



HM TREASURY

Summary of responses:

notifying trading suspensions in the market

January 2010



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1

Introduction

1.1 This feedback statement summarises responses to our July 2009 consultation on Notifying Trading Suspensions in the market. Our proposals ensure that the Financial Services Authority (FSA) has effective tools to deliver its objectives of market confidence and consumer protection.

1.2 The Markets in Financial Instruments Directive (MiFID) was implemented in November 2007 and required competent authorities to be given powers to suspend all 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. Part 18A of FSMA gives the FSA the powers to suspend trading across the entire market, including institutions that trade over-the-counter (OTC), that is bilaterally and with clients. However to date the FSA has not exercised powers to suspend trading across the entire market and it is anticipated that the FSA would use this power infrequently. Indeed, the Impact Assessment in Annex C of the July consultation was based on an estimate of only one such trading suspension per year. The FSA would only suspend OTC trading where it is necessary to protect the orderly functioning of the market or the interests of investors and would decide on a case-by-case basis whether trading needs to be suspended on organised platforms (regulated markets and multilateral trading facilities) or across the entire market.

1.3 Ensuring that the FSA is able to carry out their existing powers effectively is crucial. Where the FSA decides to use powers to suspend trading across the entire market, the existing provisions in 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 and may not ensure all firms were contacted simultaneously. Accordingly, we have decided to adopt the proposals outlined in our July consultation and allow the FSA the option of giving notice of its decision to suspend or remove a financial instrument from trading via a Regulatory Information Service (RIS). This approach will ensure all market participants are informed simultaneously and that the FSA can act in a timely way. When the FSA uses its broad power to suspend trading by investment firms, it will generally also issue a press release to this effect on its website.

1.4 We would like to thank all respondents for their detailed and helpful responses. In respect of the dissemination in the UK of MiFID cross-border suspension notifications the FSA will continue to liaise with the Committee of European Securities Regulators (CESR) and other competent authorities to consider improvements to the current protocol.

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Responses

2.1 The aim of the July 2009 paper was to seek views on the proposed changes to the way in which the FSA notifies the market that it has, at its own initiative, suspended or removed financial instruments from trading. Specifically, we wanted to be able to identify any problems or unintended consequences in the proposed new procedure. Under our proposals the FSA would be permitted to suspend trading in a financial instrument or class of financial instrument by notice to the market without the need for separate written notice to the institutions concerned. It was acknowledged that where there are potentially a large number of firms engaged in OTC trading and having the FSA write to each institution individually, either by letter or electronically, was not a practical way of achieving a timely suspension or cancellation of trading. The draft Statutory Instrument (SI) in Annex A ensures that the FSA can publish a notice on a Regulatory Information Service (RIS) and also clarifies the procedure which will apply where the FSA's decision to suspend or remove a financial instrument from trading is challenged by an institution or issuer.

2.2 We received eight responses to the consultation paper from a range of trade associations, exchanges and trading platforms. Seven responders answered the consultation questions. One response focussed on the actual existing powers that enable the FSA to suspend trading in OTC markets. This section summarises the responses received.

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

2.3 Seven responses agreed that a more effective means of notifying firms is necessary. One of the respondents suggested that a single machine-readable source could inform Regulated Markets (RMs), Multilateral Trading Facilities (MTFs) and trading firms simultaneously on a pan-European basis. We understand the term machine-readable to be a generic term meaning a format or language that a computer can process. RIS information is disseminated via a number of different Secondary Information Providers and so market participants would have a choice in respect of format or language. Another suggestion was put that all EEA markets could incorporate notifications of trading suspensions in one single feed in order to reduce pan European trading costs. It was also noted that it was important for the FSA to include information about trading suspensions on its own website.

2.4 It is important to note that the proposed changes do not relate to suspensions or removals from trading by the FSA following receipt of a notice from another competent authority under Article 41.2 of MiFID ("Article 41.2 notifications"). The FSA will continue to deal with Article 41.2 notifications in its usual way.

2.5 The FSA continues to work with European counterparties to facilitate the development of enhanced dissemination of market information. However, while regulatory announcements in general via a machine-readable source may, eventually, be a preferable method, the FSA believes that this issue requires an EU-wide solution rather than one which is unique to the UK. Although this consultation did not consider cross EU border notification within its scope, the FSA has noted these comments.

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)?

2.6 Four responses agreed that the FSA should have the ability to give notice via a regulatory information service (RIS) that it is suspending or removing a financial instrument from trading. It was felt that HMT should provide the market with sufficient lead-time before introducing these changes. Some respondents were concerned about the possibility of delay between the FSA giving notice via an RIS and the compliance department alerting dealers.

