 33AZB of the 1942 Act.

¹⁵ Section 33BAA of the 1942 Act.

Applications for Adjournment

223. 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

224. 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. The settlement process will be operated by Enforcement. See Part 5 (Settlement).
225. Where a Subject wishes to settle the matter immediately prior to or during the course of the inquiry, the Subject and/or their 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.
226. 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

227. 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.

228. 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.
229. 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.

27. Inquiry Hearing

Form of Inquiry Proceedings

230. 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.
231. 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.
232. Further detail is set out below on how an inquiry may proceed using one of these three 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.
233. 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

234. 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

235. 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.
236. 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

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

Taking of Oral Evidence

238. As outlined at paragraph 215, 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

239. 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.

28. Witnesses

Summoning of Witnesses

240. 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.
241. 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

242. 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.
243. 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."

244. The wording of the affirmation will be as follows:

"I, [name], 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."

245. 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.

246. 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.

247. 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.

29. Concluding an Inquiry

248. 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.

249. 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.

250. 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.

251. 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.
252. The right to appeal arises when the Inquiry Members notify the Inquiry Decision to the Subject.¹⁶
253. Further detail on the concluding stages of an inquiry is outlined below.

30. Inquiry Finding

Standard of Proof

254. 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

255. 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.
256. 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.
257. 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.

¹⁶ Section 33AQ(8A) of the 1942 Act.

Notification

258. As soon as the Inquiry Finding has been finalised, the Inquiry Members will deliver it to the Inquiry Participants.
259. 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.
260. 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).

31. Determination of Sanction

Submissions on Sanction

261. 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.
262. 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.
263. 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

264. 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

265. 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.
266. 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

267. 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 45 (Available Sanctions).
268. 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.
269. The Inquiry Members will also have regard to the sanctioning factors set out in Part 6 (Sanction) and in the 1942 Act.¹⁷
270. 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 33 (Inquiry Decision).

32. Inquiry to Determine Sanctions Only

271. 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 118 regarding the decision whether to hold an inquiry).¹⁸ 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 18 (Notice of Inquiry).
272. The inquiry will commence on the day on which the Inquiry Members are appointed.

¹⁷ Section 33ARA of the 1942 Act.

¹⁸ Section 33AR(2)(b) of the 1942 Act.

273. 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.
 - The Final Investigation Report and/or a statement setting out the facts agreed between the Subject and Enforcement.
274. 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 those required for the determination of sanctions following a full, substantive inquiry as outlined in Section 31 (Determination of Sanction), including whether such hearing should be held otherwise than in public.

33. Inquiry Decision

Form of Inquiry Decision

275. Once the Inquiry Members have determined the issue of sanctions, if any, they will prepare the Inquiry Decision.
276. The Inquiry Decision will contain either or both of the following:
- The Inquiry Finding previously issued by the Inquiry Members in accordance with Section 30 (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

277. The Inquiry Members will then deliver the Inquiry Decision to the Inquiry Participants.

278. 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.
279. 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 Inquiry Publication Notice.
 - Invitation to make submissions on the draft Inquiry Publication Notice, if the Inquiry Members consider it necessary to do so.
280. 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.

34. Publication

Central Bank Approach

281. 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 notice will be issued at the conclusion of all inquiries.

Inquiry Publication Notice

Publication of Finding of Prescribed Contravention

282. 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.
283. 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.¹⁹
284. As outlined at paragraph 279, when the Inquiry Members notify the Inquiry Decision to the Inquiry Participants, they will also do the following:

¹⁹ 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.

- 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.

285. 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 283.
286. 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.
287. 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 of the 1942 Act 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

288. As a matter of law, there is no requirement on the Central Bank to publish a notice at the conclusion of an inquiry where the Inquiry Members have made a finding that no prescribed contravention has been committed. Nevertheless, it is expected that the Inquiry Members will issue a public notice in these circumstances. The Inquiry Members will determine the final form and content of any such public notice.

Commentary on Inquiry Outcomes

289. Separate to the publication of information relating to the Inquiry Members' findings, the Central Bank may provide commentary on the outcome of the inquiry, whether or not the Inquiry Members have made a finding that a prescribed contravention has been committed. Any such commentary may address, for example, how the case corresponds with the Central Bank's objectives. The wording of any such commentary is a matter for the Central Bank alone.

