



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2014

Outline of the Administrative Sanctions Procedure



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<u>Version</u>	<u>Date</u>	<u>Amendments</u>
<u>1.1</u>	<u>October 2005</u>	
<u>1.2</u>	<u>2010</u>	<u>Minor amendments to reflect the creation of a dedicated enforcement function within the Central Bank of Ireland.</u>
<u>2.1</u>	<u>2013</u>	<u>Outline amended to reflect the issuance of the Inquiry Guidelines in 2013 which repealed and replaced the previous Administrative Sanctions Guidelines published by the Central Bank of Ireland in October 2005.</u>
<u>2.2</u>	<u>2014</u>	<u>Outline amended to reflect the issuance of the Inquiry Guidelines 2014 which repealed and replaced the previous Inquiry Guidelines 2013, primarily, in order to reflect the introduction of the Single Supervisory Mechanism.</u>

1. Introduction

- 1.1 This Outline of the Administrative Sanctions Procedure (“**the Outline**”) describes the structures and procedures of the Administrative Sanctions Procedure of the Central Bank of Ireland (“**the Central Bank**”) under Part IIIC of the Central Bank Act 1942 (as amended) (“**the Act**”). Reference in the Outline to the Administrative Sanctions Procedure refers only to the Administrative Sanctions Procedure under Part IIIC of the Act. While the Outline indicates the procedure that the Central Bank will generally follow, it may be necessary to depart from the procedure outlined herein in appropriate circumstances.
- 1.2 The Outline does not purport to represent a definitive legal interpretation of Part IIIC of the Act and, in case of doubt, you should refer to the relevant legislative provisions and the Inquiry Guidelines published pursuant to section 33BD of the Act (“**the Inquiry Guidelines**”)¹, or seek legal advice, if required.
- 1.3 This document, which replaces the “Outline of Administrative Sanctions Procedure” published by the Central Bank in October 2005, is a “live” document that will be updated from time to time and brought specifically to the attention of regulated financial service providers and/or persons concerned in their management at the time they are notified of an Investigation² having been commenced.
- 1.4 References in the Outline to “*regulated entities*” or “*regulated entity*” can be taken to include both present and former regulated financial service providers, as well as persons presently or formerly concerned in their management and any other person subject to Part IIIC of the Act. Similarly, in this regard, reference to regulated entities having committed a prescribed contravention, can be taken to include situations where persons presently or formerly concerned in their management, or any other person subject to Part IIIC of the Act, have

¹ A copy of the Inquiry Guidelines is available on the Central Bank website.

² See Part 3 below.

participated in that prescribed contravention.

2. An Overview of the Administrative Sanctions Procedure

2.1 Introduction

2.1.1 The Central Bank and Financial Services Authority of Ireland Act 2004 introduced Part IIC of the Act to give the Central Bank additional, stronger powers to enable it to promote compliance with regulatory requirements. Under the Act, the Central Bank has the power to impose sanctions in respect of breaches of regulatory requirements (referred to in the Act and throughout the Outline as “**prescribed contraventions**”) by regulated entities and to publicise the findings and sanctions imposed. The Central Bank (Supervision and Enforcement) Act 2013 (“**the 2013 Act**”) and transposition of European Directives³ further strengthened these powers by introducing additional sanctions under the Administrative Sanctions Procedure, and substantially increasing the fines available thereunder.

2.1.2 Generally, where a concern arises that a prescribed contravention has been or is being committed, the Central Bank may investigate⁴. Following any investigation, an Inquiry⁵ may be held where there are reasonable grounds to suspect that a prescribed contravention has been or is being committed. The Inquiry shall decide if the prescribed contravention has occurred and determine the appropriate sanctions. The final decision of an Inquiry may be appealed to the Irish Financial Services Appeals Tribunal (“**IFSAT**”)⁶ and subsequently to the High Court.

2.1.3 As an alternative, the Administrative Sanctions Procedure provides that, at any time before the conclusion of an Inquiry, the matter may be resolved by entering

³ For example, the European Union (Capital Requirements) Regulations 2014.

⁴ An investigation may also arise on foot of a requirement of the European Central Bank pursuant to Article 18(5) of Council Regulation (EU) No 1024/2013 (SSM Regulation). Additionally, where under the Single Supervisory Mechanism the European Central Bank is competent (as referred to at paragraph 2.2 below) for the supervision of certain entities the Central Bank may not be competent to impose monetary sanctions.

⁵ See Part 5 below.

⁶ Established under section 57C of the Act.

into a Settlement Agreement.⁷ This is a written agreement which binds both the Central Bank and the regulated entity. The settlement procedure is discussed in detail in Part 4 of the Outline.

2.2 *The Single Supervisory Mechanism and CRDIV*

An important progression within the area of banking supervision is the creation of the Single Supervisory Mechanism⁸ (the “SSM”) which involves, amongst other things, the direct supervision of certain entities⁹ by the European Central Bank. Consequently, in certain instances the European Central Bank will be competent for the investigation and sanctioning of regulatory breaches. In other instances the European Central Bank may require the Central Bank to open proceedings with a view to taking action in order to ensure that appropriate penalties are imposed.

In addition, following the commencement of the European Union (Capital Requirements) Regulations 2014¹⁰ certain specific sanctions, as provided for in Regulations 54 and 55 of those Regulations, may now be imposed by the Central Bank following an Inquiry under section 33AO of the Act.

This document does not purport to present a definitive legal interpretation of the legislation underpinning the SSM or of the European Union (Capital Requirements) Regulations 2014 but does reference where SSM or CRDIV are relevant to or impact on the ASP and its operation under Part IIIC of the Act.

⁷ See Section 4.6 below.

⁸ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions effectively establishes the SSM.

⁹ Tasks conferred on the ECB are set out at Article 4 of Council Regulation (EU) No 1024/2013 of 15 October 2013.

¹⁰ The European Union (Capital Requirements) Regulations 2014, give effect to the Capital Requirements Directive (Directive 2013/36/EU) and the European Union (Capital Requirements) (No. 2) Regulations 2014, give effect to a number of technical requirements in order that the Capital Requirements Regulation (Regulation 575/2013) (the “CRR”) can operate effectively in Irish law. That Directive and the CRR (together referred to as “CRD IV”) form a package of reforms to the European Union’s capital requirements regime for credit institutions and investment firms, the main purpose being to implement key Basel III reforms.

