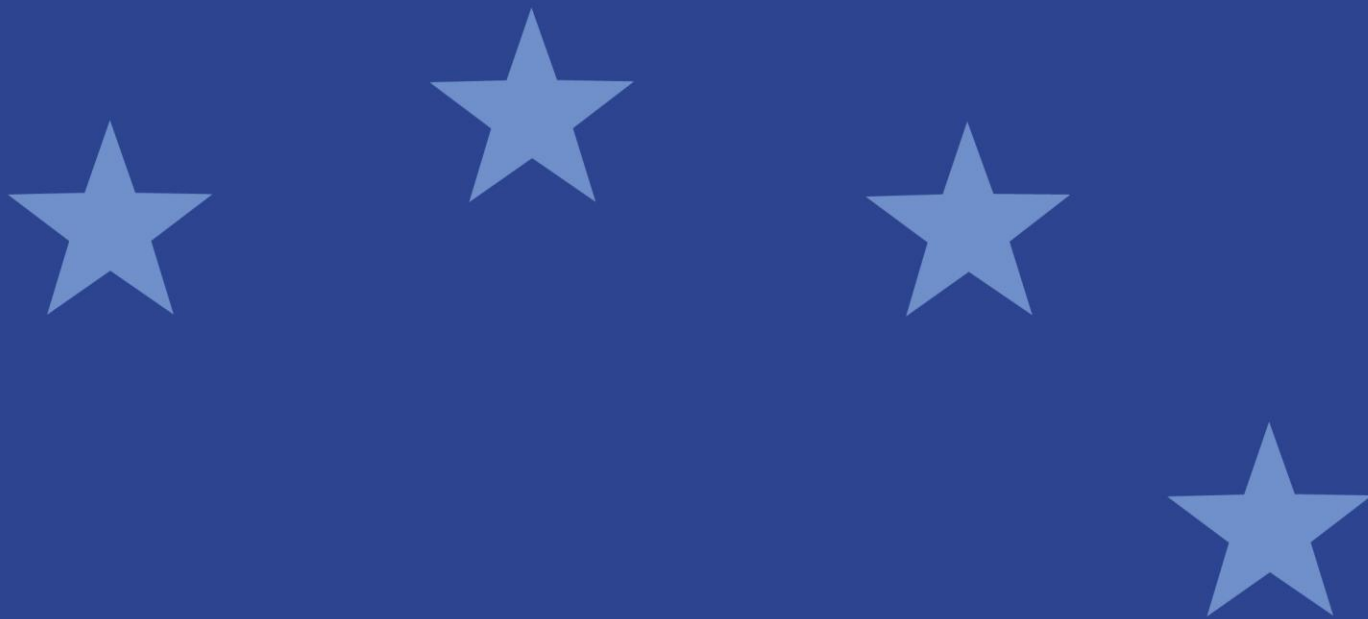




European Securities and
Markets Authority

Protocol

on the operation of notifications of MiFID Article 41 suspensions
and removals of financial instruments from trading



Protocol on the operation of notifications of MiFID Article 41 suspensions and removals of financial instruments from trading

Preamble

1. This protocol has been created to ensure effective co-operation between Competent Authorities (CAs) with respect to their obligations under Article 41 of MiFID (Suspension and removal of instruments from trading).
2. The purpose of the notification obligations under Article 41 is to afford investors across all Member States the same level of protection regardless of where they trade. In order to achieve this outcome, a shared understanding of the different circumstances under which trading may be suspended in different Member States according to their national law and the expected course of action under Article 41 is helpful. To ensure trading is suspended or an instrument is removed from trading in an effective and timely way, an effective communication process is necessary.
3. On November 2011, ESMA decided to substitute the original email notification system set out by the CESR Protocol on the Operation of notifications of MiFID Article 41 suspensions and removals of financial instruments from trading (Ref. CESR/08-363) by a centralized multilateral functionality hosted by ESMA. To that end, ESMA has developed the SARIS (Suspension And Restoration Information System), an IT tool to help national competent authorities to discharge their duties under MiFID Article 41. SARIS permits publishing externally basic data about suspensions and NCAs may benefit from the information of the ESMA's Instruments Reference Data System (RDS), an IT system which stores reference data for all instruments admitted to trading on EEA regulated markets.
4. The protocol will be kept under review in light of practical experience and the evolution of financial regulation.

