



HM TREASURY

Notifying trading suspensions in the market: a consultation

July 2009



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1

Introduction

1.1 The Financial Services Authority (FSA) has the power to require institutions to suspend or remove financial instruments from trading in various circumstances, including a broad power to suspend trading by investment firms. This may be exercised to protect investors, for example if the issuer is in severe financial difficulty, or to maintain market integrity if trading has become disorderly.

1.2 HM Treasury are proposing to simplify the means by which FSA notifies the market that it has suspended trading, or removed a financial instrument from trading, using this broad power. The FSA is currently required to give written notice individually to each institution on whom it proposes to impose a requirement to suspend or remove a financial instrument (such as the shares of a particular firm) from trading. In practice, this is more easily achieved for the trading that takes place on a Regulated Market, such as an exchange, or on a Multilateral Trading Facility (MTF) as there are relatively few of these to contact. However, requiring the FSA to provide individual written notification to each investment firm which may trade outside organised platforms (known as 'over-the-counter' or OTC trading) bilaterally or with clients has practical difficulties, as explained in section 2. To enable the FSA to ensure that a decision to suspend or remove a financial instrument from trading is put into effect by these firms without delay, HM Treasury proposes to allow the FSA to give notice of its decision via a Regulatory Information Service (RIS)¹.

1.3 This method is already used for the dissemination of various regulatory announcements and to which firms already have access. Secondary information providers such as AFX News, Bloomberg, Perfect Information, Thomson Reuters and Track Data Corporation take the information provided by the RISs and bundle it together into a single source of regulatory information. Regulated Markets and MTFs may also make an announcement that trading has been suspended, or that a financial instrument has been removed from trading on their trading platform. In addition to giving notice of its decision via a RIS, the FSA will also issue a press release on its website.

1.4 The proposed new procedure would also allow the FSA to require a specified class of institutions to suspend or remove a financial instrument from trading without having to identify each institution individually. However, the FSA will retain the right to notify institutions individually, where appropriate.

Responding to this consultation

1.5 This consultation follows informal consultation with interested stakeholders during 2008. HM Treasury invites comments on this consultation by 23 October 2009. Specific questions are included in the paper but respondees are, of course, free to frame their responses as they see fit.

¹ A Regulatory Information Service is a Primary Information Provider (PIP) service which has been approved by the FSA to disseminate regulated information in accordance with rules made under section 89A of FSMA, or a service established in an EEA state other than the UK which is used for the dissemination of regulated information for the purposes of Article 21 of the Transparency Directive.

After the consultation period closes, a feedback statement will be published collating the responses and explaining how we have reflected them in the final proposal.

1.6 Electronic responses would be preferred. Please address responses and queries to:

Fiona Henderson
Trading Suspensions consultation
Room 3/W1
Financial Services Strategy
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
Email: Fiona.c.Henderson@hm-treasury.x.gsi.gov.uk
Telephone: 020 7270 5846

Confidentiality disclosures

1.7 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

1.8 If you want the information that you provide to be treated as being confidential, please be aware that, under the FOIA, there is a statutory Code of practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request to disclose the information we will take account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

1.9 HM Treasury will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

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Proposals

2.1 The Markets in Financial Instruments Directive (MiFID) was implemented in November 2007 and required competent authorities to be given broad powers to suspend trading in a financial instrument.¹ The FSA was given these additional powers under Part 18A (see in particular section 313A) of the Financial Services and Markets Act 2000 (FSMA) as the competent authority in the UK. Trading suspensions under section 313A of FSMA are an exceptional market occurrence – indeed, the Impact Assessment in Annex C provides for only one trading suspension per year using this power. It is anticipated that FSA would use this power infrequently where it judged that trading needed to be suspended across the entire market, including institutions that traded bilaterally and with clients.

2.2 Other sections of FSMA provide the FSA with powers to suspend the ability of a financial instrument to be listed on Regulated Markets for various reasons: there are sections for suspending listing², and for suspending trading for prospectus related breaches³, for breaches of transparency related obligations⁴ and for market abuse reasons⁵. Each form of suspension follows its own procedure. Suspensions of listing, which trigger a suspension of trading on regulated markets in the UK, are a relatively common occurrence. The FSA has suspended listing in Bradford and Bingley, Northern Rock and certain Lehman Brothers debt instruments.