2.3 *What is a Prescribed Contravention?*

2.3.1 A prescribed contravention is a breach of:

- a provision of a designated enactment, including any instrument made thereunder, or a designated statutory instrument; or
- a code made, or a direction given, under such a provision; or
- any condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction; or
- any obligation imposed on any person by Part IIIC of the Act or imposed by the Central Bank pursuant to a power exercised under Part IIIC of the Act.¹¹

The list of designated enactments and designated statutory instruments is located in Schedule 2 of the Act.¹²

2.3.2 As there are many instances where the Central Bank issues statutory instruments, or imposes conditions, directions or requirements, pursuant to a designated enactment or statutory instrument, Schedule 2 of the Act will not provide a definitive list of the legal provisions which may give rise to a prescribed contravention under Part IIIC of the Act. Some obligations, in the form of conditions, directions or requirements, are imposed on a bilateral basis. These obligations will be known only to the Central Bank and the regulated entity involved.

2.3.3 Administrative sanctions cases may also be taken where a regulated entity:

- attempts to commit a prescribed contravention;
- aids, abets, counsels or procures a person to commit a prescribed

¹¹ Section 33AN of the Act.

¹² For the purposes of Part IIIC of the Act, the phrases “*designated enactment*” and “*designated statutory instrument*” do not include:

- Parts 4 or 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005;
- Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006;
- The Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342/05);
- The Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. 324/05);
- Part 5 of the European Union (European Markets Infrastructure) Regulations 2014; and that amendment to section 33AN; or
- Regulations for the time being in force made under section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006.

- contravention;
- induces, or attempts to induce, a person (whether by threats or promises or otherwise) to commit a prescribed contravention;
 - is (directly or indirectly) knowingly concerned in, or a party to, a prescribed contravention; and
 - conspires with others to commit a contravention.¹³

¹³ Section 33AN of the Act.

3. Investigations

3.1 *Introduction*

3.1.1 The investigatory phase of the Administrative Sanctions Procedure will be referred to as the “**Investigation**”. This is without prejudice to the fact that Supervisory Divisions¹⁴ may engage in their own investigations in the ordinary course of their functions.

3.1.2 The purpose of the Investigation is to allow the gathering of sufficient information to enable the Central Bank to determine whether it has reasonable grounds to suspect that a prescribed contravention has been, or is being, committed by a regulated entity, and accordingly whether to refer the matter to Inquiry, or take such other action as is appropriate in the circumstances. The Central Bank will only establish an Inquiry in circumstances where the Central Bank has brought the relevant matters to the attention of the regulated entity and they have had a reasonable opportunity to respond.

3.2 *Commencement of an Investigation*

3.2.1 Concerns that prescribed contraventions may have been committed will arise in the normal course of work undertaken by a Supervisory Division, or may arise from other sources. Information gathered pursuant to any such concerns may be referred by the relevant Supervisory Division to the Enforcement Directorate¹⁵, whereupon the Enforcement Directorate will become the regulated entity’s point of contact for all matters relating to the Investigation. The relevant Supervisory Division will continue to be the regulated entity’s point of contact for matters outside the remit of the Investigation.

3.2.2 An investigation may also be commenced where the Central Bank is required to open proceedings by the European Central Bank pursuant to Article 18(5) of

¹⁴ A Supervisory Division is one which in the ordinary course of its functions within the Central Bank engages in ongoing supervision and oversight of regulated entities.

¹⁵ The Enforcement Directorate is primarily concerned with enforcement action against regulated entities under financial services legislation.

Council Regulation (EU) No 1024/2013 of 15 October 2013 (the “SSM Regulation”).

3.3 *Investigation Letters*

- 3.3.1 Once an Investigation has commenced, the Enforcement Directorate will issue letters to the regulated entity in relation to matters relevant to the Investigation (“**Investigation Letters**”). The Central Bank may issue a number of Investigation Letters during the course of an Investigation.
- 3.3.2 Investigation Letters may contain an outline of the suspected prescribed contraventions, and/or may call upon the regulated entity to provide information, responses to specific questions, or responses to the suspected prescribed contraventions. Investigation Letters may also enclose key documents and materials, where appropriate. Where suspected prescribed contraventions are outlined in an Investigation Letter, these may be subject to later amendment or addition in light of the responses received from the regulated entity and/or any other information or evidence gathered during the course of the Investigation or otherwise in the possession of the Central Bank.
- 3.3.3 The Investigation Letters will place the regulated entity on notice that the matter may be referred to Inquiry and will indicate that the Central Bank will consider any responses from the regulated entity to the Investigation Letters in deciding whether to refer the matter to Inquiry.
- 3.3.4 The Investigation continues notwithstanding the issuance of Investigation Letters and further information may be sought from the regulated entity. During the Investigation the Central Bank will consider the responses and information received from the regulated entity. The responses, if any, from the regulated entity to the Investigation Letters should be on an open basis¹⁶ and will inform the decision as to whether or not the matter will be referred to Inquiry. Prior to the decision to refer the matter to Inquiry, the suspected prescribed

¹⁶ Where information or documents are sought in an Investigation Letter any response should be provided in open correspondence, by which it is meant that full and complete disclosure of information should be provided on the record.

contraventions will have been outlined to the regulated entity through the Investigation Letters, and an opportunity given to reply.

3.4 *Gathering of Evidence in the Investigation*

3.4.1 During the course of the Investigation it may be necessary for the Central Bank to invoke its statutory powers to assist it in gathering evidence. For example, in the course of an Investigation, the Central Bank may interview persons whom it suspects have knowledge of matters pertaining to the suspected prescribed contravention(s). These may include persons both internal and external to a regulated entity, as well as individuals both concerned and not concerned in its management. Persons being interviewed may have recourse to their own legal advice, and, where appropriate, may be provided with documentation by the Central Bank in advance.

3.4.2 Delay in the provision of information and/or documentation by the regulated entity can have a significant impact on the efficient progression of an Investigation. Accordingly, prompt responses to requests for information and documentation from the regulated entity will be required and may be a factor taken into account in determining any sanction imposed.¹⁷ In general the relevant date(s) for response will be set out in the Investigation Letter(s), or other correspondence from the Central Bank, taking into account the circumstances of the case and complexity or accessibility of the materials requested. Once a timeframe has been agreed or set, the Central Bank will generally only agree to an extension of time for complying with the requirement where it can be shown that there are reasonable grounds for doing so.

3.5 *Referral to Prosecuting or Disciplinary Bodies*

3.5.1 The Central Bank has various reporting obligations in circumstances where the information obtained by it at any stage prior to, during, or after the Investigation, gives rise to a suspicion of a criminal offence, a breach of company law, or a

¹⁷ See Section 6.3 below.

breach of competition law. In such circumstances, the Central Bank has an obligation to refer the matter to the relevant authority.¹⁸

3.5.2 If information obtained by the Central Bank gives rise to a suspicion that the regulated entity, a professional person or firm, either internal to the regulated entity or engaged by it, has committed acts of misconduct or has failed to properly perform its functions or responsibilities, the Central Bank may refer the matter to the relevant professional body.