Part 5: Settlement

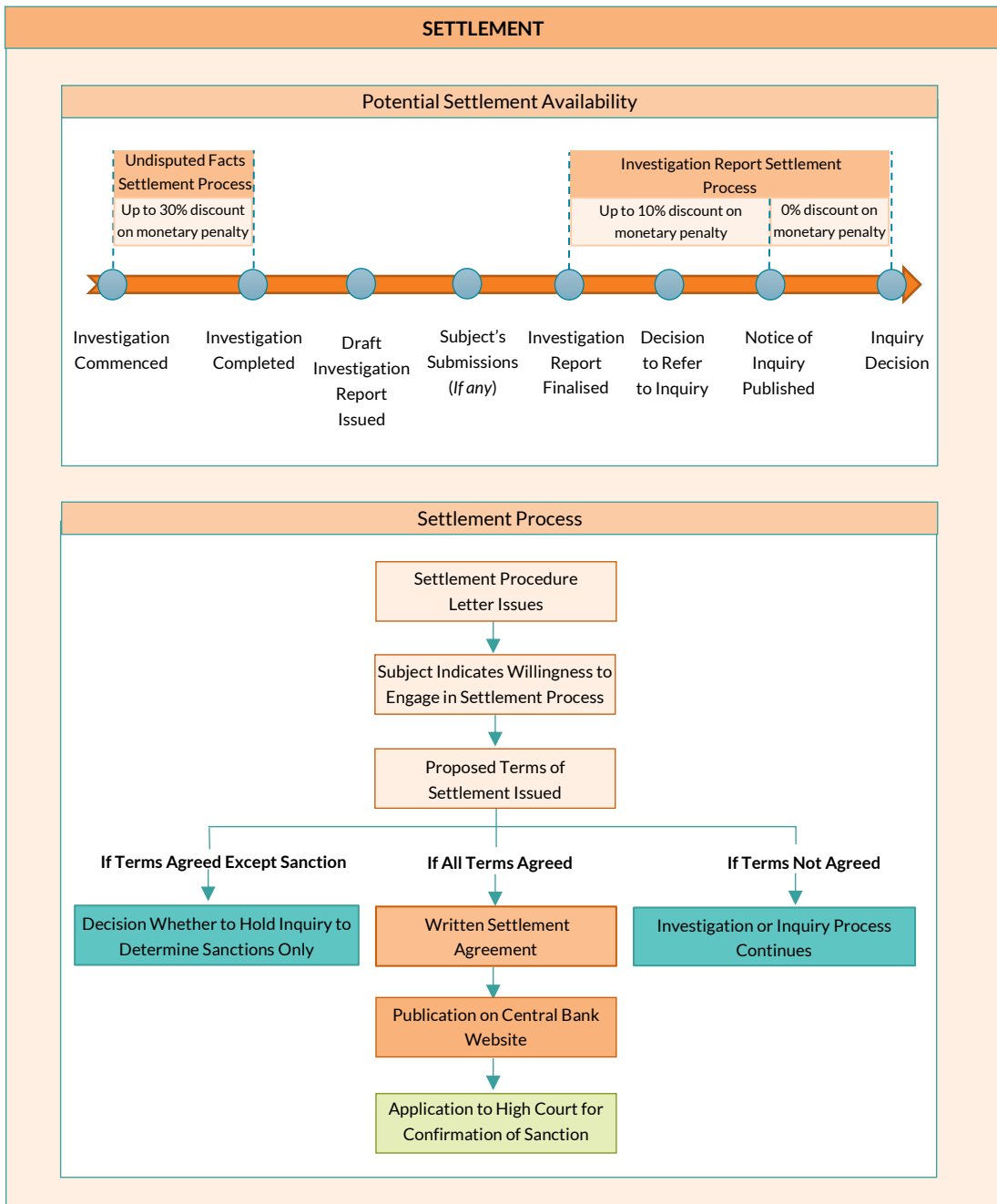
We may seek the early resolution of an ASP matter by settlement with a Subject where we consider it appropriate and in the public interest to do so. This Part explains our settlement processes.

35. Introduction

290. 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 41 (Finalising Settlement and Settlement Agreement).
291. 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.
292. There are three distinct settlement processes:
- Undisputed Facts Settlement Process
 - Investigation Report Settlement Process
 - No Admissions Settlement Process
293. The settlement processes are operated by Enforcement. Further detail on the settlement processes is set out in this Part and a diagram is included below (excluding the No

Admissions Settlement Process, which is expected to arise seldom in practice).

Settlement Processes Diagram



36. Central Bank Approach

294. 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.

295. 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 of the Central Bank including the effective use of time and resources and the minimisation of costs.
296. 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. The Central Bank will determine in its sole discretion whether a particular matter is appropriate for settlement irrespective of the stage that the matter has reached and irrespective of whether there has been prior engagement in one of the settlement processes.
297. 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.
298. 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).

299. 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.
300. 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.
301. 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.

37. Settlement Scheme

302. As noted above, 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.

303. 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 36 (Central Bank Approach), a discount may be applied to any monetary penalty under the Central Bank’s settlement scheme.
304. 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. The maximum percentage discount for monetary penalties which may be available in cases where a settlement agreement is concluded, is 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%

305. 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. Engagement in any one of the settlement processes does not give rise to an entitlement to engage in any of the other settlement processes.