2.7 The FSA Handbook requires most important regulatory announcements to be made via an RIS and therefore it is an announcement channel with which firms will be familiar with using. As provided in the Statutory Instrument in Annex A the amending regulation will come into effect on 6 April 2010.

2.8 The FSA will, as required, specify in the RIS announcement the appropriate time period having regard to the circumstances in each case. There may be occasions in which a period of delay will be acceptable and others where an immediate suspension will be required. The risk of information asymmetry will be lessened via an RIS in comparison to bilateral notification currently required.

2.9 Although where the FSA uses its broad power to suspend OTC trading the FSA will generally issue a press release as soon as possible after publication of the RIS announcement, firms should not rely on FSA press releases to inform them of relevant market announcements in the first instance. Firms should be relying on RIS announcements.

2.10 Some respondents suggested that they would still expect to be notified directly of trading suspensions by the FSA. However, the FSA considers that it would not be appropriate to notify some market participants directly and others by RIS announcement. The FSA considers that a requirement to notify some market participants directly is contrary to the purpose of this amendment, which is to allow the FSA to suspend by way of a single announcement.

2.11 Some respondents to this question reiterated their preference for a machine-readable solution as the optimal solution. As noted above, RIS information is disseminated via a number of Secondary Information Providers and so market participants have a choice of format.

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?

2.12 Four responses were received for this question. None were aware that any firms would be possibly disadvantaged by receiving information via a RIS rather than a written notice. One recommended an appropriate audit should take place. As mentioned in the July consultation paper the FSA does not expect to use this power frequently. However, if the FSA becomes aware of any disadvantages to firms arising out of the use of an RIS for suspension or removal of trading announcements, it will take appropriate action.

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?

2.13 Respondents were not aware of any firms that would be disadvantaged should they be trading bilaterally (OTC) and not on an exchange.

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?

2.14 The majority of respondents agreed 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. One suggested that such communications should only be made after an RIS announcement has been released to the market. The FSA does not think that this is necessary or desirable, but anticipates that, in most cases, an RIS announcement would be issued at the same time as, or within a very short period of time after, service of the notice to the institution or class of institutions concerned.

2.15 Respondents also questioned why the proposed amendments to FSMA only require RIS announcements to be made in relation to written notices and decision notices which concern requirements imposed on a class of institutions, on the grounds that the whole market would benefit from being informed by an RIS announcement that a suspension has been revoked and a venue is now permitted to facilitate trading in a particular security. It was suggested that there should be a requirement for the FSA to make an announcement by RIS of its subsequent decision in any case where the notice of the original suspension or removal from trading was made by an RIS announcement. However, the purpose of the proposed amendments, as stated in the July consultation paper, are to deal with the situation where there are a large number of institutions concerned by a suspension or removal from trading. It is extremely unlikely that the FSA would choose to give notice by way of an RIS announcement where only one or a very small number of institutions are concerned. In the unlikely event that it did so, the FSA would ensure that any revocation was made known to the whole market.

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?

2.16 Four responses were received for this question. Three responses thought that the FSA should 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. One response commented that the value of such a publication would be increased if the reasons for the rejection were to be made public. One response disagreed and thought that the FSA should not be required to publish a warning notice in cases where it has received an application to revoke a requirement but is proposing to reject it. Only final changes should be notified in this manner.

2.17 The FSA does not consider that it is appropriate to publish a warning notice where it proposes to reject such an application. The FSA considers that it might discourage people from making representations, if they know that a warning notice setting out potentially confidential or inaccurate information would be made public. Warning notices are not published in any other circumstance. Indeed, FSMA specifically provides that neither the FSA nor the person to whom a warning notice has been given may publish any details concerning it¹. Strong arguments would be required to change the general position in this circumstances and the proposal did not receive adequate support for this change to be considered.

¹ Section 391(1) of the Financial Services and Markets Act 2000

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Other comments to the consultation

The following additional comments were received about the consultation.

Post – trade transparency

3.1 The FSA has clarified that following a suspension, trading should cease, and therefore there should be no reportable trades. However, following a suspension, there will continue to be a requirement to publish post-trade transparency information relating to trades executed prior to the suspension in line with the post-trade timely reporting requirements and deferred publication regime.