3.6 Criminal Prosecution

3.6.1 If a suspected breach of a designated enactment or designated statutory instrument gives rise to a concern that a criminal offence may have been or is being committed, the Central Bank will generally adopt the following approach¹⁹:

a) Where both the Administrative Sanctions Procedure and summary criminal prosecution are available:

The Central Bank may decide to pursue prescribed contraventions through the Administrative Sanctions Procedure instead of bringing a summary prosecution. However, the Central Bank will consider the circumstances of each case on its merits and may decide to pursue matters which constitute both a prescribed contravention and a criminal offence via the criminal courts. In deciding whether to pursue criminal proceedings, the Central Bank will exercise its discretion, having regard to the Director of Public Prosecution's "Guidelines for Prosecutors".²⁰

¹⁸ Relevant authorities include An Garda Síochána, the Revenue Commissioners, the Director of Corporate Enforcement, the Competition Authority, and the National Consumer Agency. See section 33AK(3) of the Act.

¹⁹ Notwithstanding any other provision of the Outline, this approach will also apply to the administrative sanctions procedures under Part 5 of the Market Abuse (Directive 2006/6/EC) Regulations 2005, Part 15 of the Prospectus (Directive 2003/71/EC) Regulations 2005, Part 10 of the Transparency (Directive 2004/109/EC) Regulations 2007, and Part 5 of the European Communities (European Markets Infrastructures) Regulations 2014.

²⁰ See: <http://www.dppireland.ie/filestore/documents/GUIDELINES - Revised NOV 2010 eng.pdf>

b) Where only criminal prosecution is available:

In deciding whether to pursue criminal proceedings, the Central Bank will exercise its discretion, having regard to the Director of Public Prosecution's "Guidelines for Prosecutors".

3.6.2 No criminal prosecution may be brought if the prescribed contravention(s) in question has already been the subject of an Inquiry under the Administrative Sanctions Procedure which led to the imposition of a monetary penalty under sections 33AQ or 33AR of the Act.

3.6.3 If a criminal prosecution has been brought in respect of an offence that also involves a prescribed contravention, and a regulated entity is found either guilty or not guilty, then no monetary penalty may be imposed pursuant to the Administrative Sanctions Procedure under sections 33AQ or 33AR of the Act.²¹

3.7 *Finalising an Investigation*

3.7.1 Where a prescribed contravention is suspected to have been committed the Central Bank may deal with the issue in a number of ways. The Central Bank may, in appropriate circumstances,:

- decide to take no further action;
- issue a Supervisory Warning²²;
- resolve the matter by taking supervisory action;
- agree a settlement; or
- refer the case to Inquiry for determination and sanction.

3.7.2 The decision to take enforcement action will be determined on a case-by-case basis, taking into account the full circumstances of each case. The following objectives may, amongst others and where appropriate, be considered:

- the promotion of compliance by the regulated entity;
- the promotion of compliance within the industry or sector;

²¹ Section 33AT of the Act.

²² See Section 3.7.5 below.

- the proportionality of the enforcement action; and
- support of the strategy, objectives and policies of the Central Bank, including the proper and effective regulation of financial institutions and markets, and ensuring that the best interests of consumers of financial services are protected.

No Further Action

3.7.3 The Central Bank may decide to discontinue an Investigation and take no further action in a number of circumstances, including where:

- the information obtained leads the Central Bank to conclude that no prescribed contravention has been committed;
- the matter giving rise to concern:-
 - is very minor in nature,
 - immediate remedial action has been taken, and
 - full co-operation has been provided;
- the Central Bank considers that resources could be more effectively directed to other uses; and/or
- other policy considerations of the Central Bank are of relevance.

3.7.4 Where an Investigation Letter has been issued and an Investigation is subsequently discontinued, the regulated entity will be informed of this fact by letter. However, where relevant information becomes available to the Central Bank at a later date, the Central Bank may commence a new Investigation into the same matter.

Supervisory Warnings

3.7.5 Where, upon consideration of the evidence, the Central Bank considers that the matter does not warrant an administrative sanction, but there are nonetheless reasonable grounds to suspect a prescribed contravention has occurred, the Central Bank may, in appropriate circumstances, issue a Supervisory Warning. A Supervisory Warning may be issued, regardless of whether or not an Investigation Letter has been issued to the regulated entity.

3.7.6 A Supervisory Warning is a written warning notifying the regulated entity that the Central Bank considers that it has not complied with certain regulatory requirements, and calling upon the regulated entity to rectify the matter(s) identified. Prior to the issuance of a Supervisory Warning, the Central Bank will outline in writing to the regulated entity the basis upon which the Central Bank is minded to issue a Supervisory Warning and the regulated entity will be afforded an opportunity to respond. The responses, if any, from the regulated entity will inform the decision as to whether or not a Supervisory Warning will be issued.

3.7.7 Supervisory Warnings may be issued in a number of circumstances, including where:

- the matter giving rise to concern is minor in nature;
- immediate remedial action has been taken;
- full co-operation has been received; and,
- considerations supporting another enforcement approach do not apply.

3.7.8 The decision to issue a Supervisory Warning will be within the sole discretion of the Central Bank, made on the basis that the regulated entity has disclosed all relevant information.²³ If a Supervisory Warning is issued it will form part of the regulated entity's compliance record. Where further suspicions of prescribed contraventions occur, the prior issuance of a Supervisory Warning may influence the Central Bank's decision as to whether to commence an Investigation against a regulated entity. Supervisory Warnings will also be considered cumulatively, taking into account the date on which the Supervisory Warning was issued. Supervisory Warnings are not published by the Central Bank.

Supervisory Action

3.7.9 Notwithstanding any other action taken, and whether or not an Investigation has been undertaken, the Central Bank may decide that further action should be taken in relation to its supervision of the regulated entity. Such action may

²³ If relevant information later comes to light which was not provided to the Central Bank at this stage, the Central Bank may recommence the ASP in relation to the prescribed contraventions.

include utilising any of the supervisory or other legislative powers as the Central Bank considers appropriate in the circumstances, for example the issuing of directions or conditions.

Settlement

3.7.10 It is open to a regulated entity to seek to settle a matter under Investigation. The Central Bank is under no obligation to settle and will only do so where it is satisfied that it is appropriate in the given circumstances. Settlement is dealt with in more detail in Part 4 of the Outline below.

