



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Consultation Paper 154

Consolidated Guidelines in respect of the Central Bank Administrative Sanctions Procedure

Amended in connection with the Central Bank
(Individual Accountability Framework) Act 2023

June 2023

Contents

Executive Summary.....	3
Chapter 1: Introduction.....	6
Background and Objectives.....	6
Central Bank Approach.....	8
Legal Basis.....	9
Chapter 2: The ASP Guidelines.....	11
Overview of Key Aspects.....	11
ASP Investigations.....	16
ASP Inquiries.....	22
ASP Settlement.....	30
ASP Sanctions.....	39
ASP Court Confirmation and Appeals.....	46
Questions.....	49
ASP Investigations.....	49
ASP Inquiries.....	49
ASP Settlement.....	50
ASP Sanctions.....	51
ASP Court Confirmation and Appeals.....	51
Appendix 1: Draft ASP Guidelines.....	53
Appendix 2: Transitional Arrangement.....	54

Executive Summary

The Central Bank (Individual Accountability Framework) Act 2023 (the **Act**) was signed into law on 9 March 2023.

On 13 March 2023, the Central Bank issued its related Consultation Paper 153 titled “Enhanced governance, performance and accountability in financial services - Regulation and Guidance under the Central Bank (Individual Accountability Framework) Act 2023”.

The purpose of that consultation paper was to set out how the Central Bank proposes to implement the new Individual Accountability Framework (**IAF**), which has as its key objectives better outcomes for consumers and users of financial services and the ongoing stability and integrity of the financial system. This is to be achieved through the improvement of governance, performance and accountability in financial services firms by establishing a transparent and enhanced framework setting out who is responsible for what and where decision making lies, together with clarity as to the expected standards of behaviour and conduct in support of positive culture change within financial services.

While the IAF is predominantly aimed at providing firms with the tools to support improved governance and accountability, enforcement has an important role as an enabler of effective financial regulation in support of the public interest and as such, the IAF will be underpinned by the Central Bank’s powers of enforcement. These will be deployed in line with our established principles of high quality risk-based enforcement reflecting our commitment to proportionality, fairness, considered case selection and a consistent focus on overall outcomes.

On 20 April 2023, the Central Bank also published its “Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2023” together with its updated “Fitness and Probity: Guidance on Investigations, Suspensions and Prohibitions” which generally reflect amendments to the fitness and probity regime of a more technical nature required in connection with the Act.

The Act introduces a number of important changes to enhance the Central Bank’s Administrative Sanctions Procedure (the **ASP**) under

Part IIIC of the Central Bank Act 1942 (the **1942 Act**). These changes will apply, subject to the transitional arrangements, to the enforcement of any obligations under the ASP whether those matters are related to existing obligations under financial services legislation, new obligations introduced as part of the IAF or otherwise become subject to the ASP.

The strengthened ASP is designed to underpin and support the introduction of the IAF and in particular the Senior Executive Accountability Regime and the conduct standards for firms and individuals, which are more particularly detailed in Consultation Paper 153.

Certain more general procedural amendments to the ASP have also been made to incorporate additional safeguards to further fortify our existing process and in recognition of the expanded population of individuals coming within the scope of the ASP under the Act.

The Central Bank has reviewed the ASP with a view to updating its associated processes and procedures to reflect these changes and based on our experience of utilising the ASP. Accordingly, we have prepared draft composite guidelines, which update and consolidate the existing published ASP Outline 2018, Inquiry Guidelines 2014 and ASP Sanctions Guidance 2019¹ and which are attached at Appendix 1 (the **draft ASP Guidelines**).

Stakeholders views are sought on our proposed approach with respect to the ASP as set out in this consultation paper and the draft ASP Guidelines.

We want to hear stakeholders' views on our proposals. The Central Bank is committed to open and engaged consultation with stakeholders to ensure that the updated ASP and associated guidelines are clear and pragmatic, and in order to facilitate a smooth transition to implementation of the new ASP.

This consultation provides an important opportunity for the Central Bank to seek the feedback and views of all relevant stakeholders on

¹ Outline of the Administrative Sanctions Procedure 2018, Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act, 1942, 2014 and ASP Sanctions Guidance, November 2019.

key issues, such that these can be taken into account in the final policies and procedures, where appropriate.

Accordingly, the Central Bank invites feedback on the consultation paper and the draft ASP Guidelines from interested stakeholders, including firms, staff, representative bodies, industry consultancies, service providers, financial services customers, shareholders, investors, civil societies and any other members of the public.

When submitting a response via email, the Central Bank asks that respondents include the following subject heading in their email “Consultation Paper 154 on the ASP Guidelines under the Individual Accountability Framework” and address their response to ASPconsultation2023@centralbank.ie.

The consultation will remain open for 12 weeks from 22 June to 14 September 2023, following which the Central Bank will review all feedback received on this Consultation Paper 154 and prepare an associated feedback statement to be published by the Central Bank.

It is the policy of the Central Bank to publish all responses to its consultations on its website. Accordingly, commercially confidential information should not be included in consultation responses. Information deemed potentially libellous or defamatory will not be published. The Central Bank will accept no liability in respect of any information provided, which is subsequently released, or in respect of any consequential damage suffered as a result.

Chapter 1: Introduction

Background and Objectives

Financial regulation is designed to ensure that the financial system operates effectively and efficiently and this is vital to the stability of the economy and the protection of the interests of consumers and businesses. Accordingly, there is a significant public interest in the effective enforcement of financial regulation and enforcement plays an important role in deterring misconduct, promoting public trust and confidence, investor and consumer protection and market integrity. Where rules designed to support stability are breached, the interests of everyone in society are threatened.

Administrative enforcement powers are commonly used internationally and are recognised as an important element of financial governance and the achievement of the objectives of financial regulation. Wide-ranging enforcement powers are an integral feature of advanced financial governance systems.

Guided by the principles of proportionality and fairness, such powers are required to be deployed consistently and proactively and in an agile manner to combat emerging risks and misconduct and they operate as an important line of defence for the financial system.

The financial system is highly dynamic and ever evolving and the regulatory approach must continually adapt and evolve with it to remain equipped to deliver on regulatory objectives. This evolution includes adapting the way we approach and take enforcement action.

In the context of the IAF, in our Report on the Behaviour and Culture in Irish Retail Banks (2018), we proposed reforms to act as a driver for positive behaviours to address the cultural failings, which contribute to a weakening of the financial system. We sought increased individual accountability to reduce misconduct, having examined the interplay between the drivers of misconduct and a lack of clear responsibility and accountability and their impact on achieving a sound financial system and avoiding harm to consumers. It is anticipated that over time the IAF will result in improved governance across the financial sector and drive firms to embed and maintain high standards of conduct and culture that can in turn deliver fair outcomes for consumers and investors.

In order to credibly achieve such reform it is critical to ensure that individuals operating in the financial services sector, particularly those in senior roles, can be held to account for their own wrongdoing and not only where they have participated in a breach by a firm. The introduction of the IAF builds on the Central Bank's existing powers, and enhances the Central Bank's ability to hold senior and other individuals to account.

However, our existing proportionate and targeted approach will not change. This means that we will prioritise enforcement action in cases where such a significant action is merited on consideration of all of the facts of the case, including the seriousness of the suspected breach and the harm or potential harm involved and depending on the particular context arising in any sector of financial services. In the context of individuals specifically, we expect that our existing approach to prioritisation and assessing the seriousness of the behaviour of an individual by reference to primary factors such as culpability (the degree of responsibility of the individual for the contravention), seniority and level of responsibility of the individual and the seriousness of the contravention itself will be continued following implementation of the IAF. Further, given the material costs and significant resources that are involved in bringing formal enforcement proceedings, we would first consider whether our regulatory objectives could be achieved in other ways such as through the use of our supervisory powers.

The Central Bank remains focused on the overall outcomes of our enforcement decisions and actions as part of our overall regulatory strategy.

The Central Bank takes a holistic approach to the assessment of the most appropriate regulatory response to a particular issue or case. The Central Bank has a protective mandate and so our first concern will be addressing the immediate wrongdoing and stopping the harm. In terms of selecting the appropriate powers to utilise in these instances, this will often mean that our administrative enforcement processes and supervisory interventions will be the most appropriate mechanisms in cases involving regulated entities or persons working within them. Our separate powers of customer redress and compensation are key, alongside our enforcement powers in

assessing how best to deliver on the mandate of the Central Bank including the protection of the users of financial services.

As part of our holistic assessment, the Central Bank considers all aspects of its mandate, including its criminal functions and its role in supporting the State's criminal authorities in the prevention, detection and prosecution of criminal activity. The Central Bank conducts criminality assessments in every case, particularly in light of its statutory reporting obligations in section 33AK of the 1942 Act and section 19 of the Criminal Justice Act, 2011. Where criminality is suspected and where reports are made, the Central Bank provides any assistance required by An Garda Síochána and the Director of Public Prosecutions in order to progress a criminal investigation or prosecution. The Central Bank has built strong working relationships with its stakeholders in the criminal sphere in particular in respect of our work in the areas of unauthorised providers, anti-money laundering and countering the financing of terrorism and securities and markets investigations.

We consider that the IAF articulates a framework, the fundamentals of which many firms adhere to already, and would expect that, as with similar frameworks in other jurisdictions, implementation of the IAF by firms would achieve the intended governance benefits without a material increase in enforcement action in the financial services sector.

However, in order to effectively deliver our mandate, the Central Bank is required to be in a position to act where necessary in the public interest and our enhanced ASP is an essential part of being equipped to do that.

Central Bank Approach

We have developed the draft ASP Guidelines having regard to our Strategy² and our regulatory approach, extensive enforcement experience and consideration of international best practice, in addition to the Act itself.