306. 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.
307. 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.

38. Undisputed Facts Settlement Process

308. In this Section, a reference to a Subject is to an Investigation Subject only.
309. 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, the agreed facts and the sanction proposed.

Commencement of Process

310. Following the commencement of an investigation the Central Bank may issue a Settlement Procedure Letter to the Subject offering the possibility of settlement under the Undisputed Facts Settlement Process. Any such letter will be issued on a “without prejudice” basis and will set out a timeframe within which the Subject should reply. Such a letter will 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.
311. When a Subject has responded to the Settlement Procedure Letter in writing indicating a willingness to engage in the Undisputed Facts Settlement Process, the Central Bank may provide the Subject with a letter setting out the proposed terms of settlement under this process. The proposed terms will set out the details of the prescribed contravention and the facts to be agreed with, and admitted by, the Subject; the proposed sanction; and any potential discount offered under the settlement scheme (where the proposed sanction is a monetary penalty). The proposed terms will also include a requirement to consent to the proposed sanction and to acknowledge the proposed publication by the Central Bank of the details of the admitted prescribed contravention, the agreed facts and the sanction proposed in a public statement. The proposed terms will be on a “without prejudice” basis and will stipulate the date by which the settlement must be concluded.

312. The Central Bank will only be minded to amend the prescribed contravention, facts or sanction as set out in the proposed terms where the Subject can satisfy the Central Bank of a legal or evidential justification to do so.

Application of Settlement Scheme

313. 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 37 (Settlement Scheme).
314. In order to avail of a discount, the Subject will be required to conclude settlement within the timeframe stipulated in the letter setting out the proposed terms of settlement.
315. Where the Undisputed Facts Settlement Process has not concluded within the stipulated timeframe, that settlement process will no longer be available to the Subject. Rather, the Central Bank will continue working towards completion of the investigation.

Conclusion of Process

316. Where a settlement has been concluded under the Undisputed Facts Settlement Process, the Central Bank will promptly publish a statement. The public statement will note that any sanction imposed is subject to confirmation by the High Court.
317. 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 42 (Publication) and Section 49 (Confirmation by High Court) for further information.

39. Investigation Report Settlement Process

318. 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.

319. 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.
320. 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 107 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 contravention 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 sanction proposed by the Central Bank.
 - The Subject has acknowledged the proposed publication of the details of the admitted prescribed contravention, the agreed facts and the sanction proposed.

Commencement of Process

321. After the Central Bank has considered the Final Investigation Report and any submissions from the Subject, the Central Bank may issue a Settlement Procedure Letter to the Subject offering the possibility of settlement under the Investigation Report Settlement Process. Any such letter will be issued on a

“without prejudice” basis and will set out a timeframe within which the Subject should reply.

322. When a Subject has responded to the Settlement Procedure Letter in writing indicating a willingness to engage in the Investigation Report Settlement Process, the Central Bank may provide the Subject with a letter setting out the proposed terms of settlement under this process. The proposed terms will set out the details of the prescribed contravention and the facts to be agreed with, and admitted by, the Subject; the proposed sanction; and any potential discount offered under the settlement scheme (where the proposed sanction is a monetary penalty). The proposed terms will also include a requirement to consent to the proposed sanction and to acknowledge the proposed publication by the Central Bank of the details of the admitted prescribed contravention, the agreed facts and the sanction proposed in a public statement. The proposed terms will be on a “without prejudice basis” and will stipulate the date by which the settlement must be concluded.
323. The Central Bank will only be minded to amend the prescribed contravention, facts or sanction as set out in the proposed terms where the Subject can satisfy the Central Bank of a legal or evidential justification to do so.

Application of Settlement Scheme

324. 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 37 (Settlement Scheme).
325. In order to avail of a discount, the Subject will be required to conclude settlement within the timeframe stipulated in the letter setting out the proposed terms of settlement.
326. Where the Investigation Report Settlement Process has not concluded within the stipulated timeframe, that settlement process will no longer be available to the Subject. Rather, the

Central Bank may decide to refer the matter to inquiry and proceed to issue a Notice of Inquiry.

327. 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

328. Where a settlement has been concluded under the Investigation Report Settlement Process, the Central Bank will promptly publish a public statement. The public statement will note that any sanction imposed is subject to confirmation by the High Court.
329. 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 42 (Publication) and Section 49 (Confirmation by High Court) for further information.

40. No Admissions Settlement Process

330. 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 sanctioned 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.

331. 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.
332. 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 contravention 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 contravention is 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.

333. The greater the extent to which factors such as those in paragraph 332 are present, the less likely it will be that the No Admissions Settlement Process will be appropriate.