Notice of Inquiry

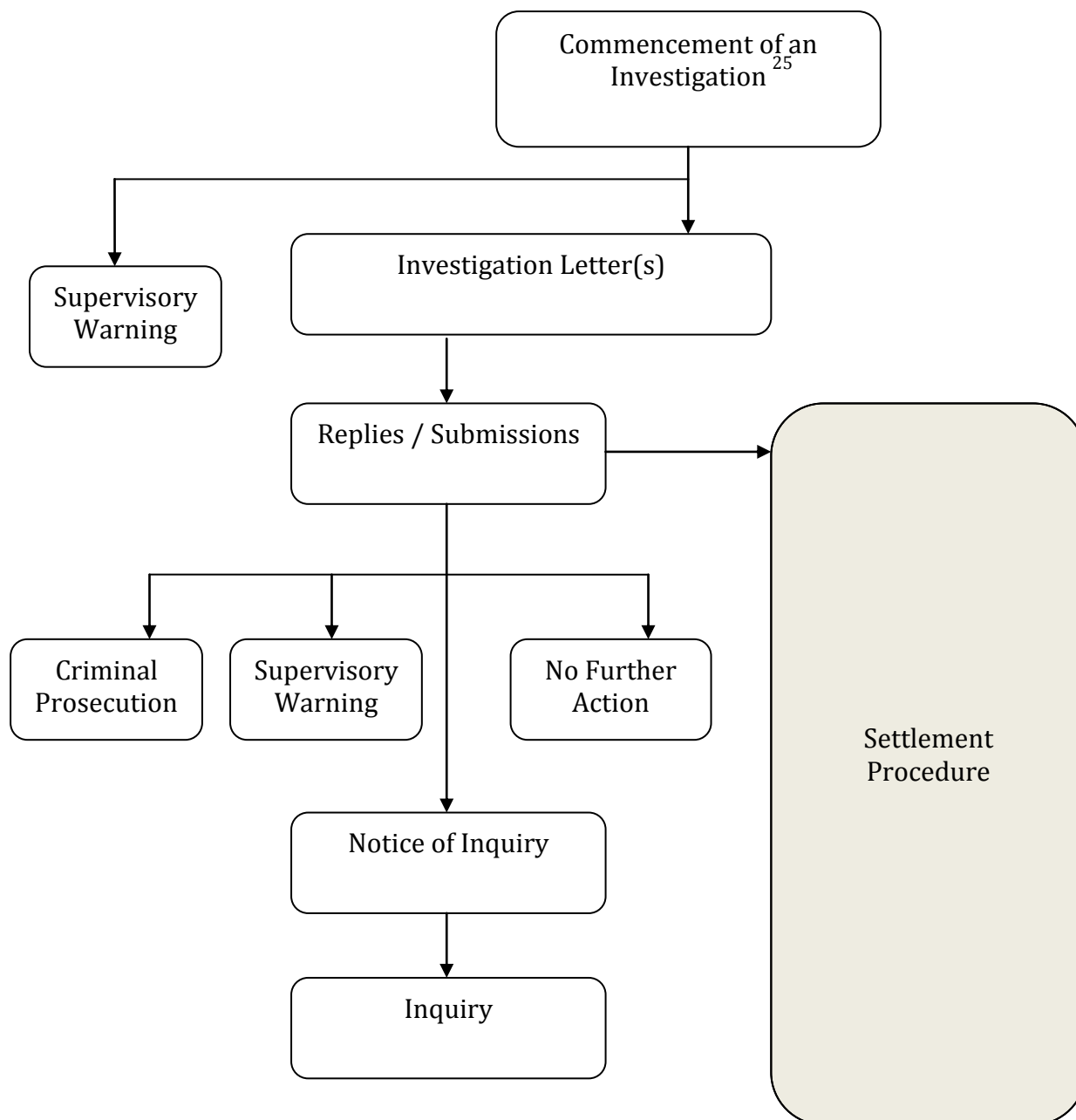
3.7.11 If the Central Bank suspects on reasonable grounds that a regulated entity is committing or has committed a prescribed contravention and the matter has not otherwise been concluded (for example by way of settlement), the Central Bank may issue a Notice of Inquiry²⁴, see Section 5.2 of the Outline below.

3.7.12 The Enforcement Directorate will provide the following to the Inquiry:

- an outline of the prescribed contraventions that the regulated entity is suspected of committing or having committed and the grounds upon which the suspicions are based;
- an Investigation Report, which will detail the Investigation carried out by Enforcement and contain a schedule of the categories of materials and information gathered during the Investigation;
- copies (hard copy or electronic) of documentation relied upon in preparing the Investigation Report; and
- copies of any Investigation Letter(s) issued to the regulated entity and any responses.

²⁴ This is subject to the provisions of the SSM Regulation.

Diagram 1: Flow diagram of Investigations



²⁵ The decision to commence an Investigation may come from a number of sources, including, but not limited to: (i) supervisory divisions; (ii) themed inspections; (iii) whistleblowers; or (iv) publicly available information. Additionally, an Investigation will be commenced where the Central Bank is required, by the European Central Bank, to open proceedings pursuant to Article 18(5) of the SSM Regulation.

4. Settlement Policy and Procedure

4.1 *Legislative Provisions on Settlement*

4.1.1 The Act provides that if the Central Bank suspects on reasonable grounds that a regulated entity is committing or has committed a prescribed contravention, the Central Bank may enter into an agreement with the regulated entity to resolve the matter²⁶ (“**the Settlement Agreement**”).

4.1.2 The Settlement Agreement must be in writing and is binding on the Central Bank and the regulated entity. The terms of the Settlement Agreement may contain sanctions of a kind referred to in section 33AQ of the Act and will stipulate that a public statement containing details of the Settlement Agreement will be published.

4.1.3 On occasion it may be necessary for the Central Bank to depart from all or any part of the settlement procedure set down in this Outline, where appropriate, having regard to the circumstances of the case.

4.2 *The Central Bank’s Approach to Settlement*

4.2.1 The Central Bank considers that, in appropriate cases, it may be in the public interest for Administrative Sanctions Procedure cases to settle, and settle as early as possible. However, the Central Bank must be satisfied that the basis for settlement is appropriate taking into account all relevant facts, including the determination of the appropriate sanction, whether all concerns have been addressed to the Central Bank’s satisfaction, and any other relevant considerations.²⁷ The level of co-operation from the regulated entity with the Central Bank during an Investigation will be relevant to settlement.

²⁶ Section 33AV(1) of the Act.

²⁷ Entry into a Settlement Agreement will be conditional upon all relevant facts known to the regulated entity having been openly disclosed by the regulated entity.