The purpose of the draft ASP Guidelines is to provide clarity and transparency as to the steps involved in an ASP following the

² https://www.centralbank.ie/docs/default-source/publications/corporate-reports/strategic-plan/our-strategy/central-bank-of-ireland-our-strategy.pdf?sfvrsn=3a55921d_4/

introduction of changes under the Act and to provide guidance in an open and clear manner as to how the Central Bank will generally approach these steps. While the Act has introduced many changes to the ASP, the draft ASP Guidelines will also serve to demonstrate that much will remain the same in terms of the Central Bank's enforcement processes and procedures and our approach to those.

The draft ASP Guidelines are aimed at all persons to whom the ASP may be relevant in order to aid their understanding of the legislative provisions and of our processes and procedures in utilising the ASP. Such persons may include regulated entities and their employees, representative bodies and advisors, decision makers³, subjects of and participants in enforcement action and the Central Bank itself as well as the wider public.

We have prepared the draft ASP Guidelines following careful consideration of the legislative provisions and our enforcement processes and procedures in connection with the ASP. We also revisited our existing published ASP Outline 2018, Inquiry Guidelines 2014 and ASP Sanctions Guidance 2019 with a view to updating and incorporating these as part of the consolidated ASP Guidelines so as to clearly set out the enhanced process and provide guidance on our policy and approach in relation to certain new and pre-existing aspects of the ASP.

Legal Basis

The IAF is given legal effect by the following:

- The Central Bank (Individual Accountability Framework) Act 2023; and
- Regulations to be issued by the Central Bank under the Central Bank Acts further detail of which is contained in the Central Bank IAF Consultation Paper 153.

The primary and secondary legislation will be supported by the Central Bank Guidance on the Individual Accountability Framework 2023 (published with the Central Bank IAF Consultation Paper 153) and the draft ASP Guidelines.

³ Decision makers can include inquiry members, IFSAT, the High Court and internal Central Bank decision makers.

Insofar as the draft ASP Guidelines apply to the conduct of inquiries, they will be prescribed pursuant to section 33BD(1) of the 1942 Act. Insofar as the draft ASP 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. Otherwise, the draft ASP Guidelines will be issued more generally in connection with the performance by the Central Bank of its functions under the ASP.

Chapter 2: The ASP Guidelines

Overview of Key Aspects

Amendments to the ASP

Legislative amendments introduced by the Act reflect experience over recent years of bringing proceedings under the ASP. The amendments set out on a statutory footing the various components of the ASP and the enhancements sought by the Central Bank to better support a robust, fair and transparent process.

Legislative amendments introduced by the Act incorporate changes for the purpose of strengthening fair procedures including the introduction of court confirmation of sanctions before any sanction can take effect as part of early resolution or settlement of an ASP matter where admissions are provided.

New provisions are introduced that will govern the investigation and inquiry stages of the ASP, together with potential settlement processes.

However, many aspects of the ASP will remain unchanged. While we have sought to highlight the key changes in this consultation paper, the fundamental structure of the ASP and many of its existing features remains. In many instances, the Act puts existing processes and procedures already operated by the Central Bank on a statutory footing. In general terms, the ASP will continue to be a process involving the investigation by the Central Bank of breaches of financial services obligations by firms and/or individuals participating in those breaches, the function to hold full or sanctions only inquiry hearings with independent decision makers, the discretion to settle cases by agreement with the Central Bank, the power to impose sanctions at inquiry or as part of settlement and the court confirmation of sanctions imposed at inquiry.

The changes to the ASP include both changes provided for by legislation and changes reflecting evolving Central Bank enforcement policy. Changes provided for by legislation include provisions in the Act which provide for the statutory commencement of investigations, a codified investigation report process, the express power to discontinue investigations, a duty to provide reasons for discontinuance and robust confidentiality obligations.

The Act introduces conduct standards applicable to individuals and a further statutory duty of responsibility for the most senior individuals as detailed in Consultation Paper 153. Accordingly the ASP has been amended to clarify the Central Bank's ability to take direct enforcement action against individuals for breaches of those and any other individual obligations that may arise in financial services in line with typical enforcement options for holding relevant persons to account. It will remain the case that individuals can also be held accountable for their participation in breaches committed by a firm.

The scope of the ASP is also extended by legislation to include individuals in all controlled functions and the concept of a "person concerned in the management" has been effectively removed, subject to its retention for the purposes of ongoing application to certain holding companies as prescribed further in the Act⁴.

A further legislative change is the new requirement that inquiry member appointments must be made from a panel established by the Minister for Finance of suitably qualified individuals. Members of this panel will also be appointed as decision makers in relation to certain fitness and probity decisions. This is another positive safeguard to copper fasten the existing independence of Central Bank decision makers.

Further, there are important amendments to provisions relating to sanctions both in respect of the matters to be taken into account in determining appropriate sanctions for individuals and the manner by which sanctions are imposed. In line with the Central Bank's commitment to transparency and openness, we are publishing, as part of the ASP Guidelines, our general methodologies for the determination of any monetary penalties that may arise in respect of firms and individuals in appropriate circumstances.

The available sanctions for individuals have been amended to introduce a more flexible disqualification sanction and provide for a direction imposing conditions on an individual in the performance of any controlled function or controlled functions being performed by such an individual.

⁴ Section 33ANC, section 33ANE, section 33ANF, section 33ANG, section 33ANH of the 1942 Act, as amended by sections 38-42 of the Act.

The Central Bank has been provided with certain new functions at an ASP inquiry which include the making of submissions, leading evidence and examining witnesses. It is proposed that the Central Bank will designate representatives from the directorate within the Central Bank that has primary responsibility for the discharge of the Central Bank's enforcement functions (**Enforcement**).

The civil standard of proof (i.e. on the balance of probabilities) in respect of findings to be made at the conclusion of an ASP, which already applies pursuant to the existing Inquiry Guidelines 2014, has now been placed on an express statutory footing.

There are a number of other procedural changes to the inquiry process included in the draft ASP Guidelines, including greater clarity on the procedure to be followed during the early stages of an inquiry and the introduction of a civil remedy for obstructive behaviour at inquiry, including a failure to comply with a direction of the inquiry member(s).

Changes that have not been specifically provided for in the legislation and which represent Central Bank policy changes, though in some cases are prompted by legislative change, include:

- Earlier disclosure of documents to subjects of enforcement action;
- The stage at which discounts on monetary penalties are potentially available as part of settlement agreements;
- The articulation of non-exhaustive factors where no admissions settlements will likely be unsuitable depending on the degree to which such factors are present; and
- The assessment of sanctioning factors and the publication of methodologies for the determination of monetary penalties.

We have included a list of the key legislative and policy changes and outlined the detail of our proposed approach on these and other aspects of the ASP below for consideration. In aid of clarity and ease of reference, we have also included a process diagram showing the various stages of the ASP.

Overview of Key Legislative and Policy Changes

The Central Bank’s amendments to the ASP involve consolidating and updating existing published guidance documents into a composite set of new ASP Guidelines.

The amendments are driven by both **LEGISLATIVE** and **POLICY** changes.

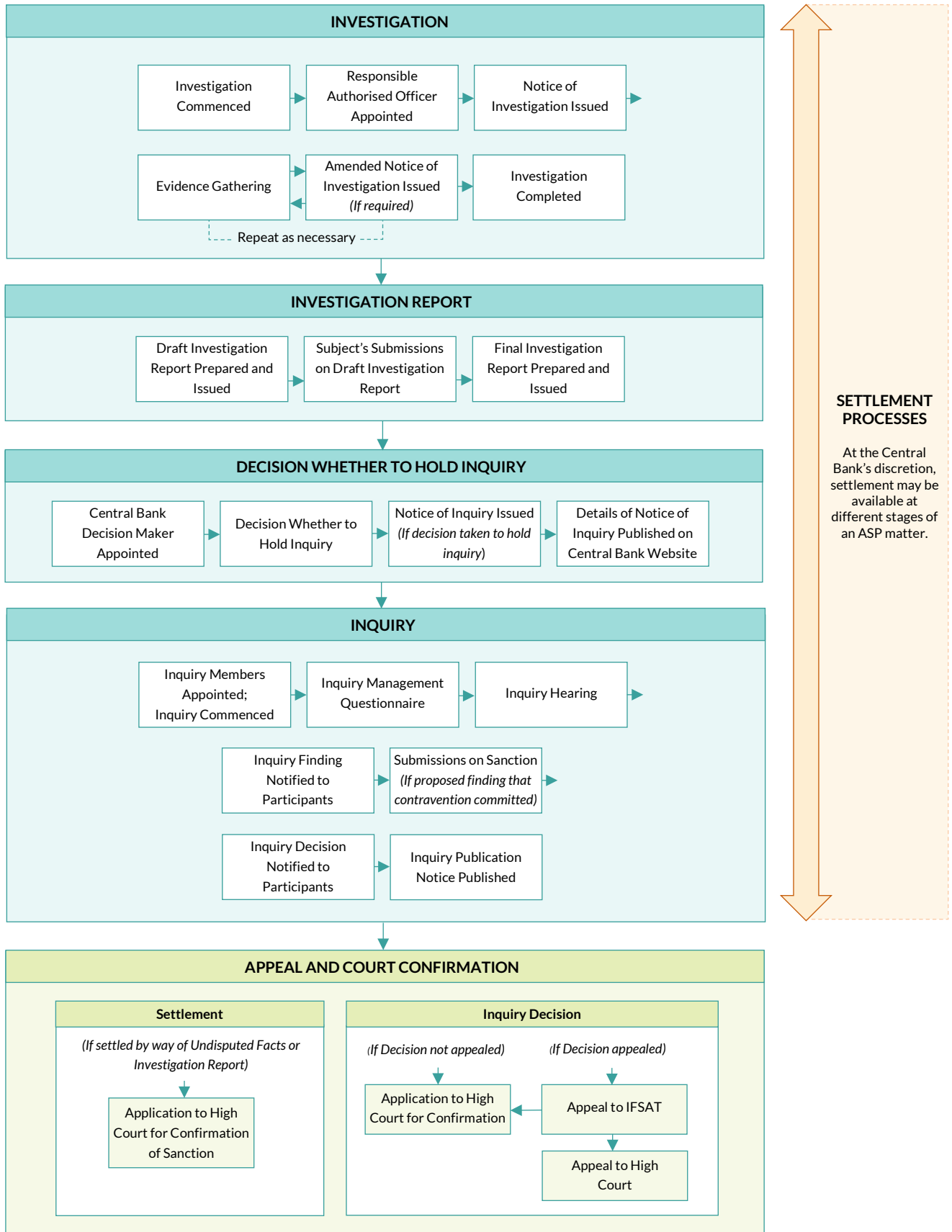
KEY LEGISLATIVE CHANGES

- extension of ASP scope to include ability to take direct enforcement action against all individuals in controlled functions for breach of individual obligations
- statutory ASP investigative process, including a new role of responsible authorised officer and an investigation report process
- a duty to provide reasons for discontinuance of investigation
- amended disqualification sanction for individuals
- new sanction of imposition of conditions on individuals
- non-exhaustive prescribed sanctioning factors for individuals
- inquiry member appointments to be made from a panel established by the Minister for Finance
- requirements in relation to functional separation and the independent performance of certain Central Bank functions under the ASP
- codification of the civil standard of proof (i.e. on the balance of probabilities) in ASP inquiries
- three distinct ASP settlement processes
- provisions for confidentiality, absolute privilege from defamation and disclosure agreements for privileged material
- revised provisions in relation to court confirmation and appeals