2.3 Countries have taken different approaches to the implementation of Article 50(j) of MiFID. The UK, along with Germany and Sweden, included measures in their legislation to enable trade suspensions in the OTC market. The FSA would only suspend OTC trading where it is necessary to protect the orderly functioning of the market or the interests of investors. FSA would decide, on a case-by-case basis whether trading needs to be suspended on organised platforms (exchanges and MTFs) or across the entire market.

2.4 Prior to the implementation of MiFID, the London Stock Exchange (LSE) had the ability to direct its members to stop trading under its rules. This had the effect of suspending OTC trading if trading on the LSE was suspended because at the time the vast majority of OTC equity trading took place under the LSE rules. A significant proportion of OTC trading now takes place outside the LSE rules.

2.5 The existing provisions under FSMA require the FSA to identify and write individually to the potentially thousands of firms engaged in OTC trading of the relevant financial instrument and/or trading with clients. This would be a time consuming practice. If notifications were made via email, the volume of email notifications that would be required and the necessity to ensure that all firms engaging in OTC trading at that time are identified and contacted simultaneously would be unpractical. Further, the current regulations relating to the service of notices requires the FSA to obtain the consent in advance of the firms concerned before service by electronic

¹ Article 50(j) of Directive 2004/39/EC on Markets in Financial Instruments Directive (MiFID)

² FSMA s.77 (see also the LR 5 section of the FSA Handbook)

³ FSMA s.87L

⁴ FSMA s.89L

⁵ FSMA s. 96C

means can be used. The result is that it would not be possible to achieve a suspension of all trading in a particular financial instrument in a timely way.

Q1: Do you agree that a more effective means of notifying firms is necessary?

Policy options

2.6 The proposed amendments to the procedural requirements set out in Part 18A of FSMA would allow FSA to give notice that it is suspending or removing a financial instrument from trading using its powers under that part of FSMA via a regulatory information service (RIS). The proposals would make further provision for the procedure following representations or an application for revocation of a requirement by the institution or issuer affected by a suspension. The FSA's power to give such notice by means of an RIS would apply in all cases where the FSA suspends or removes a financial instrument from trading, including cases where this is done following notification of a suspension or removal under Article 41(2) of MiFID by a competent authority in another EEA state. Draft regulations amending Part 18A of FSMA to achieve this are set out in Annex B.

2.7 The notification would specify when the trading suspension or removal from trading was effective and provide details on the possibility to challenge the decision. The FSA will also be able to impose a requirement to suspend or remove a financial instrument from trading on a class of institutions by specifying the class in the notice. It will no longer need to inform each institution individually. The FSA will retain the right to notify institutions individually, where appropriate.

2.8 Information service providers such as Primary Information providers (PIPs) and secondary information providers (SIPs) are already used for the dissemination of various regulatory announcements, such as Transparency Directive notifications. All firms actively engaged in securities trading are therefore likely to have access to such services. Indeed, it would be expected that all institutions who are engaged in trading would be keeping constantly abreast of all relevant regulatory information notices. Familiarity with these services may be lower in the debt markets but trading suspensions are similarly less likely in these markets.

2.9 The FSA would disseminate the notification of a trading suspension or removal through a Regulatory Information Service (RIS). For these purposes, an RIS will include any information services in the UK which have been approved by the FSA for the dissemination of regulated information (eight services have been so approved at the date of this consultation document), and information services established in another EEA state which disseminates regulated information for the purposes of Article 21 of the Transparency Directive.⁶

2.10 Firms would learn of a trading suspension or removal through at least one, if not all of the following channels:

- Through a range of SIPs such as Bloomberg and Thomson Reuters who take the information provided by the RISs and bundle it together into a single source of regulatory information;
- Through announcements from exchanges and trading platforms that trading has been suspended for the particular financial instrument;

⁶ Directive 2004/109/EC on the harmonisation of transparency requirements.

- Through a press release on the FSA website.