- 4.2.2 The settlement procedure offers both the Central Bank and the regulated entity a means of achieving early resolution of the matter. Early settlement is an efficient use of the Central Bank's resources, and provides timely resolution and transparency through the publication of the details of the case. Where settlement is agreed, it results in the avoidance of the additional costs and administrative burden of extended administrative sanctions proceedings for both the Central Bank and the regulated entity.
- 4.2.3 In each case, the Central Bank will consider its statutory objectives in determining whether it is appropriate to settle a case, and on what terms, and whether the agreed settlement terms will result in an acceptable regulatory outcome. The Central Bank expects that the regulated entity will admit the contravention(s) and that the terms of the settlement will be published.²⁸
- 4.2.4 There is no obligation on the Central Bank to engage in the settlement procedure or to settle once the settlement procedure has been commenced, and the Central Bank will decide in its sole discretion whether a particular case is suitable for settlement. The settlement procedure runs in parallel with an Investigation and it should be noted that an indication of willingness to enter into settlement discussions by the regulated entity does not cause the suspension of an Investigation. The Central Bank expects full information in response to questions raised in any Investigation Letter(s) to be provided in open correspondence before it will consider scheduling a settlement meeting.
- 4.2.5 The settlement procedure may be considered by the Central Bank at any time from the time at which full information in response to questions raised in any Investigation Letter(s) are provided in open correspondence until the date on which the Inquiry makes a finding as to whether a regulated entity has committed, or is committing, a prescribed contravention.²⁹ However, generally the Central Bank will not consider the settlement procedure option once the Notice of Inquiry has issued.

²⁸ See Section 4.7 below.

²⁹ Section 33AV(3)(b) of the Act.

4.2.6 The entire settlement procedure will be conducted on a “without prejudice” basis. Any discussion contained in writing should be made under cover of a separate letter which only addresses settlement. In such circumstances, statements made during the settlement procedure will not be used at any subsequent Inquiry or Court procedure. This is to ensure that, in the event that discussions break down, neither party is prejudiced as a result of a position taken in the course of trying to resolve the matter.

4.2.7 The settlement procedure is voluntary and any party may withdraw at any stage, should they choose to do so. No settlement will be concluded unless and until all concerns in the Investigation have been addressed to the Central Bank’s satisfaction.

4.3 *Commencement of the settlement procedure*

4.3.1 Once an Investigation has commenced, the Central Bank may issue a letter offering the possibility of settlement (“**the Settlement Letter**”) to the regulated entity. The Settlement Letter will be issued on a without prejudice basis.

4.3.2 The Central Bank will not, however, issue a Settlement Letter until such time as it has sufficient factual information to understand the nature and gravity of the suspected prescribed contraventions to allow it to make an assessment of the suitability or otherwise of the case for the settlement procedure.

4.4 *Early Settlement Discount Scheme*

4.4.1 Where a regulated entity settles a matter at an early stage with the Central Bank³⁰, a discount may be applied to the sanction³¹ (“**the Early Settlement Discount Scheme**”).

4.4.2 Under the Early Settlement Discount Scheme, the Central Bank may allow a

³⁰ Having met the conditions already set out in Section 4.3 above.

³¹ After consideration of any relevant sanctioning factors.

discount up to a set maximum to be applied to a sanction that it would otherwise expect to be imposed on a regulated entity after considering the sanctioning factors. Any discount applied pursuant to the Early Settlement Discount Scheme will be applied to the overall sanction, which will have been arrived at by reference to the relevant sanctioning factors.³² The Central Bank has identified two stages of the Administrative Sanctions Procedure for these purposes:

- from the issuance of the Settlement Letter for such period as the Central Bank indicates in the Settlement Letter (“**Stage 1**”);
- from the end of Stage 1 until the date on which a Notice of Inquiry is issued (“**Stage 2**”).

The maximum percentage discount for sanctions (both monetary penalty and/or period of disqualification) will be up to as follows:

Stage at which agreement reached	Percentage discount
Stage 1	Up to 30%
Stage 2	Up to 10%

4.4.3 In order to avail of the Stage 1 percentage discount the regulated entity will be required, within a period specified by the Central Bank in the Settlement Letter, to confirm its willingness to enter into the settlement procedure and to settle within the timeframe indicated by the Central Bank.

4.4.4 If the regulated entity does not confirm its willingness to enter into the settlement procedure and/or fails to settle within the indicated timeframe, the Stage 1 percentage discount will no longer be allowed. The Stage 2 percentage discount will only be allowed until such time as a Notice of Inquiry is issued.

4.4.5 Where the regulated entity has not confirmed in writing, before the date a Notice of Inquiry is issued, its willingness to enter into the settlement procedure, the

³² See Part 6.

case will progress towards Inquiry.

4.4.6 Where settlement is agreed after the Notice of Inquiry has issued³³ no discount will apply, and the sanction will take into account the costs incurred by the Central Bank, including any costs incurred as part of the Investigation and the Inquiry process.

4.4.7 Any Settlement Agreement between the Central Bank and the regulated entity will include a statement as to any discount applied in accordance with the Early Settlement Discount Scheme. Further discussion on Settlement Agreements is contained in Section 4.6 below.

4.4.8 In deciding upon the appropriate sanctions in the settlement procedure which will be subject to the discount, the Central Bank will take into account all of the circumstances of the case. In so doing, the Central Bank will consider the sanctioning factors set out in Part 6 of the Outline and in the Inquiry Guidelines.³⁴

4.5 *Settlement Meeting*

4.5.1 Where the regulated entity indicates in writing its willingness to enter into the settlement procedure and the regulated entity has provided full and open information in response to matters raised in the Investigation Letter(s), such that the Central Bank is satisfied that settlement is appropriate, a settlement meeting between the respective parties will be scheduled for an agreed date and time.

4.5.2 Prior to the settlement meeting taking place (but only after the regulated entity has indicated its willingness to enter into the settlement procedure), the Central Bank will write to the regulated entity notifying it of the sanction (monetary or otherwise) which the Central Bank considers as appropriate, taking into account

³³ As noted above, generally, the Central Bank will not consider entering into settlement discussions once the Notice of Inquiry has issued.

³⁴ Paragraph 5.9 of the Inquiry Guidelines.

relevant sanctioning factors. This letter will be on a without prejudice basis.

4.5.3 It is envisaged that the settlement procedure shall consist of one meeting only, attended by representatives of the Central Bank and representatives of the regulated entity. Those persons who attend the settlement meeting must have authority to agree any terms of settlement. All information which the regulated entity wishes to rely on at the settlement meeting should be provided to the Central Bank in advance of the meeting, and a copy brought to the meeting. Likewise, the Central Bank will provide copies of all information it will seek to rely on at the meeting and bring copies to the meeting. The settlement meeting will be held on a without prejudice basis as explained at Section 4.2.6 above. The without prejudice format of the settlement meeting will give the regulated entity an opportunity to discuss the case in detail with the Central Bank with a view to agreeing settlement terms.

4.6 Settlement Agreement

4.6.1 The terms of any proposed settlement will be put in writing and will be agreed by the Central Bank and by the regulated entity in the Settlement Agreement. The Settlement Agreement is conditional upon all relevant facts known to the regulated entity at the time of entry into the Settlement Agreement having been openly disclosed (in the context of responses to the Investigation Letters) and is legally binding.³⁵ The regulated entity should have carried out such internal enquiries as are necessary to ensure that it is satisfied that it has disclosed all such relevant facts known to it or which ought to have been known to it at the time of entry into the Settlement Agreement.