KEY POLICY CHANGES

- earlier disclosure of documents to subjects of an enforcement action
- the stage at which discounts on monetary penalties are potentially available as part of settlement
- articulation of factors where no admissions settlements will likely be unsuitable
- more detailed guidance on procedures pertaining to the running of inquiries
- Central Bank’s enforcement division to exercise functions at inquiry of making submissions, leading evidence and examining witnesses
- publication of the Central Bank’s general approach to the determination of sanctions
- publication of methodologies for the determination of monetary penalties for firms and individuals

ASP Process Diagram



ASP Investigations

Statutory Commencement of ASP Investigations

The Act places the investigation phase of an ASP case on an express statutory footing⁵. The draft ASP Guidelines describe the amended ASP investigation process which includes:

- A statutory decision being taken to commence an ASP investigation;
- A statutory requirement to issue to the subject of the ASP investigation a notice informing them of the investigation (**Notice of Investigation**) which is subject to amendment as the investigation progresses; see further information on the Notice of Investigation below;
- A duty to provide reasons for discontinuance of an investigation; see further information on discontinuance below;
- A statutory requirement to prepare an investigation report where the subject has a right of response; see further information on the investigation report below.

Q1. Do the Central Bank draft ASP Guidelines assist you in understanding the modified ASP investigation process now codified in statute?

Introduction of a Statutory Role of Responsible Authorised Officer (RAO)

The Act creates a new role of RAO, who must be appointed on the commencement of each ASP investigation. The RAO is defined in the Act as the person “responsible for the investigation”.

The RAO has a number of responsibilities and certain limited discretions in the making of statutory decisions that are required to be made by the RAO in connection with the conduct of an ASP investigation.

⁵ The power to commence an ASP Investigation was not previously expressly provided for in Central Bank legislation. It was, rather, considered to be ancillary to the function of the Central Bank to hold an inquiry pursuant to Part IIIC under section 5A(1)(e) of the 1942 Act.

Particular functions relating to the issuance of a Notice of Investigation and/or an amended Notice of Investigation and the drafting of an Investigation Report are required to be carried out by an RAO.

Discretions to be exercised by the RAO include:

- Determining the level of material to be disclosed with the Notice of Investigation and the draft and final investigation reports;
- The preparation of the draft investigation report having considered all relevant information or evidence gathered during the course of the investigation; and
- Making any revisions, that in the opinion of the RAO are warranted, to the draft investigation report following the receipt of submissions from the subject of the investigation

It is also the responsibility of the RAO to keep the subject of the investigation informed as to the progress of an ASP investigation, and to issue a notice to the investigation subject in the event that such investigation is changed, extended or discontinued.

The Act contains a new express statutory prohibition on the disclosure of the existence or content of a final investigation report, including any related submissions, by persons in receipt of such confidential information in the course of an ASP investigation.

Q2. Do the draft ASP Guidelines assist you in understanding the role of the RAO and the associated functions and responsibilities in respect of ASP investigations?

Notice of Investigation to Replace Investigation Letter

As provided for in the Act, as soon as practicable after a decision is made by the Central Bank to conduct an ASP investigation, the appointed RAO will give the subject notice in writing of the ASP investigation in the form of a Notice of Investigation.⁶

In line with the new statutory process, the Notice of Investigation will replace what is currently referred to as the Investigation Letter in ASP investigations and will constitute the formal notification to

⁶ Section 33ANJ(1) of the 1942 Act.

the subject of the commencement of an ASP investigation and provide certain information relating to that investigation.

In accordance with the Act, the Notice of Investigation will contain:

- A statement identifying each suspected breach and the conduct of the subject of the ASP investigation to which the investigation relates at that time;
- A copy of material relating to the matters referred in the statement, as the RAO considers appropriate; and
- Confirmation that a written response from the subject to the Notice of Investigation will be taken into account if provided within the timeframe stipulated in the Notice of Investigation or such longer period as the RAO may allow.

The Notice of Investigation is iterative and subject to change depending on responses received from the subject and/or any other relevant information or evidence gathered by the Central Bank during the course of the ASP investigation or otherwise obtained by or in the possession of the Central Bank. The RAO will issue an amended Notice of Investigation as provided for in the Act where appropriate in the circumstances to reflect any required updates.

Q3. Do the draft ASP Guidelines assist you in understanding the proposed approach to the issuing of the Notice of Investigation, what it contains and how it may be amended?

Discontinuance of an Investigation and the Provision of Reasons

As provided for in the Act, and as explained in the draft ASP Guidelines, the Central Bank may decide to discontinue an ASP investigation and take no further action. There are a number of reasons for discontinuance set out in the Act, which will vary from case to case and the Central Bank will confirm the applicable reason for the discontinuance in each such case.

When an ASP investigation is discontinued in respect of all suspected breaches, the RAO will inform the subject as soon as is practicable in writing of the discontinuance and provide the reason for the discontinuance.

Where an ASP investigation of a particular breach is discontinued while continuing in relation to another or other breaches, the RAO and the Central Bank are not required to give a reason for the discontinuance of that particular aspect of the investigation. This allows for an ASP investigation to be modified and adjusted as it progresses depending on the facts and evidence that come to light during the investigative phase. This means that an ASP investigation may be narrowed or broadened as appropriate to the circumstances in each case.

Investigation Report

The Act prescribes a new process around the investigation report, which is to be prepared following the completion of an ASP investigation.

To provide clarity on the Central Bank's approach to the new statutory process, we have set out in the draft ASP Guidelines how the investigation report process will work from provision of the draft investigation report to the subject of the ASP investigation, to finalisation of the investigation report.

The subject of the ASP investigation will be invited to make submissions on the content of the draft investigation report. These will be considered by the RAO before the report is finalised such that any amendments arising out of submissions that are warranted in the opinion of the RAO can be made. The draft ASP Guidelines include details around the considerations of the RAO when preparing the draft investigation report, the material which will be included, how further material may be requested by the subject of the investigation and the time period and process around making submissions on the draft investigation report.

The draft ASP Guidelines describe how the RAO will consider submissions made and make revisions to the draft investigation report if necessary. We provide detail on the provision of the final investigation report and submissions to the Central Bank appointed decision maker to make a decision on whether or not to hold an inquiry. The final ASP investigation report will also be provided to the subject of the ASP investigation. The final investigation report will not include any recommendation or opinion as to whether or what sanctions might be appropriate in the event that a finding is subsequently made against the subject of the investigation.

Disclosure

The Act provides for a new procedure around the preparation of investigation reports. It is intended as part of that process that the disclosure of documents will now primarily occur at the investigative stage prior to any inquiry as more particularly set out in Part 3 of the draft ASP Guidelines.

Q4. Do the draft ASP Guidelines assist you in understanding the Central Bank's proposed approach to disclosure?

Disclosure Agreements Relating to Privileged Material

Information relevant to ASP investigations may be subject to legal professional privilege, and in certain circumstances in the past, such information has been furnished to and used by the Central Bank subject to agreement. The use of such disclosure agreements is now expressly provided for in the Act with the inclusion of a statutory power for the Central Bank to enter into disclosure agreements relating to privileged material. Accordingly, these agreements will benefit from the associated statutory protections, including protection against further waiver and freedom of information requests.

Confidentiality Obligations

The Central Bank has to date imposed confidentiality obligations on recipients of confidential information based on general confidentiality obligations derived from section 33AK of the 1942 Act and/or common law.

The Act imposes new confidentiality obligations in respect of an investigation and the investigation report process. The maintenance of confidentiality of information relevant to an ASP investigation is of great importance to the Central Bank and to the subject of an ASP investigation. These obligations are essential to protect the integrity of the ASP.

In accordance with this new statutory prohibition on disclosure of confidential information, where confidential information is being disclosed to an external party, including the subject of an investigation, for the purposes of an ASP investigation or investigation report, the recipient is now prohibited from further disclosing that information to anyone other than their legal

representative unless required to do so by law or permitted by the Central Bank in writing.

The Act defines “confidential information” as including information in respect of which the recipient has been expressly notified by the RAO is itself confidential or belongs to a particular class or description which is expressed to be confidential.

The draft ASP Guidelines include further information around the notification of confidentiality obligations during the investigation and the investigation report process and the associated prohibition on disclosure, including the consequences of failure to comply with such obligations.

Separately, the Act provides for absolute privilege from defamation actions for investigation proceedings, including communications of an authorised officer⁷, any statement or submission made by or on behalf of any person in the course of the investigation and an investigation report whether in draft or final form to ensure that any person in the proceedings is afforded protections in line with those in several similar regulatory regimes. Similar protection is provided for inquiry proceedings as further outlined below.

