

## **8. Consultation outcome**

8.1 The Treasury held a three-month consultation between July and October 2009 following informal consultation with interested stakeholders during 2008. The consultation sought views on the proposed changes to the way in which the FSA announces to the market that it has suspended or removed financial instruments from trading.

8.2 The Treasury received eight responses to the consultation paper from a range of trade associations, exchanges and trading platforms. The majority of respondents agreed that a more effective means of notifying firms of a trading suspension was necessary. There was mixed response as to whether the FSA should be allowed to suspend trading via an RIS announcement to all market participants. Some respondents argued that announcement via an RIS would not be optimal, as the announcements would not be automatically fed into trading that has largely become an automated process. This legislation should allow the FSA to eventually move to this when technology allows. Other respondents argued that the FSA should still inform some market participants individually. This legislation still allows the FSA to retain the right to notify institutions individually, where appropriate. Details of the comments and the Treasury's response are summarised in the feedback statement on the consultation on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

8.3 It was considered appropriate to allow the FSA to give notice of its decision to suspend or remove a financial instrument, or class of instruments from trading to the market via a Regulatory Information Service (RIS).

## **9. Guidance**

9.1 As this instrument will not change FSA powers, HM Treasury does not propose to produce any guidance in relation to it.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation applies to small businesses but specifically affect firms engaged in securities trading.

## **12. Monitoring & review**

12.1 The legislation will be reviewed at appropriate intervals to ensure that reflects current practicable arrangements.

## **13. Contact**

Fiona Henderson at HM Treasury Tel: 020 7270 5846 or email: [Fiona.c.henderson@hmtreasury.gsi.gov.uk](mailto:Fiona.c.henderson@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.

**EXPLANATORY MEMORANDUM TO  
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (AMENDMENTS  
TO PART 18A ETC.) REGULATIONS 2010**

**2010 No. 1193**

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The purpose of these Regulations is to amend Part 18A of the Financial Services and Markets Act 2000 (FSMA) to permit the Financial Services Authority (FSA) 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.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Context**

- 4.1 Part 18A of FSMA was inserted by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007, SI 2007/126, regulation 3(3), and Schedule 3 to those regulations. It gives the FSA power to require the suspension and removal of financial instruments from trading in implementation of Articles 14.7, 41, and 50.2(j) and (k) of the Directive of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments (Directive 2004/39/EC).

- 4.2 Under section 313B, where the FSA intends to require an institution to suspend trading in a financial instrument it must give written notice to that institution and to the issuer of the instrument concerned. This means that it is not possible for the FSA to take immediate action to suspend trading in a financial instrument which is traded on a number of markets.

- 4.3 The amendments to Part 18A of FSMA made by these regulations ensure that the FSA's power to suspend or remove a financial instrument from trading may be exercised by publication of a notice by means of a regulatory information service, as an alternative to the provision of a written notice to each of the institutions concerned. They also clarify 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.

5. **Territorial Extent and Application**

- 5.1 These regulations apply to all of the United Kingdom.

6. **European Convention on Human Rights**

The Financial Services Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 are compatible with the Convention rights.

## 7. Policy background

- *What is being done and why*

7.1 The Markets in Financial Instruments Directive (MiFID) required competent authorities to be given powers to suspend trading in a financial instrument. The FSA was given these powers under FSMA as the competent authority in the UK. 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. The FSA does not find this procedure practical or efficient as they would have to identify and write to the thousands of firms who trade bilaterally (known as 'over-the-counter' or OTC trading). As a result, the FSA is not able to impose a trading suspension with immediate effect.

7.2 These Regulations therefore ensure that the FSA will be able to announce its decision to suspend or remove a financial instrument, or class of financial instrument, from trading on a Regulatory Information Service (RIS). An RIS provides the service of disseminating the various regulatory announcements that firms are required to make to the market via secondary information providers. Firms already have access to information published via RISs. The FSA would not be required to give separate written notice to the institutions concerned. This will ensure that the FSA can, if necessary, ensure that trading in a particular financial instrument is suspended immediately, ensuring that our implementation of the relevant provisions of the market in financial instruments directive is more effective.

7.3 The Regulations also clarify the FSA's ability to require a specified class of institutions to suspend or remove a financial instrument from trading without having to identify each institution individually, and set out the procedure that will apply when a suspension is imposed on a class of institution, 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.

- *Consolidation*

7.4 The Treasury does not have plans to consolidate the original text with amendments to Part 18A of the Financial Services and Markets Act 2000 at this time. Commercial publishers produce consolidated versions of the Financial Services and Markets Act 2000 with amendments, both in electronic and hard copy versions. A consolidated version of the Financial Services and Markets Act 2000 is also available on the Ministry of Justice's free website at [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk).

## Summary: Intervention & Options

**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**

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

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> 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.
	<b>One-off</b> Yrs		
	<b>£ Nil</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
<b>£ 10,000</b>		<b>Total Benefit (PV)</b>	<b>£ 93,166</b>
Other <b>key non-monetised benefits</b> 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	<b>Net Benefit Range (NPV)</b> <b>£ N/A</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 93,166</b>
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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.<sup>1</sup>

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.

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<sup>1</sup> 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