4.6.2 A Settlement Agreement will only be concluded where it is consistent with the objectives of the Central Bank³⁶ and:

- the basis for settlement is consistent with the general approach to regulation of the Central Bank;

³⁵ Section 33AV(2) of the Act.

³⁶ See Section 3.7.2 above.

- it is fair having regard to all the known facts; and
- the Settlement Agreement will contribute to the efficient, effective and economic use of resources.

4.6.3 A Settlement Agreement will include the following:

- admissions by reference to the prescribed contraventions;
- a statement that the prescribed contraventions have ceased or are being addressed;
- a statement from the regulated entity that it has disclosed all relevant information in its possession;
- appropriate sanctions;
- any discount for early settlement;
- a detailed public statement; and
- other relevant terms.

4.6.4 The Settlement Agreement will represent the final agreed position between the parties and will specify the prescribed contraventions in respect of which a settlement has been agreed. The Central Bank expects that all Settlement Agreements will contain admissions by the regulated entity in respect of the prescribed contraventions contained therein.

4.6.5 The Settlement Agreement will contain details of the sanction(s) imposed on the regulated entity and, where a monetary penalty has been imposed, the manner in which such monetary penalty is to be paid. Where applicable, the Settlement Agreement will also include any discount applied pursuant to the Early Settlement Discount Scheme.

4.6.6 Both parties shall adhere to the terms of the Settlement Agreement. However, if the regulated entity fails to comply with the terms of the Settlement Agreement the Central Bank may apply to the High Court for an order requiring the regulated entity to comply with the terms of the agreement³⁷, and/or may seek

³⁷ Section 33AV(3A) of the Act.

to recover any monetary amount agreed to in a court of competent jurisdiction as a debt due to the Central Bank.³⁸ Further, should additional material information emerge, which was not brought to the attention of the Central Bank during the course of the Investigation, the Central Bank may, if the circumstances warrant it, commence a further Investigation into the regulated entity.

4.6.7 Where the prescribed contraventions are admitted by the regulated entity but agreement cannot be reached as to the sanctions to be imposed, a Settlement Agreement cannot be entered into.³⁹

4.7 *Public statement*

4.7.1 Public statements are an important tool in promoting the transparency of the Central Bank's decision-making process. They inform the general public as well as the market, and help to maximise the deterrent and educational effect of enforcement action. The Central Bank expects that a public statement will be released in all administrative sanctions cases which are settled pursuant to the settlement procedure.

4.7.2 Once the terms of a Settlement Agreement have been agreed by the Central Bank and the regulated entity, the Central Bank will prepare a statement for publication ("**the public statement**"). The public statement will provide a detailed account of the admitted prescribed contraventions and will contain:

- the name of the regulated entity;
- the prescribed contraventions;
- the facts of the case;
- the sanctions imposed, including any discount applied for early settlement;
and
- other relevant factors.

³⁸ Section 33AV(4) of the Act.

³⁹ If sanctions cannot be agreed at settlement, an Inquiry into sanctions may be undertaken under section 33AR of the Act. See Section 5.3.2 below.

A sample public statement is attached at Appendix 1 to this Outline. Appended to a public statement will be a prepared statement by the Central Bank on the market aspects of the case and how it corresponds with the Central Bank's objectives. The wording of any market commentary is a matter for the Central Bank alone and does not form part of the Settlement Agreement.

- 4.7.3 The timing and manner of the release of a public statement will be within the sole discretion of the Central Bank. It may, however, be discussed between the parties at the settlement meeting. The public statement and any market commentary on the case will generally be published promptly on the Central Bank's website.

4.8 *Effect of Settlement Agreement*

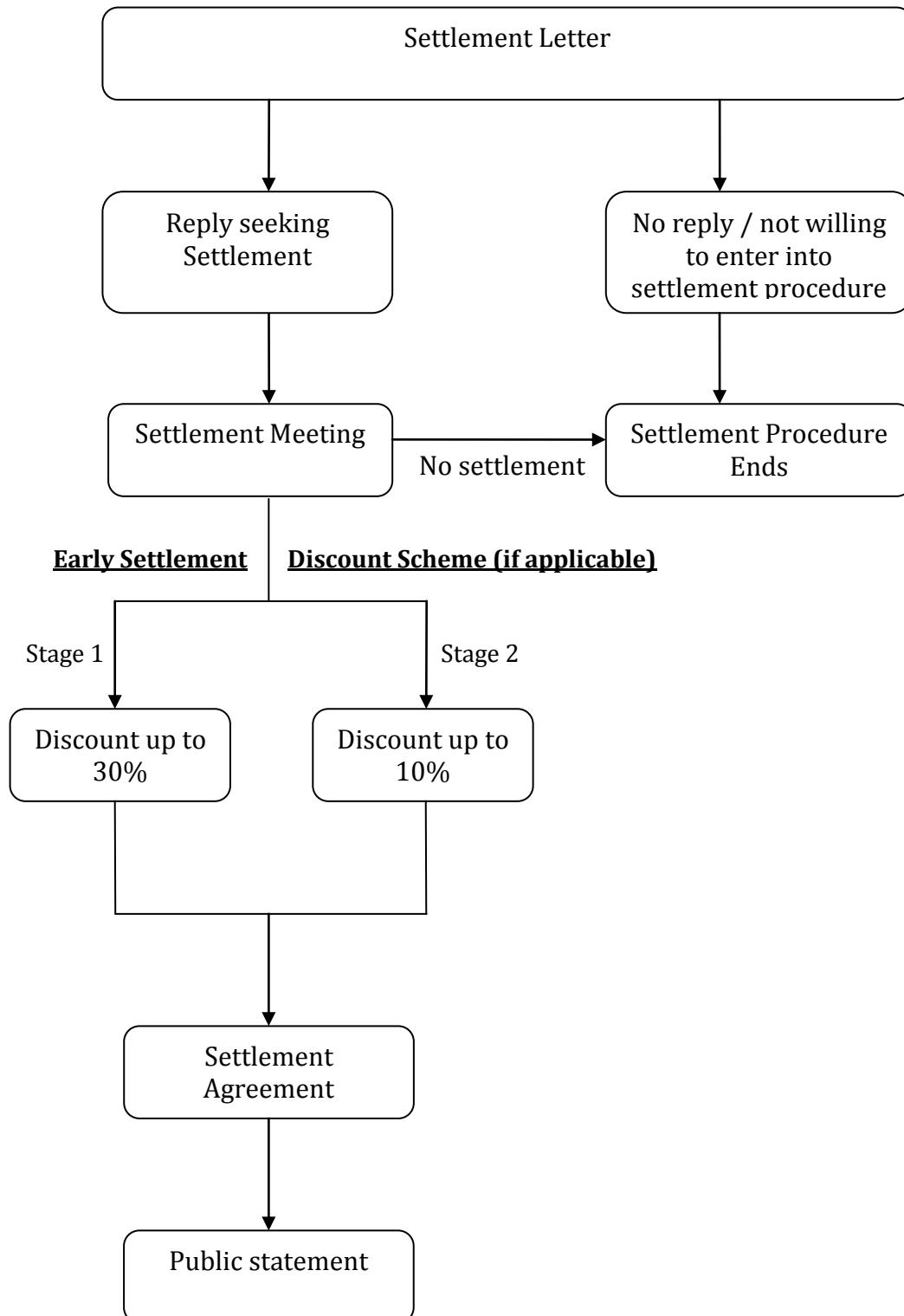
- 4.8.1 The Settlement Agreement will form part of the regulated entity's compliance record. As such, it may influence the Central Bank's decision to commence enforcement action, taking into account the age of the previous Settlement Agreement(s), and may be taken into account in other actions taken by the Central Bank.
- 4.8.2 Settlement Agreements may be considered cumulatively, although they relate to separate areas of a regulated entity's business, where the concerns which gave rise to those Settlement Agreements are considered to be indicative of a regulated entity'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 common issues or controls.
- 4.8.3 A Settlement Agreement entered into with a person concerned or formerly concerned in the management of a regulated entity may be considered by the Central Bank in assessing a subsequent application by that person to perform a pre-approval controlled function under the Fitness and Probity regime pursuant