Q5. What are your views in respect of the obligations and expectations regarding confidentiality described in the draft ASP Guidelines?

Deciding Whether to Hold an Inquiry

As outlined above, a Central Bank appointed decision maker will consider the final investigation report and any submissions made by the subject on the draft investigation report in order to make a decision on whether or not to hold an inquiry. The draft ASP Guidelines outline the types of decisions which the appointed decision maker may make, including the option to hold a more limited form of inquiry to determine sanctions only. The draft ASP Guidelines further outline the procedure for issuing a notice of inquiry to a subject, which will issue in advance of the

⁷ This provision covers communications of any authorised officer of the Central Bank and is not limited to the communications of the Responsible Authorised Officer.

commencement of an inquiry, and provide for the publication of certain details of the notice of inquiry.

ASP Inquiries

The Act introduces a number of important amendments to the Central Bank's ASP inquiry process. These legislative reforms are based on the Central Bank's experience of the operation of inquiries over the last decade and are intended to introduce increased procedural enhancements, efficiencies, process clarifications and transparency for inquiry participants.

In the context of the new inquiry guidelines incorporated in the draft ASP Guidelines, the Central Bank is seeking to provide guidance in respect of the legislative amendments to inquiries and to update the Inquiry Guidelines 2014 to reflect evolving practice and procedure at inquiries more generally. The draft ASP Guidelines are intended to guide both inquiry members and inquiry subjects in how an inquiry should proceed and to ensure appropriate fair procedures continue to be afforded to inquiry subjects. Whilst inquiry members may depart from the ASP Guidelines in certain instances where they are not appropriate in the circumstances of a particular case, the enhanced guidelines will aid transparency, efficiency, consistency and fair procedures across inquiries. Inquiry members will also benefit from the greater certainty provided around procedural issues in the draft ASP Guidelines.

Roles at Inquiry

Introduction

The Act has introduced amendments to Part IIIC of the 1942 Act which are intended to provide greater clarity around the different functions of the Central Bank in the conduct of an ASP inquiry.

In particular, the Act has introduced a number of procedural safeguards to copper-fasten the independence of the inquiry decision making process and to ensure that the same persons do not carry out the investigative and adjudicative functions on behalf of the Central Bank.

Many of the provisions in the Act reflect the existing functional separation, safeguards and independence measures that the Central

Bank currently operates in respect of ASP investigations and inquiries.

Inquiry Members

The draft ASP Guidelines in respect of inquiries have been updated to reflect the fact that the Regulatory Decision Panel has been designated as a panel established by the Minister for Finance for the purposes of section 33BI of the 1942 Act, and the draft ASP Guidelines briefly outline the processes concerning the appointment of those panel members to an inquiry. The changes introduced by the Act formalise the existing independence of inquiry members in conducting an inquiry. In addition new definitions have been included in the Act of “Inquiry Members” and “Person Presiding” at an inquiry. These definitions are explained in the draft ASP Guidelines. In particular, it is envisaged that the functions of the “Person Presiding” outlined in the amended Part IIIC of the 1942 Act will be performed by the “Inquiry Chair” as described in the draft ASP Guidelines.

A list of the current members of the Regulatory Decisions Panel is available on the Central Bank’s website.

Central Bank Functions at Inquiry and the Role of Enforcement

The original provisions of Part IIIC of the 1942 Act were silent in relation to how the matters underlying the referral to the inquiry were to be presented at that inquiry and by whom.

The Inquiry Guidelines 2014 outlined Enforcement’s role at an ASP inquiry as providing any assistance, information or evidence requested by the inquiry members. Under the Inquiry Guidelines 2014, inquiry members had discretion to appoint and determine the role of a legal practitioner. The Inquiry Guidelines 2014 also envisaged that a legal practitioner might be required to assist inquiry members at a hearing with oral evidence by leading evidence or cross-examining witnesses as appropriate.

The Act specifically amends Part IIIC of the 1942 Act to introduce express Central Bank functions at inquiry of leading evidence, examining witnesses, making submissions and any other functions that are necessary for the proper conduct of an ASP inquiry.

As per the draft ASP Guidelines, it is envisaged that Enforcement (or legal practitioners appointed on its behalf) will take up a more active role at an ASP inquiry and will carry out the Central Bank functions

of leading evidence, examining witnesses and making submissions. Enforcement will also be empowered to carry out any other Central Bank functions ancillary to the performance of these functions for the purposes of presenting the ASP investigation report to the inquiry members at inquiry. Both the amended provisions of Part IIIC of the 1942 Act and the draft ASP Guidelines ensure the functional separation between Enforcement and the inquiry members in the performance of these functions to protect the independence of the inquiry members' adjudicative functions.

Whilst Enforcement (or its legal representatives) will lead in the presentation of the evidence and other matters at inquiry, this will not impact on the overall powers and functions of the inquiry members to conduct the inquiry and to "inquire" into the circumstances of the matters that are before them.

Notwithstanding Enforcement's role, the inquiry members will still be empowered to do all things necessary and/or ancillary to their function of conducting an ASP inquiry, including to ask questions and make appropriate directions relating to witnesses and submissions.

Inquiry Subject

The Inquiry Guidelines 2014 referred to the person who was suspected to have committed a prescribed contravention as the "regulated entity", which was described 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 1942 Act. The draft ASP Guidelines instead describe such persons as the "Subject" or "Inquiry Subject" as the context requires in recognition of the Central Bank's ability to now take direct enforcement action against individuals for breaches of individual obligations that may arise in financial services.

Inquiry Participants

The term "Inquiry Participants" is used throughout the draft ASP Guidelines to clarify the processes and procedures that will apply to the main participants in the inquiry process, namely Enforcement and the Inquiry Subject.

Legal Practitioner

Under the Inquiry Guidelines 2014, the role of a legal practitioner was to assist the inquiry. Any decision to appoint a legal practitioner

together with the precise role to be played by the practitioner was a matter to be determined by the relevant inquiry members.

The draft ASP Guidelines relating to inquiries are updated to provide for the fact that separate legal practitioners can be appointed to assist each of the inquiry members and Enforcement at inquiry, as set out in the Act.

The legal practitioner appointed to assist inquiry members will act as the legal advisor to the inquiry members. Any decision to appoint a legal advisor will be a matter for the inquiry members. The draft ASP Guidelines provide guidance on the potential scope of a legal advisor's role.

Regulatory Decisions Unit

The Regulatory Decisions Unit in the Central Bank (**RDU**) will continue to act as registrar for inquiries and will manage the administration of an ASP inquiry, including receiving and distributing inquiry materials. The draft ASP Guidelines concerning inquiries have been updated to reflect a slightly broader scope of the role that RDU already has in respect of existing inquiries, which includes the provision of advice and guidance to inquiry members with regard to inquiry procedures, in addition to providing drafting and research assistance.

Third Parties

The 1942 Act does not expressly provide for any third parties to have a role at an ASP inquiry. The draft ASP Guidelines propose that a firm who believes that it has an interest in the subject matter of an inquiry may apply to the inquiry member(s) to request a role in the inquiry. Such an application could be made where the inquiry subject is an individual who is or was performing a controlled function in that firm. Whether the firm will be afforded any role at an inquiry in which they are not the subject and the nature of any such role will be at the absolute discretion of the inquiry members.

Q6. Do the draft ASP Guidelines assist you in understanding the revised roles at inquiry?

Inquiry Process and Procedure

Inquiry Management Questionnaire

Under the Inquiry Guidelines 2014, the first stage of the inquiry involved issuing a notice of inquiry, the investigation report and an inquiry management questionnaire to the regulated entity. Given the changes to the ASP, the notice of inquiry and investigation report will have issued to the inquiry subject prior to the commencement of the inquiry.

It is proposed in the draft ASP Guidelines that the first stage of the inquiry will involve the issuing of an inquiry management questionnaire to both the inquiry subject and Enforcement within six weeks from the date on which the inquiry commences being the date on which the inquiry members are appointed.

The draft ASP Guidelines include a non-exhaustive list of the types of issues which can be included in the questionnaire. The purpose of issuing the questionnaire to both inquiry participants is to seek to identify any procedural issues or applications at an early stage so that they may be quickly resolved in advance of a substantive hearing.

Notice of Inquiry Hearing

Under the Inquiry Guidelines 2014, the notice of inquiry was to issue in advance of an inquiry hearing after the inquiry members were appointed. The Act provides that the Central Bank may separately issue a notice prior to the holding of an inquiry and further notices may then issue in advance of any hearings being held.

The draft ASP Guidelines propose that two types of notices would issue as follows:

- A “Notice of Inquiry”: this type of notice issues to the subject notifying them that a decision has been made to hold an inquiry. This notice issues prior to the commencement of the inquiry and sets out the grounds on which the suspicions are based. Further details on the Notice of Inquiry are set out in Part 3 of the draft ASP Guidelines; and

- A “Notice of Inquiry Hearing”: this type of notice will set out the date, time and place at which the Central Bank will hold a hearing (including an Inquiry Management Meeting) in order to ensure inquiry subjects are invited to attend or to make written submissions about the matter to which the inquiry relates.

Inquiry Management Meeting

Inquiry Management Meetings (**IMMs**) take place at the direction of the Inquiry Members, prior to an ASP inquiry substantive hearing (i.e. hearing of the evidence) to assist with the timely and efficient running of an inquiry by dealing with any preliminary applications and issues at this stage.

While IMMs are not specifically provided for in the legislation, their use was provided for in the Inquiry Guidelines 2014 and they have been used in all inquiries to date. The draft ASP Guidelines in relation to IMMs have been expanded to provide greater clarity to inquiry members and inquiry subjects as to the procedure to be followed in holding IMMs.