FSA would not be required under the legislation to provide an accompanying written notification to firms – and it is unlikely to do so given the reasons outlined above and the administration costs involved.

Q2: Do you agree that the FSA should have the ability to give notice that it is suspending or removing a financial instrument from trading using its powers under Part 18A of FSMA via a regulatory information service (RIS)?

Q3: In practice are there any firms who would not have access to these services or would in any way be disadvantaged by receiving this information via an RIS rather than by written notice?

Q4: Would firms engaging in bilateral (OTC) trades be in any way disadvantaged in comparison to firms trading on exchange or on a trading platform?

2.11 The FSA would expect firms to have adequate systems and controls to ensure they can access and process regulatory information and would take supervisory action against the firm if these were inadequate. It would be extremely unlikely that the FSA would take formal enforcement action in circumstances where the institution concerned was genuinely and reasonably in ignorance of the suspension notice. The FSA's Enforcement Guide (EG) sets out its approach to handling breaches of FSMA requirements (see, in particular, Chapter 2 of EG). The principles in the Guide make clear that the FSA does not *automatically* take enforcement action against anyone who has breached a FSMA requirement.

Procedural requirements

2.12 The regulations make more detailed provision for the procedure which the FSA must follow where a requirement to suspend or remove a financial instrument from trading is imposed on a class of institutions, and a member of that class, or the issuer, chooses to make representations against the imposition of the requirement or to apply for its revocation.

2.13 Where the FSA has received representations in relation to such a requirement, it may decide to impose or to revoke the requirement in relation to any one or more members of the class (or in relation to the entire class). It must give written notice of its decision to those institutions which made representations, and to the issuer of the instrument in question. Unless the FSA decides to make no change to the requirement or to the class of institutions on which it is imposed, its decision must also be published by way of an RIS (where no change is made, nothing need be published via an RIS).

2.14 Where the FSA receives an application for revocation of a requirement imposed on a class of institutions from a member of that class or from the issuer, it may in the same way decide to revoke the requirement in relation to one or more members of the class on which it was imposed, or in relation to the whole class. Where it proposes not to revoke the requirement in response to an application, it must give a warning notice to the applicant and to the issuer, but we do not propose to require the FSA to publish the warning notice by means of an RIS. Once the decision whether or not to grant the application has been taken, written notice of that decision must be given to the applicant and to the issuer, and the FSA will have to publish the decision by means of an RIS, so that all members of the class are made aware that an application for revocation of the requirement has been made, and of the outcome of that application.

Q5: Do you consider that the procedural requirements proposed will give sufficient transparency to the FSA's decisions following representations or an application to revoke a requirement imposed on a class of institutions?

Q6: Should the FSA be required in addition to publish a warning notice by means of an RIS where it has received an application to revoke a requirement, and it proposes to reject that application?

A

Written consultation code of practice

The seven consultation criteria

1. When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy in to the process is to be obtained.

6. Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Further information on the Code of Practice on Consultation is available from the Department of Business, Innovation and Skills website:

<http://www.berr.gov.uk/files/file47158.pdf>

This document has been produced to conform to these criteria.

Complaints

If you have any complaints about any element of the consultation process leading from the issue of this document, please contact:

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B

Statutory Instrument

The Statutory Instrument follows overleaf.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2009 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2009

Made - - - - 2009
Coming into force - - 2009

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems and in relation to credit and financial operations;

A draft of this instrument has been laid before Parliament in accordance with paragraph 2(2) of Schedule 2 to that Act and approved by a resolution of each House of Parliament;

The Treasury make these Regulations in exercise of the powers conferred on them by section 2(2) of that Act:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2009 and come into force on [].

(2) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000(c);

“the Regulations” mean the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(d).

Amendment of section 313A

2.—(1) Section 313A of the Act (Authority’s power to require suspension or removal of financial instruments from trading) is amended as follows.

(a) S.I. 1993/2661 and 2001/3495.

(b) 1972 c.68; by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p. 572). For the decision of the EEA Joint Committee in relation to Directive 2004/39/EC, see Decision No 65/2005 of 29th April 2005 (OJ No L 239, 15.9.2005, p.50).