to Part 3 of the Central Bank Reform Act 2010.⁴⁰

- 4.8.4 Settlement Agreements may be taken into account in determining appropriate sanctions pursuant to the Administrative Sanctions Procedure (including at Inquiry) if subsequent prescribed contraventions are committed by the regulated entity.

⁴⁰ For further information on Fitness and Probity and the relevant regulatory requirements, please see the Central Bank website.

Diagram 2: Flow diagram of the Settlement Procedure



5. The Inquiry

5.1 *The Inquiry Guidelines*

5.1.1 The procedures relating to the conduct of an Inquiry are set out in detail in the Inquiry Guidelines. The Outline only provides a summary of the procedures. Reference should therefore be made to the Inquiry Guidelines for the purposes of information relating to Inquiries.

5.2 *Inquiry Notice*

5.2.1 If it is determined that there are reasonable grounds to suspect that a prescribed contravention is being or has been committed, the Central Bank may refer the matter to an Inquiry pursuant to Part IIIC of the Act. The purpose of the Inquiry is to determine if a prescribed contravention is being or has been committed and to determine the appropriate sanctions.

5.2.2 Where the Central Bank has decided to refer a matter to Inquiry, the Regulatory Decisions Unit (“**RDU**”) of the Central Bank will issue a Notice of Inquiry to the relevant regulated entity. The Notice of Inquiry will:

- (a) set out the suspected prescribed contravention(s) and the grounds upon which the suspicions are based, as outlined by ENF at referral; and
- (b) append an Inquiry Management Questionnaire (“**the Questionnaire**”).⁴¹

The Notice of Inquiry will be accompanied by a copy of all documentation provided to the RDU⁴² by the Enforcement Directorate at the time of referral.

5.2.3 The Questionnaire must be completed and returned to the RDU within such time as specified in the Questionnaire, allowing at least 10 working days for response. If no response to the Questionnaire is received within the time specified, the RDU will notify the members of the Inquiry (“**Inquiry Members**”)⁴³ and will proceed

⁴¹ See paragraph 3.6 of the Inquiry Guidelines.

⁴² See paragraph 2.3 of the Inquiry Guidelines.

⁴³ In certain cases an Inquiry may be comprised of a sole member, see paragraph 2.4 of the Inquiry Guidelines.

to confirm the date and arrangements for the Inquiry hearing without further consultation. The RDU will act as registrar to the Inquiry and will be the point of contact within the Central Bank for the regulated entity in relation to all Inquiry matters.

5.3 *Inquiry Procedure*

5.3.1 The Inquiry Members may consider both written and oral submissions in relation to the alleged contravention(s) and will make a determination as to:

- whether the prescribed contravention(s) occurred; and
- the appropriate penalty to be applied.

5.3.2 Where the regulated entity has admitted a prescribed contravention(s) formally in open correspondence, but does not agree with the sanction proposed by the Central Bank, an Inquiry as to sanctions only will be undertaken.⁴⁴ Any such Inquiry will be held in accordance with the Inquiry Guidelines.

5.4 *Appeals*

5.4.1 If the regulated entity disagrees with the final decision of the Inquiry, it may appeal the decision to IFSAT within 28 days of being notified of that decision, or within such time as agreed with the Registrar or Chairperson of the IFSAT.⁴⁵ IFSAT's decision may subsequently be appealed to the High Court.⁴⁶ The decision of the Inquiry will not take effect while the appeal is pending.

5.5 *Publicity*

5.5.1 Generally, the Central Bank's obligations to publish the findings of an Inquiry, are set out in section 33BC of the Act⁴⁷. Pursuant to section 33BC of the Act, where

⁴⁴ Section 33AR of the Act

⁴⁵ Section 57 of the Act.

⁴⁶ Section 57AK of the Act.

⁴⁷ There are, however, circumstances where different publication provisions may apply in respect of the imposition of sanctions. For example, where the prescribed contravention constitutes a breach of the European Union (Capital Requirements) Regulations 2014 and/or Regulation (EU) No 575/2013 of the

the Inquiry Members find that a prescribed contravention is being or has been committed and/or impose a sanction, the Central Bank must publish the findings of the Inquiry Members⁴⁸ and such (if any) of the particulars of the contravention(s) as it thinks appropriate, which will ordinarily include:

- the name of the regulated entity on whom a sanction has been imposed;
- details of the prescribed contravention(s) in respect of which the sanction has been imposed;
- details of the sanction imposed; and
- the grounds upon which the findings are based.⁴⁹

5.5.2 Notwithstanding this, the Central Bank is not required to publish a finding or particulars:

- if publication of the finding or particulars involves the disclosure of confidential information the disclosure of which is prohibited by the 'Rome Treaty'⁵⁰, the ECSB Statute or the Supervisory EU legal acts (within the meaning of section 33AK(10) of the Act); or
- if the Inquiry Members determine:
 - (i) that the finding or particulars are of a confidential nature or relate to the commission of an offence against a law of the State; or
 - (j) that publication of the finding or particulars would unfairly prejudice a person's reputation.⁵¹

5.5.3 Separate to the publication of the Inquiry Members' findings, the Central Bank may issue a market commentary on the outcome of the Inquiry, which will outline the Central Bank's view of how the findings in the case apply more

European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Regulation 56 of European Union (Capital Requirements) Regulations 2014 applies.