Disclosure

As noted in the investigations section above and in Part 3 of the draft ASP Guidelines, it is intended as part of the investigation report process that the disclosure of documents will now primarily occur at the investigative stage prior to any inquiry. However, it will remain the case that disclosure requests may also be made for consideration at an inquiry though the Central Bank expects the necessity for these to be vastly reduced as a result of the approach to disclosure set out in Part 3 of the draft ASP Guidelines.

Standard of Proof

As noted, the standard of proof in respect of matters subject to an inquiry under the ASP has been expressly clarified in the Act as the civil standard on the balance of probabilities.

Confidentiality Obligations

The Act introduces a number of new provisions with regard to the confidentiality and disclosure of information relating to inquiry proceedings, which have been included in the draft ASP Guidelines. The Act provides that the inquiry chair (Person Presiding) may order, when there are reasonable grounds to do so, that specified information relating to specified proceedings before the inquiry if

held in public, shall not be disclosed and that a person who contravenes such an order shall be guilty of an offence.

Similar to the new confidentiality obligations outlined above in respect of an investigation and the investigation report process, the Act imposes new confidentiality obligations in respect of inquiries.

In accordance with these new confidentiality obligations, where confidential information is being disclosed for the purposes of an inquiry to an external party, the recipient is now prohibited from further disclosing that information to anyone other than their legal representative unless required to do so by law or permitted by the Central Bank in writing.

The Act defines “confidential information” as including information in respect of which the recipient has been expressly notified by the Inquiry Chair is confidential or of a particular class or description, which is expressed to be confidential.

The Act provides for absolute privilege from defamation actions for inquiry proceedings including any statement or submission made by or on behalf of any person in the proceedings to ensure that protections are afforded to such persons in line with those in several similar regulatory regimes.

Civil Remedy for Non-Compliance at an ASP Inquiry

The Act amends Part IIIC of the 1942 Act to provide that, where a person engages in obstructive behaviour at an inquiry, the Central Bank may apply to the High Court for an order requiring the person to comply with any request or requirement under the Act and not to repeat the obstructive behaviour, which differs from the criminal offence of obstructing an inquiry.

In cases where a criminal prosecution would be disproportionate or impractical, the Central Bank now has this civil remedy to address non-compliance as an alternative to criminal prosecution.

Inquiry Decision

The Act makes certain amendments to the decisions that may be made at the conclusion of an inquiry. The changes to the sanctions that may be imposed are considered at Part 6 of the draft ASP Guidelines.

The Act requires that the inquiry members must notify their decision to the inquiry subject at the conclusion of an inquiry. The inquiry decision must set out in writing the finding as to whether a prescribed contravention has been or is being committed, the grounds upon which the finding is based, and the sanctions (if any) imposed. Following the notification of this inquiry decision, the subject may exercise their right of appeal.

In order to ensure fair procedures are afforded to an inquiry subject in determining the sanction to be imposed, the draft ASP Guidelines propose that the finding would be notified to the inquiry subject and Enforcement, both of whom will then be invited to make written submissions on sanctions and may request that an oral sanctions hearing be held.

The draft ASP Guidelines outline the proposed procedure for inviting written submissions on sanctions and the procedure for holding an oral sanctions hearing, if required.

Once the inquiry members have determined the issue of sanctions, they will prepare the inquiry decision, which will include the finding as to whether a prescribed contravention has been or is being committed, the grounds upon which the finding is based, and the sanctions (if any) imposed.

Inquiry Publication Notice

At the conclusion of an inquiry, the inquiry members will publish certain details of the inquiry decision by way of an inquiry publication notice. The draft ASP Guidelines outline the procedure determining the form and content of the inquiry publication notice, which will be published as soon as possible once the inquiry decision has been notified to the inquiry subject.

Q7. Do the draft ASP Guidelines assist you in understanding the revised ASP inquiry process and procedures?

Q8. Do the draft ASP Guidelines assist you in understanding the process to be followed at the conclusion of an inquiry, including notifying the inquiry decision and issuing an inquiry publication notice?

Q9. Do the draft ASP Guidelines assist you in understanding how an ASP inquiry would work in practice?

ASP Settlement

The earlier resolution of ASP matters by way of settlement has served the public interest well to date and will continue to be an area of focus for the Central Bank. While in terms of the totality of the ASP, procedures may not be quicker overall and in some cases may take longer in light of additional procedural steps and safeguards under the Act, we are committed to gaining the maximum possible efficiencies. Settlement can in appropriate cases provide an effective tool to achieve good regulatory outcomes and potentially offset some of the lengthier procedures.

Therefore, the Central Bank's position remains that resolving certain cases by way of settlement can often be in the public interest. Settlement can optimise the efficient use of the Central Bank's resources by freeing up resources earlier to be deployed elsewhere as required in the ongoing protection of the public interest. Settlement can benefit the Central Bank and the ASP subject and constitute the best use of public resources through the avoidance of additional costs, time commitment and administrative burden. As discussed further below, it can also afford subjects of ASP matters an opportunity to avail of greater credit for settling matters early on in recognition of the public interest that can be served by doing so in appropriate cases. Accordingly, the Central Bank will continue to incentivise earlier settlements in certain circumstances through its settlement scheme which has been updated to align with the new settlement procedures set provided for in the Act.

The Act makes substantial amendments to the ASP settlement procedures and the draft ASP Guidelines set out the Central Bank's proposed approach to these changes and to settlement in a more general sense.

As a matter of law, there are three distinct settlement procedures provided for in the Act. The Central Bank may decide to engage with these procedures at its sole discretion in order to resolve an ASP investigation and/or an inquiry. Two of these settlement procedures are new and require the subject of the investigation to admit the breaches. The third settlement procedure, which formalises the

existing ability to settle on a no admissions basis is predicated on a scenario where admissions are not provided or required.

As has been the case to date, in order to exercise the power to resolve a matter subject to an ASP by way of each of these settlement processes, the Central Bank must be satisfied that there are reasonable grounds to suspect that a subject is committing or has participated in the commission of a breach.

Details on the settlement procedures and other associated changes are set out below:

New Settlement Procedure – Undisputed Facts Settlement

The Act allows the Central Bank to enter into an undisputed facts settlement where:

- The investigation 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 they render an investigation unnecessary. (The Central Bank will approach this as including in respect of an existing investigation that any further investigation would be unnecessary);
- The investigation subject has admitted in writing to the prescribed contravention(s) as set out by the Central Bank;
- The investigation subject has consented in writing to the sanction(s) proposed by the Central Bank; and
- The investigation subject has acknowledged the proposed publication⁸ of the details of the admitted prescribed contraventions and the agreed sanctions.

While the Act provides that the undisputed facts settlement process is available up until the completion of the investigation, the draft ASP Guidelines highlight that it will be at the sole discretion of the Central Bank as to whether or not and at what stage of an investigation the undisputed facts settlement process is utilised in any particular case.

⁸ Pursuant to section 33BC of the 1942 Act.

As a matter of law, the undisputed facts settlement process will no longer be an available option for settlement once the Central Bank's ASP investigation has been completed.

The Central Bank intends that the undisputed facts settlement will be the primary settlement procedure utilised in the early resolution of ASP matters. This policy approach will be underpinned by the potentially available incentives as set out below.

The earlier availability of this option under the Act, from the beginning of an investigation and the requirement on the subject to make admissions to the facts and breaches, aligns with the Central Bank's policy of encouraging earlier settlement and seeking to hold relevant persons to account. As set out in the draft ASP Guidelines and discussed further below, the Central Bank may in its absolute discretion incentivise an undisputed facts settlement by applying a percentage reduction of up to a maximum of 30% of any agreed monetary penalty proposed under the terms of the settlement as more particularly detailed in the section on the revised settlement scheme in this paper.

Q10. Do the draft ASP Guidelines assist you in understanding the new undisputed facts settlement procedure particularly in terms of when it may be available and the Central Bank's proposed approach to it?

New Settlement Procedure – Investigation Report Settlement

The second new settlement procedure introduced by the Act⁹ and set out in the draft ASP Guidelines may be utilised by the Central Bank following completion of an investigation in the following circumstances:

- The Central Bank has provided to the investigation subject a copy of the final investigation report and a copy of any submissions provided to it by the investigation subject;
- The Central Bank has considered both the final investigation report and the submissions and suspects on reasonable grounds that the investigation subject has committed and/or participated in a prescribed contravention(s);

⁹ Pursuant to section 33AR(1)(a)(i) of the 1942 Act.

- The investigation subject has admitted to the prescribed contravention(s) in writing as set out in the final investigation report;
- The investigation subject agrees in writing to dispense with an ASP inquiry, including any ongoing ASP inquiry;
- The investigation subject has consented in writing to the sanction(s) proposed by the Central Bank; and
- The investigation subject has acknowledged the proposed publication¹⁰ of the details of the admitted prescribed contravention(s) and the sanction(s) proposed.

In contrast to the undisputed facts settlement procedure which ceases to be available on completion of an ASP investigation, the ability to enter an investigation report settlement can only arise **after** the ASP investigation has been completed and **after** the final report of the ASP investigation has been considered by the Central Bank. This means that in the intervening period (the period between completion of the ASP investigation and the final investigation report being available) there will have been a potentially lengthy process involving the preparation of a draft investigation report, provision of documentation to the subject, receiving and considering any submissions from the subject in order to finalise the investigation report. In line with the Central Bank’s policy to optimise resources and seek settlement as early as possible in appropriate cases, the potential discount available for this settlement process is significantly lower (up to 10%) than the maximum potentially available under the undisputed facts settlement and reflects the likely additional costs, time and resources that will require to be expended at this stage of an ASP. The specific availability periods in respect of which such discounts are potentially available are further set out under the Settlement Scheme section of Part 5 of the draft ASP Guidelines.