(c) 2000 c. 8. Part 18A of the Act was inserted by regulation 3(3) of, and Schedule 3 to, S.I. 2007/126.

(d) S.I. 2001/1420, amended by the Enterprise Act 2002 c.40, and S.I. 2005/274.

- (2) In subsection (1), after “an institution” insert “or a class of institutions”.
- (3) For subsection (2), substitute—
 - “(2) If the Authority exercises the power conferred by subsection (1), the matter may be referred to the Tribunal by—
 - (a) the institution or, as the case may be, any institution in the class, or
 - (b) the issuer of the financial instrument (if any).”.

Amendment of section 313B

3.—(1) Section 313B of the Act (suspension or removal of financial instruments from trading: procedure) is amended as follows.

- (2) In subsection (2)—
 - (a) after “an institution,” insert “or a class of institutions,”;
 - (b) for “give written notice” to the end of the subsection, substitute—
 - “give notice—
 - “(a) by written notice to—
 - (i) the institution or, as the case may be, each institution in the class, and
 - (ii) the issuer of the financial instrument in question (if any); or
 - (b) by publishing a notice by means of a regulatory information service.”.
- (3) In subsection (3), for “The notice” substitute “A notice given under subsection (2)(a)”.
- (4) After subsection (3), insert—
 - “(3A) A notice published under subsection (2)(b) must—
 - (a) give details of the relevant requirement;
 - (b) specify the institution, or the class of institutions, to which it applies;
 - (c) state the Authority’s reasons for imposing the requirement and choosing the date on which it took effect or takes effect;
 - (d) state that any institution to which the requirement applies or the issuer of the financial instrument in question may make representations to the Authority within such period as may be specified by the notice (whether or not the institution or the issuer has referred the matter to the Tribunal);
 - (e) state the date on which the requirement took effect or takes effect; and
 - (f) state that any institution to which the requirement applies or the issuer of the financial instrument in question has a right to refer the matter to the Tribunal, and give an indication of the procedure on such a reference.”.
- (5) Omit subsections (5) to (12).

Suspension or removal of financial instruments from trading: further procedure

4. After section 313B of the Act (suspension or removal of financial instruments from trading: procedure) insert—

“Procedure following consideration of representations

313BA.—(1) This section applies where, within the period specified under section 313B(3), (3A) or (4), representations are made to the Authority in relation to a requirement that it has proposed to impose or has imposed under section 313A.

(2) The Authority must decide whether to impose the requirement or (in the case of a requirement that has been imposed) whether to revoke it.

(3) In the case of a requirement that the Authority has proposed to impose on a class of institutions, the Authority may decide to impose the requirement—

- (a) on the class;
- (b) on the class apart from one or more specified members of it; or
- (c) only on one or more specified members of the class.

(4) In the case of a requirement that the Authority has imposed on a class of institutions, the Authority may decide to revoke it in relation to—

- (a) the class;
- (b) the class apart from one or more specified members of it; or
- (c) one or more specified members of the class only.

(5) The Authority must give written notice of its decision to—

- (a) the institution or each of the institutions which has made representations, and
- (b) the issuer of the financial instrument in question (if any).

(6) In the case of a requirement that the Authority has proposed to impose or has imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service unless the decision is—

- (a) to impose the requirement on the class, or
- (b) not to revoke the requirement in relation to the class or any member of it.

(7) An institution to whom notice is required to be given under subsection (5) may refer the matter to the Tribunal if the Authority's decision is that the requirement will be imposed on, or will continue to apply to, the institution.

(8) An issuer to whom notice is required to be given under subsection (5) may refer the matter to the Tribunal if the Authority's decision is that the requirement will be imposed on, or will continue to apply to, the institution or (in the case of a requirement relating to a class) any of the institutions in the class.

(9) A notice given under subsection (5) must inform the recipient if the recipient has a right to refer the matter to the Tribunal.

Revocation of requirements: applications by institutions

313BB.—(1) This section applies where the Authority has imposed a requirement on an institution or a class of institutions under section 313A.

(2) The institution or any of the institutions in the class may apply to the Authority for the revocation of the requirement.