334. 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 by the Central Bank of details of the prescribed contravention, even though this is neither admitted nor denied, and the sanction proposed.

335. 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.

336. Once a settlement has concluded under the No Admissions Settlement Process, the Central Bank will promptly publish a public statement. See Section 42 (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.

41. Finalising Settlement and Settlement Agreement

337. 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.
338. 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.
339. 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.
340. 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.

341. 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.
342. 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 32 (Inquiry to Determine Sanctions Only).
343. A settlement agreement will form part of a Subject's compliance record.
344. 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.
345. 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.
346. 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.
347. Previous settlement agreements may be taken into account in determining appropriate sanctions in other enforcement actions involving the Subject.

42. Publication

348. The Central Bank expects that a public statement will be issued in all concluded settlement processes. A subject will

have the opportunity to engage on the public statement prior to the conclusion of settlement.

349. 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.
350. Details of enforcement actions concluded by way of the various settlement procedures are available on the Central Bank's website.
351. 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. 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.

Commentary on Settlement Outcomes

352. Separate to the publication of a public statement following a settlement, the Central Bank may provide commentary on the outcome of the settlement. Any such commentary may address, for example, how the case corresponds with the

Central Bank's objectives. The wording of any such 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.

43. Introduction

353. 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.
354. In this Part, all references to the Central Bank include the Inquiry Members.
355. 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 38), the Investigation Report Settlement Process (Section 39), or at inquiry (Part 4) are subject to confirmation by the High Court (Section 49).
356. 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.

44. Central Bank Approach

357. 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 financial regulation

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

General Principles

358. 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

359. When determining sanctions, the Central Bank has a duty to act proportionately. This means deciding on the appropriate sanction (if any) 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

360. 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

361. The Central Bank may determine that no sanction or 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 and proportionality of each sanction individually and as part of the overall suite of sanctions to be imposed.

General Approach to Sanctioning

362. 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.

363. In considering these matters, the Central Bank will have regard to a range of sanctioning factors set out in Section 46 (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, of deterrent effect and appropriate in their totality.

45. Available Sanctions

364. The availability of particular sanctions depends on a number of factors, including the following:

- Whether the Subject is a firm or individual.
- Whether the Subject is a firm authorised by the ECB.
- Whether a given prescribed contravention is a contravention of a provision of an EU financial services regulatory framework to which distinct sanctions apply as prescribed under the relevant framework. See paragraph 369 (Sanctions Prescribed by Certain EU Regulatory Frameworks).

Firms and Individuals

365. The Central Bank may impose one or a combination of the following sanctions on a firm or individual:²⁰

- **A caution or reprimand.** The Central Bank considers a reprimand to be a more significant sanction than a caution and will generally publish the fact that a reprimand is being imposed.

²⁰ Sections 33AQ(3) and (5) of the 1942 Act.

- 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.²¹ 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.²²
- A direction to **cease committing the prescribed contravention**.
- 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

366. In addition to the sanctions at paragraph 365, 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

367. In addition to the sanctions at paragraph 365, the Central Bank may impose one or a combination of the following sanctions on an individual:

- For prescribed contraventions that occurred on or after 19 April 2023, 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,

²¹ Section 33AQ(4) of the 1942 Act.

²² Section 33AQ(4) of the 1942 Act.

specified controlled function(s), or specified part(s) of controlled function(s).

- For prescribed contraventions that occurred on or after 19 April 2023, 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. Where a prescribed contravention occurred prior to 19 April 2023, the Central Bank may impose a direction disqualifying an individual from being concerned in the management of a regulated financial service provider for such period as is specified in the direction.

Firms Authorised by the ECB

368. In addition to the sanctions at paragraph 365, 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

369. 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 may be imposed are those prescribed by such EU frameworks.

46. Sanctioning Factors

370. 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 94 et seq.).
- The conduct of a firm or individual during and after the commission of a prescribed contravention (see Table 3 at page 99 et seq.).
- The previous record of a firm or individual (see Table 4 at page 109 et seq.).
- Other relevant considerations (see Table 5 at page 111 et seq.).

371. The majority of sanctioning factors apply to both firms and individuals. However, the legislation prescribes certain sanctioning factors that are relevant to individuals only.²³ These factors are identified as such in the tables below.²⁴ There are no factors that apply solely to firms.

372. 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.²⁵

373. As set out in paragraph 369 (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 may be 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.

²³ Section 33ARA of the 1942 Act.

²⁴ See Factor 12 of Table 2 (Nature, Seriousness and Effect Factors) and Factors 4 and 5 of Table 5 (Other Relevant Considerations).

²⁵ Section 33ARA of the 1942 Act.