It should be noted that the availability periods provided under the Act in respect of each of the undisputed facts settlement and investigation report settlement procedures have the effect of creating as a matter of law a period for which there may be a “**settlement availability gap**” within which there will be no available

¹⁰ Pursuant to section 33BC of the 1942 Act.

option for settlement other than a no admissions settlement which as a general rule will not be acceptable to the Central Bank. This period will span the length of time it takes following completion of the investigation (which constitutes the end point for availability of undisputed facts settlement) to prepare a draft investigation report, consider any submissions, amend and finalise the investigation report as appropriate and consider the final report (which constitutes the start point for availability of investigation report settlement).

The drive to optimise resources and minimise costs is a key factor in the Central Bank's policy preference for undisputed facts settlements. It has also informed the settlement incentives policy, specifically the level of potential discount available to an undisputed facts settlement. This reflects the Central Bank's desire to avoid, where possible and appropriate, entering the "settlement availability gap" period and incurring all of the additional costs and administrative burden involved in advancing matters from there.

The investigation report settlement procedure may technically remain available up until a finding has been made at inquiry. However, it will cease to be incentivised beyond a certain point in light of the greatly reduced benefits and increased costs associated with settling at a later stage. This is discussed in further detail below.

Public Statement

The timing and manner of the release of a public statement will be within the sole discretion of the Central Bank. However, the Central Bank will generally publish a public statement promptly in all cases that are resolved pursuant to settlement processes.

Q11. Do the draft ASP Guidelines assist you in understanding the new investigation report settlement procedure particularly when such settlement procedure may be available and the Central Bank's proposed approach to it?

Formulation of No Admissions Settlement

It is important to note that as a matter of law the Central Bank has always had the ability to negotiate settlements without requiring admissions to breaches by the subject of an ASP. The amendments introduced by the Act now make that power explicit and incorporate

a distinct legislative provision for the purpose of what will be referred to as “no admissions settlements” going forward.¹¹

Notwithstanding the existing power to enter into no admissions settlements under the ASP, the Central Bank’s policy position to date has been to seek admissions to contraventions before settlement will be considered.¹²

It is intended that the Central Bank will continue this policy of requiring admissions for the purposes of settlements in almost all cases as further set out in the draft ASP Guidelines. The requirement on ASP subjects to provide admissions in respect of their wrongdoing is an important tool in securing some of our key financial regulation enforcement objectives – accountability, transparency, public trust and deterrence. Accountability, reflection and true reform by regulated entities and individuals of the behaviours that led to the enforcement action are best achieved through a requirement that ASP investigation and/or inquiry subjects accept as part of a settlement agreement that their actions or failure in duty were wrong and contravened the law. Settlement admissions ensure that there is transparency around wrongdoing and the associated regulatory response. Settlement admissions also increase public confidence in the legitimacy of the enforcement process and the financial system.

However, given the Act now expressly provides for no admissions settlements as a possible option, we have adapted our policy to specifically address no admissions settlements.

Research conducted of comparator regimes demonstrates that no admissions settlements have had some utility as part of a financial regulation enforcement process.¹³ However, it appears that in the US experience there are significant negative impacts in utilising no admissions settlements as a primary settlement procedure.

¹¹ Section 33 AV of the 1942 Act.

¹² See Par 4.2.3 of existing [ASP Outline 2018](#).

¹³ AMF France, FSMA Belgium, Cysec Cyprus.

There is a growing consensus at an international level to increasingly require admissions as part of settlements in order to promote greater accountability.¹⁴

The draft ASP Guidelines, while confirming the general policy of the Central Bank to require admissions, specify certain non-exhaustive factors to which the Central Bank may have regard and which would indicate a lack of suitability of a case for a no admissions settlement. The greater the degree to which such factors are present, the greater the likelihood that a no admissions settlement would not be appropriate. It is not proposed to seek to define or foresee circumstances where a no admissions settlement might constitute an acceptable regulatory outcome. It is anticipated that such circumstances will seldom arise in practice.

In addition to setting out these factors, the draft ASP Guidelines include a requirement that ASP subjects would “not deny” the commission of and/or participation in the breach in the event that a no admissions settlement agreement is entered into with the Central Bank. This in line with the approach adopted by the U.S. Securities and Exchange Commission.¹⁵

Given the Central Bank’s policy preference for ASP subjects to admit to breaches, there is no potential discount proposed on any monetary penalties in connection with early settlement under the no admissions settlement process.

Q12. Do the draft ASP Guidelines assist you in understanding the no admissions settlement process and the Central Bank’s continuing policy approach of seeking settlement with admissions?

Q13. What are your views regarding the factors set out in the draft ASP Guidelines indicating a lack of suitability for the no admissions settlement process?

¹⁴ FCA (UK), BaFin (Germany) HANFA (Hungary), FMA (AT), FCMC (LV), MFSA (MT). See SEC Director of Enforcement, Gurbir S Grewal’s speech in October 2021 reiterating the SEC’s shift towards requiring admissions in more cases - [here](#). See [here](#) for article discussing the shift in policy.

See Commodity Futures Trading Commission - September 2022 - [Proposal for a Heightened Enforcement Accountability and Transparency \(HEAT\) Test to Require More Defendants to Admit to Wrongdoing in Settlements](#).

¹⁵ In addition to the approach of the Belgian FSMA, French AMF & Cyprus CYSEC.

Settlement Scheme

The ASP Outline 2018 detailed the Central Bank's "Early Settlement Discount Scheme" which set out when the Central Bank may apply a discount up to a set maximum to a sanction that it would otherwise expect to impose on a subject after considering the sanctioning factors.

The proposed revised scheme has been renamed as the "Settlement Scheme" and the pre-existing discount amounts have now been aligned to the settlement options available under the Act.

Monetary Penalties Only

The Settlement Scheme will only apply to monetary penalties and does not apply to other sanctions given their nature. For example, the amendment in the Act to the disqualification sanction and the introduction of a new sanction for individuals in the form of a direction imposing conditions each offer a significant degree of flexibility in terms of the scope and application of these sanctions. These changes have greatly expanded the ability of the Central Bank to design a bespoke and proportionate sanction that is appropriate to the circumstances of a particular case and should also benefit individuals as a result of the incorporation of these additional proportionality levers. Further detail in respect of disqualification and conditions sanctions has been set out in the sanctions section below.

From a policy perspective, a disqualification direction or direction imposing conditions is protective in nature as much as it is punitive. It would be counter to the protective element underlying the imposition of such a sanction if an arbitrary percentage discount was applied as part of a settlement discount scheme.

The percentage discounts will not be available in respect of other types of financial penalties such as the direction for a refund of charges and/or investigation/inquiry costs. In respect of the refund sanction, this is restitutionary in nature and it would be inconsistent and contrary to the policy underpinning it to provide a discount on a refund. There is no policy justification for extending the discount on the costs of an investigation and/or inquiry where the imposition of that sanction is considered appropriate in circumstances where the rationale is costs recovery.

Percentage Discounts

The Central Bank will have a discretion to apply a maximum of up to 30% in the undisputed facts settlement process where there have been significant savings in terms of time, resources and costs as a result of settlement. It is important to emphasise that the Central Bank retains the sole discretion to apply any discount and to decide when and in what percentage amount any discount is to be applied.

The Central Bank will have discretion to apply up to a maximum of 10% in the investigation report settlement process. Again, the Central Bank shall retain the sole discretion to apply any discount and to decide when and in what percentage amount such discount is to be applied.

It remains the Central Bank's position that no discount will be available for an investigation report settlement that occurs after a Notice of Inquiry has issued.

As noted above no discount will be available for a no admissions settlement regardless of when it may occur.

Q14. Do the draft ASP Guidelines assist you in understanding the Central Bank's proposed approach to the updated Settlement Scheme?

Q15. Do you agree with the Central Bank's proposed approach regarding the application of the Settlement Scheme to monetary penalties only?

Q16. Do you agree with the Central Bank's proposed approach to undisputed facts settlements?

Q17. Do you agree with the Central Bank's proposed approach to investigation report settlements?

Q18. What are your views and comments regarding the proposed Settlement Scheme?

ASP Sanctions

The Central Bank's approach to sanctioning is informed by its mission and strategic objectives and is based on serving the public interest by safeguarding monetary and financial stability, and working to ensure that the financial system operates in the best interests of consumers and the wider economy.

In determining sanctions, the Central Bank considers the overarching principles of proportionality, deterrence and totality to ensure that sanctioning outcomes are balanced and fair to both firms and individuals while promoting high standards in financial services and deterring misconduct.

With respect to the provision of guidance in relation to the determination of sanctions under the ASP, the Central Bank published its existing ASP Sanctions Guidance in 2019. This was the first standalone ASP sanctions guidance from the Central Bank. This guidance was aimed at firms and at individuals to the extent they were persons concerned in the management of a firm who had participated in a breach by that firm. The ASP Sanctions Guidance 2019 reflected the Central Bank's significant experience and regulatory expertise in the determination of appropriate sanctions and was not prescribed by legislation.

The introduction of the IAF and the new provisions in the Act relating to enforcement and sanctions in connection with individuals in particular has resulted in many changes which now need to be addressed in our policy and procedures. These changes include the ability to take direct enforcement action against individuals, the expansion of the population of individuals coming within the scope of the ASP and numerous amendments for the purpose of strengthening our ASP processes and procedures.

In recognition of this broader scope of the ASP, the Act sets out in respect of individuals only (and not firms) certain specific non-exhaustive relevant considerations to which the Central Bank shall have regard where relevant in determining sanctions. The Act also provides that the Central Bank shall equally have regard to any other relevant considerations in determining sanctioning matters for individuals in any particular case.

The Act has also introduced changes to the sanctions which may be imposed on individuals under the ASP.

Since the Central Bank first published ASP sanctions guidance in 2019, it has concluded numerous enforcement actions under the ASP which have further informed our thinking and practices on the determination of sanctions. Accordingly, the Central Bank has prepared and included as Part 6 of the draft ASP Guidelines, updated guidelines in relation to the sanctions in respect of firms and individuals to address the legislative changes introduced by the Act and the Central Bank's evolving approach since 2019. These new guidelines contain an updated set of combined sanctioning factors for firms and individuals.