(3) The Authority must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the Authority may decide to revoke it in relation to—

- (a) the class;
- (b) the class apart from one or more specified members of it; or
- (c) one or more specified members of the class only.

(5) The Authority must give a warning notice if—

- (a) in the case of a requirement imposed on an institution, the Authority proposes not to revoke the requirement, or
- (b) in the case of a requirement imposed on a class, the Authority proposes to make a decision which would have the effect that the requirement continues to apply to the applicant (whether or not it would have the effect that it continues to apply to other members of the class).

(6) The warning notice must be given to—

- (a) the applicant, and
- (b) the issuer of the financial instrument in question (if any).

Decisions on applications for revocation by institutions

313BC.—(1) This section applies where, having considered any representations made in response to a warning notice, the Authority has decided whether to grant an application for revocation made under section 313BB.

- (2) The Authority must give written notice in accordance with subsection (3) if—
 - (a) in the case of a requirement imposed on an institution, the Authority decides to revoke the requirement, or
 - (b) in the case of a requirement imposed on a class, the Authority makes a decision which has the effect that the requirement will no longer apply to the applicant (whether or not it will continue to apply to other members of the class).

- (3) The written notice must be given to—
 - (a) the applicant; and
 - (b) the issuer of the financial instrument in question (if any).

(4) If the Authority is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service.

- (5) The Authority must give a decision notice in accordance with subsection (6) if—
 - (a) in the case of a requirement imposed on an institution, the Authority decides not to revoke the requirement, or
 - (b) in the case of a requirement imposed on a class, the Authority makes a decision which has the effect that the requirement will continue to apply to the applicant (whether or not it will continue to apply to other members of the class).

- (6) The decision notice must be given to—
 - (a) the applicant, and
 - (b) the issuer of the financial instrument in question (if any).

(7) If the Authority is required to give a decision notice in relation to a requirement imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service.

(8) If the Authority gives a decision notice, the recipient may refer the matter to the Tribunal.

Revocation of requirements: applications by issuers

313BD.—(1) This section applies where the Authority has imposed a requirement on an institution or a class of institutions under section 313A.

(2) The issuer of the financial instrument may apply to the Authority for the revocation of the requirement.

(3) The Authority must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the Authority may decide to revoke it in relation to—

- (a) the class;
- (b) the class apart from one or more specified members of it; or
- (c) one or more specified members of the class only.

(5) The Authority must give the issuer a warning notice if—

- (a) in the case of a requirement imposed on an institution, the Authority proposes not to revoke the requirement, or
- (b) in the case of a requirement imposed on a class, the Authority proposes not to revoke the requirement or to revoke it in relation to—
 - (i) the class apart from one or more specified members of it, or
 - (ii) one or more specified members of the class only.

Decisions on applications for revocation by issuers

313BE.—(1) This section applies where, having considered any representations made in response to a warning notice, the Authority has decided whether to grant an application for revocation made under section 313BD.

(2) The Authority must give written notice to the issuer if the Authority decides to revoke the requirement.

(3) If the Authority is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service.

(4) The Authority must give the issuer a decision notice if—

- (a) in the case of a requirement imposed on an institution, the Authority decides not to revoke the requirement, or
- (b) in the case of a requirement imposed on a class, the Authority decides not to revoke the requirement or makes a decision to revoke the requirement in relation to—
 - (i) the class apart from one or more specified members of it, or
 - (ii) one or more specified members of the class only.

(5) If the Authority is required to give a decision notice under subsection (4)(b), it must also give notice of its decision by publishing it by means of a regulatory information service.

(6) If the Authority gives a decision notice under subsection (4), the issuer may refer the matter to the Tribunal.”.

Amendment of section 313C

5. In section 313C of the Act (notification in relation to suspension or removal of a financial instrument from trading), in subsection (1)(a), after “appropriate” insert “unless the decision has already been published under section 313B(2)(b)”.