Timing of Suspensions

3.2 One respondent considered that the FSA’s announcement of a suspension and the suspension itself should both take place outside market hours in order to avoid disorderly trading in the period between the announcement and the suspension. The FSA views this as contradictory to the mandate of ensuring suspension notices are disseminated to the market as soon as possible and therefore does not agree that suspensions should only take place outside market hours.

Clearing and settlement

3.3 One respondent argued that Recognised Bodies active in clearing and settlement should be notified individually in each case of a trading suspension because they may have to form a view as to whether any action in relation to the instrument is necessary, for example they may wish to suspend the instrument within their settlement system. They may also have to deal with questions from market players. The FSA does not consider that it is appropriate to be required to notify Recognised Clearing Houses (RCHs) individually for the same reason that it is not appropriate to notify Regulated Investment Exchanges individually. That is, it would defeat the purpose of the amendments if the FSA were required to notify parties in addition to making an announcement by way of an RIS. Further, RCHs should have access to, and be monitoring, RIS announcements and so will be aware of any suspension or removals from trading by that means. If there are, however, circumstances in which the FSA considers that direct notification of one or more institutions would further the purposes of a suspension or removal from trading, then the FSA may do so.

Other announcements

3.4 One respondent asked for clarification as to whether trading platforms would be expected to publish suspension notifications for securities where the suspension has not been instigated by that platform. The FSA understands this to refer to situations where a trading suspension that falls both within the scope of this consultation and feedback, as well as within the rules of a particular organised platform, has been instigated by the FSA rather than the trading platform. The FSA would not expect organised platforms to necessarily publish suspension notifications in such circumstances, but also understands this as a matter for organised platforms to consider.

Power to suspend trading by investment firms

3.5 One response went beyond this consultation and focussed on whether or not the FSA should have the power to suspend financial instruments from trading when trades are taking place OTC. Instead, the respondent felt that the Markets and Financial Instruments Directive (MiFID) confined the use of this power to the suspension of trading on regulated markets and MTFs only.

3.6 The UK, along with some other EU member states, has interpreted MiFID to refer to trading by all market participants. Otherwise, there would exist a 'gap' or 'loophole' where (for example) shares in a distressed issuer could continue to be traded by some methods but not by others. This would not deliver the level of investor protection and market integrity that we would seek. This is evidenced in section 313A(3) of the Financial Services and Markets Act 2000 (FSMA) which expressly states that "trading" includes trading otherwise than on a regulated market or a multilateral trading facility.

3.7 The respondent considered that the power to suspend trading otherwise on a regulated market or an MTF would interfere with the rights to quiet enjoyment of property under Article 1, Protocol 1 of the European Convention on Human Rights (ECHR). Imposing a suspension this widely may in some cases restrict rights in this way. A suspension on a regulated market or MTF is likely to have the same result. However, such a restriction would be justifiable where it can be shown that the restriction is in the public interest, serving a legitimate aim, proportionate and striking a fair balance between the rights of the individuals affected and the interests of the community. The FSA, as a public authority, is required to act compatibly with the Convention rights protected under the Human Rights Act 1998 when it suspends a financial instrument from trading (and when it takes any other action).

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List of participants

4.1 HM Treasury are grateful to the following organisations for their responses to the consultation document. We received one confidential response.

- CHI-X Europe
- Association of British Insurers (ABI)
- Association for Financial Markets in Europe (AFME) (formerly the London Investment Banking Association (LIBA) and Securities Industry and Financial Markets Association (SIFMA))
- London Stock Exchange
- Euroclear UK & Ireland
- LIFFE
- Investment Management Association (IMA)

A Draft Regulation

The Statutory Instrument follows overleaf.

DRAFT STATUTORY INSTRUMENTS

2010 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010

Made - - - - 2010
Coming into force - - 6 April 2010

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 2010 and come into force on 6 April 2010.

(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).”

Date

Two of the Lords Commissions 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).

An Impact Assessment of the effect of this instrument on the costs of business has been prepared and is available on HM Treasury's website (www.hm-treasury.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

B

Impact Assessment

Impact Assessment below.

Summary: Intervention & Options

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| Department /Agency: HM Treasury | Title: Impact Assessment of notifying trading suspensions via a Regulatory Information Service. | |
| Stage: Final | Version: 2 | Date: 11 January 2010 |
| 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 final proposal/implementation 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: 15/01/2010

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 dependent 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 (Net)

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

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.

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

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

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 |

HM Treasury contacts

This document can be found in full on our website at:
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If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence and Enquiry Unit
HM Treasury
1 Horse Guards Road
London

SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: public.enquiries@hmtreasury.gov.uk

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