Nature, Seriousness and Effect

374. The Central Bank will assess the seriousness of the prescribed 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.	<p>Whether the prescribed contravention or conduct by the firm or individual was intentional, negligent or dishonest.²⁶</p> <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>Whether the prescribed contravention or conduct by the firm or individual was reckless.</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>The duration of the prescribed contravention on the part of the firm or individual.²⁷</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</p>

²⁶ Section 33ARA(1)(a)(iii) of the 1942 Act.

²⁷ Section 33ARA(1)(a)(v) of the 1942 Act.

	or which occurred for a short duration can also be serious, depending on other factors and its effect.
4.	<p>Whether there is more than one prescribed contravention, or repeated commission of a prescribed contravention by a firm or individual.²⁸</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 prescribed contravention can be serious depending on other factors and its effect.</p>
5.	<p>Any benefit gained or loss avoided by the firm or individual or any other person.²⁹</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>The extent to which the firm or individual has departed from any standard to which they are subject.³⁰</p>

²⁸ Section 33ARA(1)(a)(vi) of the 1942 Act.

²⁹ Section 33ARA(1)(a)(vii) of the 1942 Act.

³⁰ Section 33ARA(1)(a)(ii) of the 1942 Act.

	<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>Whether the prescribed contravention by the firm or individual has affected or may affect the orderliness of the financial markets, including public confidence in those markets.³¹</p> <p>This factor applies to firms and individuals. A prescribed contravention which affects or potentially affects:</p> <ul style="list-style-type: none"> (a) The financial markets; (b) Public confidence in the financial markets; and/or (c) Public confidence in the Central Bank, <p>will be viewed more seriously by the Central Bank.</p>
8.	<p>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.³²</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</p>

³¹ Section 33ARA(1)(b)(i) of the 1942 Act.

³² Section 33ARA(1)(b)(ii) of the 1942 Act.

	<p>detriment, the prescribed contravention will ordinarily be viewed more seriously by the Central Bank.</p>
9.	<p>Whether any loss or detriment as a result of the prescribed contravention by the firm or individual has affected or may affect vulnerable persons.³³</p> <p>This factor applies to firms and individuals. Where the prescribed contravention affects vulnerable consumers, customers or investors, such as:</p> <ul style="list-style-type: none"> ▪ those who have the capacity to make their own decisions but, because of their individual circumstances, may require assistance to do so; or ▪ those who have limited capacity to make their own decisions and require assistance to do so, <p>the prescribed contravention will ordinarily be viewed more seriously by the Central Bank.</p>
10.	<p>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.³⁴</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 will ordinarily be viewed more seriously by the Central Bank.</p>
11.	<p>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.</p> <p>This factor applies to firms and individuals. Serious weakness or systemic issues, particularly where they</p>

³³ Section 33ARA(1)(b)(iii) of the 1942 Act.

³⁴ Section 33ARA(1)(a)(iv) of the 1942 Act.

	<p>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>The individual's seniority and level of responsibility, and the nature of any role performed by the individual, at the time of the individual's commission of or participation in the prescribed contravention.³⁵</p> <p>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.</p>

Conduct of the Firm or Individual

375. 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.
376. 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 a prescribed contravention and/or subsequently dealt with any related issue.

³⁵ Section 33ARA(1)(a)(i) of the 1942 Act.

Table 3 | Conduct Factors

No.	Factor and Guidance
1.	<p data-bbox="363 389 1091 613">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.³⁶</p> <p data-bbox="363 676 1118 801">This factor applies to firms and individuals. The firm or individual must be open and cooperative with the Central Bank.</p> <p data-bbox="363 869 1134 1043">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:</p> <ul style="list-style-type: none"> <li data-bbox="363 1106 1062 1189">(a) knew about the behaviour that constituted the contravention, but failed to report it; <li data-bbox="363 1249 1121 1332">(b) wilfully withheld information about wrongdoing by the firm or any other firm or individual; <li data-bbox="363 1393 1043 1476">(c) failed to report the prescribed contravention, despite it being obvious; <li data-bbox="363 1536 1091 1619">(d) failed to report the prescribed contravention, despite it continuing for a lengthy period of time; <li data-bbox="363 1680 1134 1805">(e) failed to report the prescribed contravention within a reasonable time after it came to their attention; and/or

³⁶ Section 33ARA(1)(c)(i) of the 1942 Act.

- (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 engagement and a willingness to facilitate the Central Bank's supervision or investigation in whatever way possible;
- (b) immediately reporting when the prescribed contravention came to light; and/or
- (c) identification of other prescribed contraventions by the firm, the individual or by the firm in which the individual is employed.

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.

2. **The degree of cooperation by the firm or individual with the Central Bank or any other relevant regulatory authority, agency or criminal investigative**

body provided during the investigation of the prescribed contravention.³⁷

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.