Amendment of section 313D

6. In section 313D of the Act (interpretation of Part 18A), insert each of the following definitions at the appropriate place—

““regulated information” has the meaning given in Article 2(1)(k) of the transparency obligations directive (as defined in section 103 of this Act);”

““regulatory information service” means—

- (a) a service approved by the Authority to disseminate regulated information in accordance with rules made under section 89A of this Act, or
- (b) a service established in an EEA state other than the United Kingdom which is used for the dissemination of regulated information for the purposes of Article 21 of the transparency obligations directive;”.

Amendments to the Regulations

7.—(1) The Regulations shall be amended as follows.

(2) In regulation 1, insert at the end—

“(7) Apart from regulation 6A, nothing in these Regulations shall apply to a notice given by publication by means of a regulatory information service under Part 18A of the Act.”.

(3) After regulation 6, insert—

“**6A.**—(1) A notice published by means of a regulatory information service under section 313B(2)(b) of the Act is to be treated as having been received by—

- (a) the institution or (as the case may be) each institution in the class of institutions specified in the notice, and
- (b) any issuer so specified,

at the time when it is first published.

(2) A notice of a decision published by means of a regulatory information service under section 313BA(6), 313BC(4) or (7) or 313BE(3) or (5) of the Act is to be treated as having been received by each institution in the class in question at the time when it is first published.

(3) Paragraph (2) does not apply to an institution which is entitled to receive written notice of the decision under section 313BA(5) or 313BC(2) or a decision notice under section 313BC(5).”

2009

Two of the Lords Commissioners of Her Majesty’s Treasury

Name
Name

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations continue the implementation of part of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1) (“the Directive”). They amend Part 18A of the Financial Services and Markets Act 2000 (“the Act”), which transposed Articles 14.7, 41 and 50.2(j) and (k) of the Directive.

Regulation 2 amends section 313A of the Act to make it clear that the Financial Services Authority has power to require a class of institutions to suspend or remove a financial instrument from trading. Regulation 3 amends section 313B to provide that this power may be exercised by the publication of a notice by means of a regulatory information service, as an alternative to the provision of written notice to each of the institutions concerned, and specifies what information must be published.

Regulation 4 inserts sections 313BA to 313BE into Part 18A of FSMA, to clarify the procedure which will apply where representations are made against the imposition of such a requirement, or an institution or an issuer applies for the revocation of the requirement. These sections set out (a) what decisions the Authority may take in response to such representations or application where the requirement was made in relation to a class of institutions, (b) when the Authority is required to give written notice of its decisions, and (c) when information about those decisions must be published by means of a regulatory information system. Regulation 6 defines “regulatory information service” for the purpose of Part 18A of the Act.

Regulation 7 makes consequential amendments to the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (S.I. 2001/1420).



Impact Assessment

The Impact Assessment follows overleaf.

Summary: Intervention & Options

Department /Agency: HM Treasury	Title: Impact Assessment of notifying trading suspensions via a Regulatory Information Service.	
Stage: Consultation	Version: 1	Date: 16 July 2009
Related Publications:		

Available to view or download at:

<http://www.hm-treasury.gov.uk>

Contact for enquiries: Fiona Henderson

Telephone: 020 7270 5846

What is the problem under consideration? Why is government intervention necessary?

The FSA has the power under section 313A of FSMA to require institutions to suspend or remove financial instruments from trading, but currently the FSA must write to each institution to notify them of such a suspension. Requiring the FSA to provide written notification to each investment firm trading outside organised platforms means that it is not possible to suspend such trading. Government intervention is needed to amend FSMA so that the FSA can give notice of its decision to suspend or remove financial instruments from trading via a Regulatory Information Service (RIS).

What are the policy objectives and the intended effects?

To simplify the means by which FSA notifies institutions that it has suspended, or removed, a financial instrument from trading under section 313A of FSMA. This ensures that section 313A trading suspensions can be achieved quickly throughout the whole market in a timely manner in cases where it is appropriate and not simply confined to suspensions of trading on Regulated Markets and other organised trading platforms such as Multilateral Trading Facilities (MTF).

What policy options have been considered? Please justify any preferred option.