The Central Bank's Approach to Sanctions

The Central Bank has set out its general approach to sanctioning for both firms and individuals at Part 6 of the draft ASP Guidelines. This provides information on how the Central Bank generally approaches the imposition of sanctions through the following steps:

- Whether a sanction (or sanctions) 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

In line with the Central Bank's published strategy and commitment to transparency, the Central Bank has decided to publish for the first time, the manner in which it generally approaches the determination of monetary penalties where the need arises in respect of firms and individuals. Further details on this are set out below.

Application of Sanctions for Individuals

The applicable sanctions for individuals remain broadly the same with two important exceptions. The first is a change to the disqualification sanction for individuals. This change was sought by the Central Bank and is aimed at ensuring that disqualification is capable of being more proportionately tailored to the particular circumstances of a case. Previously an individual who was

disqualified was disqualified from being concerned in the management of a regulated financial service provider, but now, individuals may be disqualified on a more targeted basis from performing any controlled function, a particular controlled function or specified parts of a controlled function.

This is important given the significant impact such a sanction could have on an individual and their livelihood. The amended disqualification sanction provides increased flexibility to the Central Bank in its approach to disqualification, which is ultimately of benefit to all.

The second key change to the individual sanctions is the introduction of a sanction providing for a direction imposing conditions on the performance of any controlled function or part of it by an individual. Again, this enables a more flexible approach by the Central Bank and an opportunity to employ an alternative to disqualification in appropriate circumstances where the Central Bank may want to address or restrict aspects of an individual's performance.

The addition of these will facilitate the design of more tailored sanctions commensurate with the particular circumstances of the case, resulting in more effective enforcement outcomes.

Sanctioning Factors

Once it has been determined that a sanction is warranted for a breach by a firm or an individual, Part 6 of the draft ASP Guidelines sets out the various sanctioning factors that will likely be relevant for consideration by the Central Bank in arriving at the final sanction or sanctions.

With respect to individuals, as mentioned above, there are a number of legislatively prescribed factors that the Central Bank will take into account where relevant.

Although there are no prescribed factors specifically for firms, many of the legislatively prescribed sanctioning factors for individuals are derived from the ASP Sanctions Guidance 2019 such that the Act has provided for similar but not identical sanctioning factors to those in the ASP Sanctions Guidance 2019. In order to facilitate a consistency of approach, the Central Bank has adopted the language of the individual sanctioning factors prescribed in the Act for both firms and individuals. This has meant a change to some of the text

which was published in the ASP Sanctions Guidance 2019 but not the overall meaning of those sanctioning factors.

In addition to the prescribed factors set out in the Act, the legislation recognises that there may be other relevant considerations that the Central Bank may take into account which, where relevant, will carry equal weight to the prescribed factors. As such, the Central Bank has chosen to retain a number of sanctioning factors from the ASP Sanctions Guidance 2019 which were not included in the Act and which it has found to be relevant in its assessment of sanctions to date. These factors are also set out in Part 6 of the draft ASP Guidelines.

These listed factors are non-exhaustive and the Central Bank retains discretion to consider other sanctioning factors which are relevant to a particular case or circumstances.

There are three new factors set out in the legislation with respect to individuals, further details of which are set out below. The Central Bank has also made certain updates outside of the legislative alignment to the factors that were previously set out in the ASP Sanctions Guidance 2019, to reflect our evolving approach and better align with the Act.

New Sanctioning Factors for Individuals

The Act introduces a new requirement that the Central Bank shall have regard, where relevant, to the **financial position** of an individual where it proposes to sanction that individual.

This means that the Central Bank will consider whether an individual's financial position is a relevant sanctioning factor and where it is relevant, the Central Bank will consider the proportionality of any proposed sanction or combination of sanctions in light of the individual's financial position. This may result in an adjustment to the sanctions imposed including an increase or decrease in the level of any monetary penalty imposed.

The Act also introduces a new requirement that in determining sanctioning matters involving a breach of the common and additional conduct standards for individuals, the Central Bank shall have regard to the importance of **promoting a culture of compliance** with these standards. This is an important factor to be considered in connection with enforcement of the conduct standards. It recognises the

broader regulatory and legislative aims of achieving greater individual accountability in furtherance of enhanced governance in financial services, a sound financial system and the protection of customers and society as a whole. The provision provides a mechanism where these aims can be applied in practice to the determination of sanctions, and the calibration of sanctions for conduct standard cases can be aligned to such objectives. How this factor will operate in practice and its impact on any final sanction or sanctions will depend on the particular conduct standard case in question. What is required to promote a culture of compliance may vary depending on the circumstances and certain behaviours could of course be more harmful to a positive culture than others. The Central Bank will consider this provision in every conduct standards case.

Finally, the Act introduces a new sanctioning factor with respect to an individual's seniority and level of responsibility. This factor allows the Central Bank to consider an 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 and/or participation in the prescribed contravention.

Changes to Sanctioning Factors for Firms from the ASP Sanctions Guidance 2019

Deletion of Sanctioning Factors from ASP Sanctions Guidance 2019

The Central Bank has deleted certain of the sanctioning factors contained in the ASP Sanctions Guidance 2019, namely:

- The likelihood that the same contravention will recur if no administrative sanction is imposed;
- Prevalence of the contravention;
- The level of turnover of a firm in its last complete financial year prior to the commission of the contravention;
- Whether there are a number of smaller issues which individually may not justify an administrative sanction but which do so when taken collectively.

Changes to Certain Sanctioning Factors in the ASP Sanctions Guidance 2019

In aid of greater clarity, the Central Bank has amended the wording of a number of sanctioning factors that were contained in the ASP

Sanctions Guidance 2019. The amended sanctioning factors are set out in Part 6 of the draft ASP Guidelines.

For example, the cooperation sanctioning factor has been updated to make clear that the provision of privileged material on an open basis by a firm or individual will be treated as a mitigating factor. However, the Central Bank is cognisant of a firm or individual's right to assert privilege over material and therefore, where a firm or individual chooses to assert privilege, this will be neutral for sanctioning purposes. The cooperation sanctioning factor has also been updated to incorporate early admissions by a firm or individual as part of the assessment of overall cooperation.

Methodology for the Determination of Monetary Penalties

In addition to the provision of general guidance on the determination of sanctions, the Central Bank is now publishing for the first time its methodologies for the determination of monetary penalties for firms and individuals as part of the draft ASP Guidelines. Publication of the methodologies is in keeping with the Central Bank's published strategy and commitment to transparency.

These methodologies are explained in the draft ASP Guidelines but, in essence, amount to a seven step framework that the Central Bank employs when assessing monetary penalties. The following specific aspects of these methodologies are notable:

- The methodologies do not operate in an arithmetic fashion and instead, outline the Central Bank's general approach to determining monetary penalties. Certain aspects of the methodologies may be adjusted, where necessary, to ensure that the Central Bank imposes a monetary penalty which is just, proportionate and sufficiently dissuasive;
- The methodologies for firms and individuals are largely identical save in a few respects including that the starting point for the assessment of a monetary penalty will generally be revenue for firms and income for individuals. There will be cases where other starting points will be more appropriate.

EU Regulatory Frameworks Subject to the ASP

It is important to note that in terms of the determination of sanctions for individuals, the draft ASP Guidelines address only the

determination of sanctions under section 33AQ of the 1942 Act as amended by reference to the sanctioning factors for individuals set out in the new section 33ARA inserted by the Act.

In respect of firms, the draft ASP Guidelines address only the determination of sanctions applicable under section 33AQ by reference to the updated sanctioning factors for firms as set out in the draft ASP Guidelines.

Certain EU regulatory frameworks that are designated for the purpose of the ASP under Part IIIC of the 1942 Act in respect of the sanctioning of firms incorporate distinct and separate provisions containing prescribed EU sanctions to be applied to particular EU prescribed breaches. These are accompanied by bespoke EU prescribed sanctioning factors, which differ from those in Central Bank legislation and the draft ASP Guidelines. In such cases, the EU prescribed provisions which have been transposed into domestic law shall continue to apply in place of the domestic provisions, notwithstanding that the Central Bank's general sanctioning approach in cases under relevant EU frameworks will be the same. The relevant frameworks transposed into Irish statutory instruments currently include the MiFID II, Securitisation, Benchmarks and SFTR Regulations¹⁶.

Q19. Do the draft ASP Guidelines assist you in understanding the Central Bank's proposed approach to the determination of sanctions and what are your views in this regard?

Q20. Are the different sanctions which may be imposed on firms and individuals sufficiently clear in the draft ASP Guidelines?

Q21. Are the different sanctioning factors which may be applicable to firms and individuals sufficiently clear in the draft ASP Guidelines?

¹⁶ S.I. No. 375 of 2017 European Union (Markets in Financial Instruments) Regulation 2017; S.I. No. 656/2018 European Union (General Framework for Securitisation and Specific Framework for Simple, Transparent and Standardised Securitisation) Regulations 2018; S.I. No. 644/2017 - European Union (Indices Used as Benchmarks in Financial Instruments and Financial Contracts or to Measure the Performance of Investment Funds) Regulations 2017 and S.I. No. 631 of 2017 European Union (Securities Financing Transactions) Regulation 2017.

Q22. Do the sanctioning factors assist you in understanding the Central Bank's proposed sanctioning approach and what are your views on the sanctioning factors?

Q23. What are your views on the monetary penalty methodologies?

Q24. Is there any other aspect of the Central Bank's sanctioning approach which would benefit from further consideration or explanation?

ASP Court Confirmation and Appeals

High Court Confirmation of Sanctions Following Settlement

The Act introduces a new requirement that sanctions agreed as part of the undisputed facts settlement procedure and the investigation report settlement procedure be confirmed in the High Court in order to take effect. The objective of this is to further strengthen fair procedures by incorporating an additional proportionality safeguard into the ASP, such that the High Court will have jurisdiction to remit the matter to the Central Bank where it considers such a sanction to be manifestly disproportionate. The draft ASP Guidelines set out more detail on this process.