In addition to potentially constituting a criminal offence and/or a further prescribed 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:

- (a) provision of false, inaccurate and/or misleading information/documents to the Central Bank;
- (b) failure to provide complete and timely information/documents/explanations in response to a Notice of Investigation or an information request;
- (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 or their control including electronically stored information;

³⁷ Section 33ARA(1)(c)(ii) of the 1942 Act.

- (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 cooperation 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) providing responses to correspondence that go above and beyond the basic provision of information/documents;
- (b) engaging constructively with the investigation and seeking 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) proactively and voluntarily furnishing additional information to the Central Bank in order to assist the investigation, which, for example, facilitates/expedites the review of documents previously requested;
- (d) engaging with the investigation from the outset, seeking to assist the Central Bank wherever possible, and aiding in time, cost and resource savings;
- (e) proactively 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 prescribed contravention;
- (f) making early admissions to the prescribed contravention. To be treated as such, admissions must be full, frank and made at the earliest opportunity;

- (g) sharing the output of internal investigations and/or third party reviews; and/or
- (h) providing 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); 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 takes an 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 prescribed 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 contravention 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 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

	<p>but rather reflect a ‘best practice’ approach; and/or</p> <p>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.</p>
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Previous Record

377. 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.
378. 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
1.	<p>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.³⁸</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>

³⁸ Section 33ARA(1)(d)(i) of the 1942 Act.

2.	<p>Whether or not the individual has previously been convicted of an offence relevant to the performance of a controlled function³⁹ or a firm has been convicted of a relevant offence.</p> <p>This factor applies to firms and individuals. The Central Bank will take relevant previous convictions into account when sanctioning a firm or an individual. When doing so, the Central Bank will consider the relevance of the offence having regard to 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>The previous compliance history of the firm or individual.</p> <p>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.</p> <p>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.</p>

Other Relevant Considerations

379. 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

³⁹ Section 33ARA(1)(d)(ii) of the 1942 Act.

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 deterrent.

380. 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>The appropriate deterrent impact of the sanction on the firm or individual and on other firms or individuals.</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 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>Action taken by the Central Bank in previous similar cases.</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</p>

	bears in mind that each case is unique, and that the weight to attach to comparators may therefore be limited.
3.	<p>Any consideration relating to pending or possible criminal proceedings, including whether any such proceedings may be prejudiced by the imposition of a sanction.⁴⁰</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>
4.	<p>Any matter relevant to the financial position of the individual.⁴¹</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>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</p>

⁴⁰ Section 33ARA(1)(e) of the 1942 Act.

⁴¹ Section 33ARA(1)(f) of the 1942 Act.

regard to the importance of promoting a culture of compliance with these standards.⁴²

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.

Where individuals holding either a controlled function or a pre-approval controlled function fail to adhere to their obligations under the Common Conduct Standards or Additional Conduct Standards, the Central Bank will consider the importance of promoting a culture of compliance with these standards in assessing the appropriate sanction(s).

47. Determination of Monetary Penalties

381. 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 (page 114 et seq.). The methodology for individuals is described in Table 7 below (page 116 et seq.).
382. As set out in paragraph 361 (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.
383. This guidance is not intended to provide an automatic or arithmetic mechanism for the calculation of monetary

⁴² 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 Common Conduct Standards or the Additional Conduct Standards.

penalties but to provide general guidance on the process to be followed and considerations involved. Firms and individuals will be provided with information on how any proposed monetary penalty has been calculated, which would generally include the basis for the starting point. Firms and individuals against whom sanctions, including monetary penalties, are being imposed will also be entitled to make submissions on such sanctions as part of a settlement or inquiry process.

Table 6 | Monetary Penalty Methodology for Firms

Step	Guidance
1.	<p>Determine an appropriate Starting Point Figure.</p> <p>For the majority of cases, the Central Bank considers a firm’s revenue to be an appropriate starting point (referred to in this Table as the “Starting Point Figure”) 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>Identify and apply the severity level to determine the Base Monetary Penalty.</p> <p>Having determined the Starting Point Figure (which will be rounded), the Central Bank will consider the</p>

	<p>nature, seriousness and effect of the prescribed contravention by reference to the factors in Table 2 (Nature, Seriousness and Effect Factors, page 94 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, 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 “Base Monetary Penalty”).</p>
3.	<p>Calculate any aggravation or mitigation.</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 by reference to the factors in Table 3 (Conduct Factors, page 99 et seq.) and Table 4 (Previous Record Factors, page 109 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>Consider any further adjustment.</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 111 et seq.) and to any other factor which the Central Bank considers to be relevant.</p>
5.	<p>Consider whether any maximum penalty adjustment is required.</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.⁴³</p> <p>If an adjustment is necessary the Central Bank will adjust the Base Monetary Penalty (as adjusted at Step 4).</p>
6.	<p>Consider the sanctions to be imposed in their totality.</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>Final monetary penalty.</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.	<p>Determine an appropriate Starting Point Figure.</p> <p>For the majority of cases, the Central Bank considers an individual's income to be an appropriate starting point (referred to in this table as the "Starting Point Figure") 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</p>

⁴³ Section 33AQ(4) of the 1942 Act.