1. Retention of the current method of writing to each firm individually.
2. Updating the Financial Services and Markets Act 2000 so that the FSA can inform institutions of a trading suspension by announcement on a RIS, rather than individually by written notification. The legislative option is preferable as it would reduce the risk of trading in suspended instruments and promote the government's objective to provide the conditions for efficient, stable and fair financial markets.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The legislation will be reviewed at appropriate intervals to ensure that it reflects current practicable arrangements.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



.....Date: 21/07/2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Amendments to FSMA to allow FSA to inform institutions of a trading suspension via a Regulatory Information Service

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Assuming all institutions already have access to Regulatory Information Services, then no extra costs would be incurred.	
	One-off (Transition)	Yrs		
	£ Nil			
	Average Annual Cost (excluding one-off)			
	£ Nil		Total Cost (PV)	£ Nil
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' FSA saves £10,000 per trading suspension. The total benefit is the benefit over 10 years, at a discount rate. It is assumed that there will be one section 313A trading suspension per year - this assumption is dependant on market conditions however it is anticipated it would only be used in exceptional circumstances.	
	One-off	Yrs		
	£ Nil			
	Average Annual Benefit (excluding one-off)			
	£ 10,000		Total Benefit (PV)	£ 93,166
Other key non-monetised benefits by 'main affected groups' Risk of the continued trading in financial instruments that should be suspended across entire market is reduced as more timely information is disseminated to the market. Opportunity cost of a firm not trading in a share, where the suspension has been lifted, is significantly reduced.				

Key Assumptions/Sensitivities/Risks

The discount rate used reflects the effect on the price of money from 2009 over 10 subsequent years. It is assumed that all institutions already have access to Regulatory Information Services.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ 93,166
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			As per SI		
Which organisation(s) will enforce the policy?			FSA		
What is the total annual cost of enforcement for these organisations?			£ Nil		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro Nil	Small Nil	Medium Nil	Large Nil
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ Nil	Decrease of	£ Nil	Net Impact	£ Nil

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

1. BACKGROUND

The Markets in Financial Instruments Directive (MiFID) was implemented in November 2007 and required competent authorities to be given broad powers to suspend trading in a financial instrument. The FSA was given these additional powers under Part 18A of the Financial Services and Markets Act 2000 (FSMA) as the competent authority in the UK. However, the procedural provisions under FSMA require the FSA to identify and write individually to each institution (including regulated market and MTF) to notify them of such a suspension. In order to suspend trading in a financial instrument across the market, the FSA needs to be able to notify individual institutions who trade outside organised platforms directly with each other, (known as bilateral or over the counter (OTC) trades) or with clients as well as on Regulated Markets and trading platforms. There could be thousands of firms engaged in the OTC trading of the suspended financial instrument and therefore identifying and writing to firms individually is not the most practical and efficient way of notifying the market.

The preferred proposal is to enable the FSA to give notice of its decision to suspend trading via a Regulatory Information Service (RIS). This would also allow the FSA to identify the institutions concerned as a class instead of having to identify each institution individually. For example, to notify all investment firms operating MTFs or acting as systematic internalisers. Systematic internalisers are investment firms, which, on an organised, frequent and systematic basis, deal on their own account by executing client orders outside a regulated market or an MTF. However, the FSA will retain the right to notify institutions individually, where appropriate.

2. OPTION 1 – Retention of current method

Under option 1, the FSA would retain the current practice of identifying and notifying each institution that trades in the suspended financial instruments individually in writing.

Benefits

The 'do nothing' option would conserve the status quo.

Costs

For each section 313A trading suspension, it is estimated that the total costs would amount to £10,000. FSA estimate that there would be one section 313A trading suspension per year – these would be relatively infrequent occurrences, made under exceptional circumstances. A decision would be made on a case-by-case basis as to whether OTC trading should be suspended along with trading on organised markets. Nevertheless, they are market dependent and legislation should not hinder the FSA by making it difficult and costly to carry out its powers. £10,000 is an approximate figure and comprises preparation of the notifications, estimated to cost around £2,500 for sufficient staff to handle this in a timely manner and postage and stationery, which is estimated to cost around £7,500 for mailing to around 12,500 recipients. These costs assume that the notification process takes place twice – a mailing to inform firms of a trading suspension, followed by a second mailing to alert them that the suspension has been lifted.