Appeal of Inquiry Decision to IFSAT

In reaching a decision at the conclusion of an inquiry, as a matter of law, the Central Bank must include in its notification of its decision to the inquiry subject, a statement outlining the right of the inquiry subject to appeal against the inquiry decision to the Irish Financial Services Appeals Tribunal (**IFSAT**) within 28 days of such notification of the inquiry decision. Appeals to IFSAT from an ASP inquiry are confined to grounds that an inquiry subject might have relied upon in the context of a judicial review of the inquiry decision and/or any ground that the sanction imposed is not proportionate.

High Court Confirmation of Inquiry Decision or IFSAT Appeal Decision

An inquiry decision made by the inquiry members or an appeal decision by IFSAT will only take effect if it has been confirmed by the High Court. As soon as practicable after the making of the inquiry

decision and/or the IFSAT appeal decision (provided they are not appealed), the Central Bank must apply to the High Court to confirm the relevant decision. The High Court must confirm the decision unless it is satisfied that:

- The inquiry members and/or 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; OR
- That any sanction imposed is manifestly disproportionate.

If the decision is confirmed by the High Court, then it takes effect as an order of the court and may be enforced as such. If the decision is not confirmed, the High Court can either substitute the decision or set it aside and remit the matter for reconsideration by the inquiry members and/or IFSAT.

Ex Parte Consent

The Act expressly provides that the Central Bank can obtain written consent to have an uncontested confirmation hearing for settlements involving admissions¹⁷. The draft ASP Guidelines set out the Central Bank's proposed approach of writing to the subject in advance of any confirmation hearing inviting their written consent to an *ex parte* hearing which they may or may not give in accordance with the legislative provisions.

In light of the Central Bank's overarching duty of proportionality and the fact that what the High Court will be considering is a sanction that has been agreed with the subject as part of either the undisputed facts settlement or an investigation report settlement processes, the Central Bank would expect that the confirmation hearing would not be contentious and that such consent should be capable of being provided without issue. In such circumstances, an *ex parte* hearing would also save costs for all parties in addition to court time.

Q25. Do the draft ASP Guidelines assist you in understanding the new requirement for High Court confirmation of sanctions agreed as part of (a) an undisputed facts settlement procedure and (b) an

¹⁷ Section 33AWA(4) of the 1942 Act.

investigation report settlement procedure, and the Central Bank's proposed approach to it?

Q26. Do the draft ASP Guidelines assist you in understanding the revised confirmation and appeal procedures?

Questions

For ease of reference, the following is a consolidation of each of the questions asked throughout this consultation paper:

ASP Investigations

Q1. Do the Central Bank draft ASP Guidelines assist you in understanding the modified ASP investigation process now codified in statute?

Q2. Do the draft ASP Guidelines assist you in understanding the role of the RAO and the associated functions and responsibilities in respect of ASP investigations?

Q3. Do the draft ASP Guidelines assist you in understanding the proposed approach to the issuing of the Notice of Investigation, what it contains and how it may be amended?

Q4. Do the draft ASP Guidelines assist you in understanding the Central Bank's proposed approach to disclosure?

Q5. What are your views in respect of the obligations and expectations regarding confidentiality described in the draft ASP Guidelines?

ASP Inquiries

Q6. Do the draft ASP Guidelines assist you in understanding the revised roles at inquiry?

Q7. Do the draft ASP Guidelines assist you in understanding the revised ASP inquiry process and procedures?

Q8. Do the draft ASP Guidelines assist you in understanding the process to be followed at the conclusion of an inquiry, including

notifying the inquiry decision and issuing an inquiry publication notice?

Q9. Do the draft ASP Guidelines assist you in understanding how an ASP inquiry would work in practice?

ASP Settlement

Q10. Do the draft ASP Guidelines assist you in understanding the new undisputed facts settlement procedure particularly in terms of when it may be available and the Central Bank's proposed approach to it?

Q11. Do the draft ASP Guidelines assist you in understanding the new investigation report settlement procedure particularly when such settlement procedure may be available and the Central Bank's proposed approach to it?

Q12. Do the draft ASP Guidelines assist you in understanding the no admissions settlement procedure and the Central Bank's continuing policy approach of seeking settlement with admissions?

Q13. What are your views regarding the factors set out in the draft ASP Guidelines indicating a lack of suitability for the no admissions settlement process?

Q14. Do the draft ASP Guidelines assist you in understanding the Central Bank's proposed approach to the updated Settlement Scheme?

Q15. Do you agree with the Central Bank's proposed approach regarding the application of the Settlement Scheme to monetary penalties only?

Q16. Do you agree with the Central Bank's proposed approach to undisputed facts settlements?

Q17. Do you agree with the Central Bank's proposed approach to investigation report settlements?

Q18. What are your views and comments regarding the proposed Settlement Scheme?

ASP Sanctions

Q19. Do the draft ASP Guidelines assist you in understanding the Central Bank's proposed approach to the determination of sanctions, and what are your views in this regard?

Q20. Are the different sanctions which may be imposed on firms and individuals, sufficiently clear in the draft ASP Guidelines?

Q21. Are the different sanctioning factors which may be applicable to firms and individuals, sufficiently clear in the draft ASP Guidelines?

Q22. Do the sanctioning factors assist you in understanding the Central Bank's proposed sanctioning approach, and what are your views on the sanctioning factors?

Q23. What are your views on the monetary penalty methodologies?

Q24. Is there any other aspect of the Central Bank's sanctioning approach which would benefit from further consideration or explanation?

ASP Court Confirmation and Appeals

Q25. Do the draft ASP Guidelines assist you in understanding the new requirement for High Court confirmation of sanctions agreed as part of (a) an undisputed facts settlement procedure and (b) an investigation report settlement procedure, and the Central Bank's proposed approach to it?

Q26. Do the draft ASP Guidelines assist you in understanding the revised confirmation and appeal procedures?

Appendix 1: Draft ASP Guidelines

Appendix 1 to the Consultation Paper 154 – Draft ASP Guidelines is located in a separate file.

Appendix 2: Transitional Arrangement

Part 7 of the Central Bank (Individual Accountability Framework) Act 2023 (the **Act**), which commenced on 19 April 2023 (the **commencement date**), includes savings and transitional provisions regarding various processes and procedures under the Central Bank's Administrative Sanctions Procedure (**ASP**) relating to investigations and inquiries.

The Act made significant amendments to Part IIIC of the Central Bank Act, 1942 (the **1942 Act**) which, subject to the savings and transitional provisions, impact new and existing investigations and inquiries to varying degrees.

The purpose of this transitional guidance is to provide clarity as to the practical impact of such provisions on investigations and inquiries. In particular, this guidance seeks to make clear when the new provisions will apply to both new and ongoing investigations and inquiries.

New Investigations Post-Commencement Date

All of the new or amended provisions of Part IIIC of the 1942 Act will apply to investigations commenced after the commencement date.

Ongoing Investigations

Subject to certain exceptions, all of the new or amended provisions in Part IIIC of the 1942 Act apply in full to ongoing investigations. An investigation is ongoing where the Central Bank decision to commence the investigation was made before the commencement date. Pursuant to section 93 of the Act, the following amendments to the ASP do not apply to ongoing investigations:

- The requirement for a responsible authorised officer of the Central Bank to provide an ASP investigation subject with a notice in writing, as soon as practicable after a decision is made by the Central Bank, to investigate the commission of a prescribed contravention (**Notice of Investigation**);
- The requirement for the Central Bank's responsible authorised officer to provide an ASP investigation subject with amended

Notices of Investigation, to reflect any change, extension or partial discontinuance of an ASP investigation;

- Any other obligation concerning investigations set out in section 33ANJ of the 1942 Act.

New Inquiries

All of the new or amended provisions of Part IIIC of the 1942 Act will apply to inquiries where the Notice of Inquiry was given by the Central Bank after the commencement date.

Ongoing Inquiries

Subject to certain exceptions, none of the new or amended ASP provisions in Part IIIC of the 1942 Act apply to ongoing inquiries. An inquiry is ongoing where a Notice of Inquiry was given by the Central Bank before the commencement date.

Pursuant to section 94 of the Act, the amended provisions in Part IIIC and Part VIIA of the 1942 Act relating to:

- High court confirmation of inquiry decisions; and
- Appeals to the Irish Financial Services Appeals Tribunal

apply to ongoing inquiries where the inquiry decision is made after the commencement date.

Disqualification and Conditions Sanctions

The original disqualification sanction for individuals has been amended and a new sanction of a direction imposing conditions on an individual has been introduced.

Pursuant to section 95 of the Act, the amended disqualification sanction and the new direction imposing conditions sanction for individuals cannot be imposed where a prescribed contravention or participation in a prescribed contravention occurred prior to the commencement date. In those circumstances, the original disqualification sanction will continue to be available as a potential sanction. The requirement for regulated financial service providers to ensure that individuals who are disqualified are not concerned in their management will continue to apply in respect of individuals who are subject to the original disqualification sanction.

Impact on EU Law Regulatory Frameworks Subject to the ASP

The provisions relating to the available sanctions and the sanctioning factors contained in the Act and the associated guidance provided in the draft ASP Guidelines address only the determination of sanctions to be imposed pursuant to section 33AQ of the 1942 Act.

Separately, there are certain EU law regulatory frameworks that are designated for the purpose of the ASP in respect of the sanctioning of firms. These incorporate distinct and separate provisions containing prescribed EU sanctions to be applied to particular EU prescribed breaches.

These are typically accompanied by bespoke EU prescribed sanctioning factors, which can differ from those in Central Bank legislation and guidelines.

In such cases, the EU prescribed provisions which have been transposed into domestic law shall continue to apply in substitution of the domestic provisions under Part IIIC of the 1942 Act and related guidelines, notwithstanding that the Central Bank's general sanctioning approach in cases under relevant EU frameworks will be the same.

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