⁴⁸ Section 33BC(1) and (2) of the Act.

⁴⁹ Section 33BC(3) of the Act.

⁵⁰ The Treaty on the Functioning of the European Union.

⁵¹ Section 33BC(4) of the Act.

broadly to the market at issue.

- 5.5.4 The Central Bank will publish annually, in summary form, information on its actions under Part IIC of the Act⁵², including on the decisions of any Inquiry conducted.

⁵² Section 33BC(5) of the Act.

6. Sanctions

6.1 *Introduction*

6.1.1 Prior to November 2013, the Central Bank undertook a substantive review of the sanctions which may be imposed under the Administrative Sanctions Procedure. In imposing sanctions under the Administrative Sanctions Procedure, including under the settlement procedure, the Central Bank continues to place an increased emphasis on deterrence, both in relation to the specific regulated entity and the overall relevant financial market, and the annual turnover of the regulated entity subject to sanction, where appropriate. The Central Bank will have regard to the sanctioning factors specified in 6.3 below. It is envisaged that this may lead to the imposition of greater sanctions than has previously been the case.

6.2 *Types of Sanctions Imposed*

6.2.1 The Central Bank, in light of its enforcement and supervisory objectives and policies, may, either under a Settlement Agreement⁵³ or following an Inquiry⁵⁴, impose one or more of the following sanctions:

- caution or reprimand;
- 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;
- imposition of a monetary penalty (in the case of a corporate and unincorporated body an amount not exceeding €10,000,000 or 10% of the annual turnover of the regulated financial service provider in the last financial year, whichever is the greater, or in the case of a natural person an

⁵³ In relation to settlement, this list is non-exhaustive.

⁵⁴ It may arise that other sanctions, further or in addition to the sanctions outlined in section 33AQ of the Act, may be available to the Inquiry Members. For example, Regulations 54 and 55 of the European Union (Capital Requirements) Regulations 2014 provide that particular sanctions may be imposed in respect of certain contraventions as set out therein.

amount not exceeding €1,000,000)⁵⁵;

- a direction disqualifying a person from being concerned in the management of a regulated financial service provider;
- except where the provisions of Council Regulation (EU) No 1024/2013 apply, suspension of the authorisation⁵⁶ of a regulated entity, in respect of one or more of its activities, for a period not exceeding 12 months;
- except where the provisions of Council Regulation (EU) No 1024/2013 apply, revocation of a regulated entity's authorisation⁵⁷;
- direction to cease a contravention, if it is found the contravention is continuing; and
- 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.⁵⁸

6.3 *Sanctioning Factors*

6.3.1 All the circumstances of the case will be taken into account in determining sanctions and, in doing so, regard may be had to the following factors⁵⁹:

1. The Nature, Seriousness and Impact of the Contravention

- (a) whether the contravention was deliberate, dishonest or reckless;
- (b) duration and frequency of the contravention;
- (c) the amount of any benefit gained or loss avoided due to the contravention;
- (d) whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of the business;

⁵⁵ In both cases this will be subject to the overriding requirement that any monetary penalty imposed under section 33AQ or 33AR of the Act will not cause a corporate entity to cease business or cause an individual to be adjudicated bankrupt (section 33AS(1) and (2) of the Act).

⁵⁶ In this context, 'authorisation' has the same meaning as provided for in section 33AQ(9) of the Act.

⁵⁷ In this context, 'authorisation' has the same meaning as provided for in section 33AQ(9) of the Act.

⁵⁸ Section 33AQ of the Act.

⁵⁹ In particular, and where appropriate, the Central Bank shall, when determining the appropriate sanction take into account such circumstances as detailed in Regulation 58 of the European Union (Capital Requirements) Regulations 2014.

- (e) the extent to which the contravention departs from the required standard;
- (f) the impact or potential impact of the contravention on the orderliness of the financial markets, including whether public confidence in those markets has been damaged or put at risk;
- (g) the loss or detriment or the risk of loss or detriment caused to consumers or other market users;
- (h) the effect, if any, of the contravention on vulnerable consumers⁶⁰;
- (i) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;
- (j) whether there are a number of smaller issues which individually may not justify administrative sanction, but which do so when taken collectively;
- (k) any potential or pending criminal proceedings in respect of the contravention which will be prejudiced or barred if a monetary penalty is imposed pursuant to the Administrative Sanctions Procedure.

2. The Conduct of the Regulated Entity after the Contravention

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

⁶⁰ The term “vulnerable consumer”, has the same meaning as the definition set out in Chapter 12 (‘Definitions’) of the Consumer Protection Code 2012 at p.75.

- administrative sanction is imposed;
- (e) whether the contravention was admitted or denied.

3. The Previous Record of the Regulated Entity

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

4. Other General Considerations

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

6.4 *Restriction on Imposition of Monetary Penalties*

- 6.4.1 Section 33AT(2) of the Act provides that no monetary penalty may be imposed under sections 33AQ and 33AR of the Act if the regulated entity has been found guilty or not guilty of committing a criminal offence under the law of the State involving a prescribed contravention. In those circumstances the Central Bank may, under section 33AQ and 33AR of the Act, only impose non-monetary penalties.

6.5 *When a Decision of the Inquiry Takes Effect*

6.5.1 The Inquiry Guidelines contain detailed information on when a decision of the Inquiry takes effect. Please see paragraphs 5.16 to 5.19 of the Inquiry Guidelines for further information.

Appendix 1: Sample Public statement

[On Central Bank headed paper]

Settlement Agreement between the Central Bank of Ireland and *[the regulated financial service provider / person concerned in its management]*

The Central Bank of Ireland (“the Central Bank”) has entered into a Settlement Agreement with effect from *[date]* with *[the regulated financial service provider / person concerned in its management]* (“the firm”) / *[name]*, a *[regulated financial service provider / person concerned in the management of the firm]*, in relation to breaches of regulatory requirements contained in *[relevant legislation]*.

[X number of] breaches of the *[relevant legislation]* were identified. The firm breached the *[relevant legislation]* by failing *[for y period of time]* to:

1. *[particulars of contraventions]* *[the particulars of the contraventions will be described in substantial detail]*
2. *[particulars of contraventions]*
3. *[particulars of contraventions]*

The Central Bank has imposed the following sanctions:

[details of sanctions imposed, including any discounts under the early settlement discount scheme]

[Facts of the case] *[the facts of the case will be described in substantial detail and will provide a narrative of the contraventions and their Investigation, including any mitigating or aggravating factors]*

The sanction(s) imposed in this case reflects *[the seriousness with which the Central Bank treats the relevant contravention(s)]*.

The Central Bank confirms that the matter is now closed.

END.

[Market Commentary]

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