3. OPTION 2 – NOTIFICATION VIA A RIS

Benefits

The legislative changes to FSMA would empower the FSA to deliver a simpler, more effective method of implementing section 313A trading suspensions throughout the whole market.

The proposed amendments to FSMA will -

- Enable the FSA to use its existing powers effectively to suspend OTC trading and/or trading with clients;
- Ensure that all institutions trading in the suspended share are informed simultaneously;
- Mitigate information asymmetry risk in the market; ensuring that Regulated Markets, trading platforms (e.g. MTFs) and other investment firms have access to the same level of information;
- Provide cost savings to the FSA of approximately £10,000 per section 313A trading suspension;
- Allow the FSA to notify certain types of institutions as a class, rather than individually;
- Give the FSA the flexibility to notify each institution individually, if appropriate.

These changes are necessary to ensure that the FSA has effective tools to deliver its objectives of market confidence and protection of consumers.

Costs

It is not anticipated that institutions would incur any extra cost as a result of these changes as it is assumed that all institutions already have access to RIS.

For these purposes, an RIS will include any information services in the UK which have been approved by the FSA for the dissemination of regulated information (eight services have been so approved at the date of this impact assessment), or an information service established in another EEA state which disseminates regulated information for the purposes of Article 21 of the Transparency Directive.¹

Information service providers such as Primary Information providers (PIPs) and secondary information providers (SIPs - for example Bloomberg and Thomson Reuters) are already used for the dissemination of various regulatory announcements, such as Transparency Directive notifications and take the information provided by the RISs and bundle it together into a single source of regulatory information. Regulated Markets and MTFs may also make an announcement that trading has been suspended on their trading platform. In addition to giving notice of its decision via a RIS, the FSA will also issue a press release on its website.

All firms actively engaged in securities trading are therefore likely to have access to such services. Indeed, it would be expected that all institutions that are engaged in trading would be keeping constantly abreast of all relevant regulatory information notices.

The risk of an institution not seeing the notification, and therefore potentially incurring regulatory penalties, is considered low because the process is already established for regulatory and other market notices.

4. COMPETITION ASSESSMENT

¹ Directive 2004/109/EC on the harmonisation of transparency requirements.

Neither proposal has any implications for competition. The proposals are to do with the method of notification, rather than the power to suspend trading in itself under Section 313A, and have no impact on entry to market or on conduct of business.

5. IMPACT ON SMALL FIRMS

The proposals have no special impact on small firms: small firms are not exempt from the practice of viewing existing regulatory information announcements.

6. EQUALITY ASSESSMENTS

The legislation should have no impact on race, disability or gender equality.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

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Consultation list

This consultation document has been made available to the general public via the HM Treasury public website and has in addition been sent to a large number of organisations including the following bodies:

Alternative Investment Management Association
Announce (provided by Hugin ASA)
Association of British Insurers
Association of Private Clients and Investment Managers
Baikal
Bank of England
BATS
Bloomberg
British Bankers' Association
Business Wire Regulatory Disclosure (provided by Business Wire)
CHI-X
DGAP IR.COCKPIT (provided by EquityStory AG)
Digitallook
Dow Jones
EDX
EuroMTS
Financial Express-UK Wire
Financial Services Authority
FirstSight (provided by Cision)
The Futures & Options Association
Global 3 Digital
Hemscott.net
ICAP
ICE Futures
International Swaps & Derivatives Association
Instinet

Investment Management Association
LIFFE
Liquidnet
London Investment Banking Association
London Metal Exchange
London Stock Exchange
MarCo - Market Communication Office (provided by Tensid Ltd of Switzerland)
NASDAQ/OMX
News Release Express (provided by Marketwire)
NYFIX
Perfect Information
Pipeline
PLUS
PR Newswire Disclose (provided by PR Newswire)
RNS (provided by the London Stock Exchange)
Securities Industry and Financial Markets Association
The Share Centre
Smartpool
Takeover Panel
Thomson Reuters
3i Group
Turquoise
The Wholesale Market Brokers' Association

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This document can be found in full on our website at:
hm-treasury.gov.uk

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