	<p>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>Identify and apply the severity level to determine the Base Monetary Penalty.</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 94 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, 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 "Base Monetary Penalty").</p>
3.	<p>Calculate any aggravation or mitigation.</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 by reference to the factors in Table 3 (Conduct Factors, page 99 et seq.) and Table 4 (Previous Record Factors, page 109 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>Consider any further adjustment.</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 111 et seq.) and to any other factor which the Central Bank considers to be relevant.</p>
5.	<p>Consider whether any maximum penalty adjustment is required.</p> <p>The Central Bank must ensure that the figure does not exceed the maximum penalty of €1 million.⁴⁴</p> <p>If an adjustment is necessary, the Central Bank will adjust the Base Monetary Penalty (as adjusted at Step 4).</p>
6.	<p>Consider the sanctions to be imposed in their totality.</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>Final monetary penalty.</p> <p>The final monetary penalty imposed will be the figure arrived at following Step 6.</p>

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

384. 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

⁴⁴ Section 33AQ(4) and (6) of the 1942 Act.

such as to force the firm to cease trading or cause the individual to be adjudicated bankrupt.⁴⁵ A firm or individual will be required to verify any claim in this regard with detailed, sworn financial information.

385. 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.

48. Sanctions Applicable to Individuals Only

386. Sanctions that are applicable to individuals only are listed at paragraph 367. These may be imposed as a sole sanction or in combination with other sanctions.

Direction Imposing Conditions

387. For prescribed contraventions that occurred on or after 19 April 2023 the Central Bank may impose, by way of direction, such conditions as it considers appropriate on an individual's performance of one or a number of controlled functions, or part(s) thereof, in one or more firms.⁴⁶
388. In line with the general approach set out at Section 44 (Central Bank Approach), the Central Bank will determine the details of any conditions to be imposed based on the facts of each case, the circumstances of the individual involved, any relevant sanctioning factors set out in Section 46 (Sanctioning Factors) and any other factor which the Central Bank considers to be relevant.
389. Conditions may restrict an individual's performance of, or require them to do something in relation to, one or more controlled functions, including pre-approval controlled functions. The Central Bank will set out the terms of any condition as well as its duration. Conditions will be clear, time based and actionable so the individual involved knows what is expected of them and, if relevant, when the conditions have been satisfied or completed.

⁴⁵ Section 33AS of the 1942 Act.

⁴⁶ Sections 33AQ(3)(da) and 33AQ(5)(ca) of the 1942 Act.

390. The individual may be entitled to perform one or more controlled functions, or parts of such functions, while a direction imposing conditions is in place, but must comply with the relevant conditions. Where a cost is incurred in complying with any condition, the individual is responsible for any such cost.

391. Examples of some conditions which may be imposed are as follows:

- A condition that an individual be supervised or monitored in the performance of a controlled function.
- A condition that an individual performs a controlled function only in a certain manner.
- A condition that an individual cannot perform one (or more) aspect(s) of a controlled function.
- A condition that an individual satisfy an appropriate time commitment to the performance of a controlled function, or parts thereof.
- A condition that an individual obtain a qualification or complete specified training or upskilling within a certain time period in order to address any deficit in, for example, skills or experience.

392. This sanction may be imposed in circumstances where a prescribed contravention can be remedied, and/or appropriately dealt with by the imposition of conditions on an individual. A condition is unlikely to be imposed by the Central Bank where a prescribed contravention is serious, for example, where the contravention involves dishonesty or other serious lack of integrity on the part of the individual. In such cases, it is more likely that the Central Bank will impose a direction disqualifying an individual.

Direction Disqualifying an Individual

393. Generally, a direction disqualifying an individual is considered to be a more serious sanction than a direction imposing conditions.

394. In line with the general approach set out at Section 44 (Central Bank Approach), the Central Bank will determine the duration and scope of a disqualification based on the facts of each case, the circumstances of the individual involved, any relevant sanctioning factors set out in Section 46 (Sanctioning Factors) and any other factor which the Central Bank considers to be relevant.
395. For prescribed contraventions that occurred prior to 19 April 2023, the Central Bank may impose a direction disqualifying an individual from being concerned in the management of a regulated financial service provider for such period as is specified in the direction.
396. For prescribed contraventions that occurred on or after 19 April 2023, the Central Bank may impose a direction disqualifying an individual, for such period as it considers appropriate, from performing, in relation to all regulated financial service providers or in relation to such regulated financial service provider or providers as may be specified in the direction, any of the following:
- Any controlled function.
 - Such controlled function or functions as may be specified in the direction.
 - Such part or parts of a controlled function or functions as may be specified in the direction.⁴⁷

⁴⁷ Sections 33AQ(3)(d) and 33AQ(5)(c) 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.

49. Confirmation by High Court

Confirmation of Inquiry Decision

397. 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 Inquiry Decision.
398. Where an Inquiry Decision has not been appealed to IFSAT (see Section 50 (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.
399. 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

400. 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.
401. 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 Sanction Agreed by way of Settlement

402. Where the Central Bank has concluded a settlement with a Subject under the Undisputed Facts Settlement Process or the Investigation Report Settlement Process, any sanction imposed as part of that process 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.
403. As soon as practicable after such a settlement process has been concluded, the Central Bank will apply to the High Court for confirmation of the sanction imposed. 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.
404. The High Court will confirm the decision to impose a sanction unless it is satisfied that any sanction imposed is manifestly disproportionate.
405. Any sanction imposed following the conclusion of a settlement 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

406. 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.
407. 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.
408. 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.
409. 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.

50. Appeal to IFSAT and High Court

Irish Financial Services Appeals Tribunal (IFSAT)

410. The Inquiry Decision is the only decision under the ASP that is an "appealable decision" and may therefore be appealed to

IFSAT.⁴⁸ 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.

411. 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.

High Court

412. 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.

413. 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.

414. 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.

415. 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.

⁴⁸ Section 33AW(2) of the 1942 Act provides that an inquiry decision is an appealable decision. Section 57A of the 1942 Act defines "appealable decision" as a decision of the Central Bank that is declared by a provision of the 1942 Act, or by a designated enactment or a designated statutory instrument, to be an appealable decision for the purposes of Part VIIA of the 1942 Act.

Appendix: Glossary of Terms and Statutes

Table 8 | Terms Used in the Guidelines

Term	Meaning
Additional Conduct Standards	The standards set out in section 53F of the 2010 Act.
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.
Common Conduct Standards	The standards set out in section 53E of the 2010 Act.
controlled function	Has the meaning in section 18(1) of the 2010 Act, namely a function prescribed in regulations made under section 20 of the 2010 Act as a controlled function in relation to a firm.
Draft Investigation Report	The draft report of an investigation prepared by the Responsible Authorised Officer in accordance with section 33ANK of the 1942 Act. The Draft Investigation Report will include any material that 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 to hold an inquiry. Such material may include documents and other information.
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. The Final Investigation Report will include any material that 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 to hold an inquiry. Such material may include documents and other information.
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 and notified to the Subject, 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), (2), (7) and (8) of the 1942 Act.
Inquiry Finding	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.
Inquiry Hearing Notice	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.
Inquiry Management Meeting	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.
Inquiry Management Questionnaire	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.
Inquiry Member	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.
Inquiry Participants	Enforcement and the Inquiry Subject.
Inquiry Publication Notice	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.
Inquiry Subject	A firm or individual who is or was the subject of an inquiry, as the context requires.
investigation	An investigation under the ASP. See section 33ANI of the 1942 Act.

Investigation Report Settlement Process	One of the Central Bank’s settlement processes under section 33AR of the 1942 Act.
Investigation Subject	A firm or individual who is or was the subject of an investigation, as the context requires.
Irish Financial Services Appeals Tribunal, or IFSAT	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.
No Admissions Settlement Process	The Central Bank’s procedure for settlement under section 33AV of the 1942 Act.
Notice of Inquiry	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.
Notice of Investigation	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.
pre-approval controlled function	Has the meaning in section 18(1) of the 2010 Act, namely a function prescribed in regulations made under section 22 of the 2010 Act as a pre-approval controlled function in relation to a regulated financial service provider or holding company, or a function declared by the Central Bank to be a pre-approval controlled function by written notice served on a regulated financial service provider.
prescribed contravention	Has the meaning given to that term in section 33AN of the 1942 Act.

regulated financial service provider	Has the meaning given to that term in section 2(1) of the 1942 Act.
Regulatory Decisions Panel	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.
Regulatory Decisions Unit, or RDU	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.
Responsible Authorised Officer	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.
sanction	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, where applicable, in various EU financial services regulatory frameworks.
settlement	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.
Settlement Procedure Letter	A letter that may be issued by the Central Bank to the Subject offering the possibility of settlement under either the Undisputed Facts Settlement Process or the Investigation Report Settlement Process, as applicable, and outlining the relevant procedure.
Single Supervisory Mechanism, or SSM	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.
Subject	An Investigation Subject or Inquiry Subject, as the context requires.
Undisputed Facts Settlement Process	One of the Central Bank’s settlement processes 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.

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



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