Powers to suspend trading under MiFID:

5. Article 41(1) of MiFID gives operators of regulated markets the power to suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.
6. Under Article 50 of MiFID, CAs are given supervisory and investigatory powers necessary for the exercise of their functions. These powers include the rights (a) to require the suspension of trading in a financial instrument and (b) to require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements.

Notification obligations under Article 41 of MiFID:

7. Article 41 requires a pan-EEA framework for information sharing in relation to suspensions and removals of trading in financial instruments, between operators of regulated markets (MO) and their respective home Member State (MS) CAs as well as between such authorities.
8. If a MO suspends or removes a financial instrument from trading, under Article 41(1) it is required to give notice to the CA and make a public announcement. The CA must then inform other CAs.
9. Where a CA suspends or removes financial instruments from trading, according to Article 41(2) it must immediately make public its decision and notify other CAs, who are obliged to take similar action unless it would be likely to cause significant damage to the interests of investors or the orderly functioning of financial markets.

Scope of notifications and legal obligations

10. The impact of notifications made to other CAs under Article 41(1) and 41(2) differ. As noted above, if a notification is made under Article 41(1) there is no obligation for other CAs to follow the decision. On the other hand, if a notification is made under Article 41(2) other CAs are obliged to follow the decision of the notifying CA unless the exceptions apply.
11. MiFID does not harmonize the reasons for suspending or removing a financial instrument from trading. Accordingly, CAs' powers or obligations to suspend or remove a financial instrument under national laws and regulations are not uniform across Europe and vary from one Member State to another. Similarly, it is acknowledged that CAs will be using discretion conferred to them under national laws and regulations when deciding whether to suspend or remove a financial instrument from trading. National competent authorities will thus apply this protocol in their day-to-day supervisory activities in accordance with their national laws and regulations.
12. The table at the end of the document has been developed to illustrate different categories of trading suspensions/removals and restorations which can be requested by CAs and MOs. It is not an exhaustive list of different categories of trading suspensions/removals. It is worth noting that CAs (or MOs) may not necessarily have the power to suspend/remove trading in all circumstances enumerated in the table and that national laws and regulations will dictate whether the CA should request a trading suspension/removal (and regulated market rules will dictate whether a MO should request a trading suspension/removal). The table describes certain categories of trading suspensions/removals which are considered to fall within the scope of Article 41 and require notifications to other CAs. It also describes other events which are considered outside the scope of Article 41 notifications. These would include, for example, short-term trading halts triggered by (or requested for) 'technical reasons' (e.g. price volatility, systems breakdown or purely local technical reasons which, unless other extraordinary circumstances arise, should not be notified) or restorations. The categories will be kept under review in light of practical experiences and the evolution of financial regulation.
13. Although not required by MiFID, CAs recognise that it would be helpful to be informed of the reason for a trading suspension at the time of notification. Accordingly, CAs should, without prejudice to their national laws and regulations, provide the reason for suspension in the notification and, where relevant, use the reasons described in the table (for example, 'undisclosed price sensitive information' may be a reason for suspension). As noted above, the table does not provide an exhaustive list and there might be circumstances where a CA suspends a financial instrument from trading for a reason other than those enumerated.
14. CAs should notify other CAs of the removal of a financial instrument from trading when driven by the compulsory exclusion of the financial instrument. For example, a removal of a financial instrument for non-compliance with rules of the regulated market or because the company is being

wound up should fall within the scope of Article 41 notifications. CAs should not notify, without prejudice to their own national laws and regulations, cases such as removals arising from ISIN changes or because a financial instrument has reached maturity.

Financial instruments covered by Article 41:

15. The notification obligations under Article 41 only refer to suspensions or removals from trading of financial instruments admitted to trading on an RM. They do not extend to financial instruments which have only been admitted to trading on a Multilateral Trading Facility (MTF).
16. The suspension of a security does not create an obligation under Article 41.2 to suspend trading of financial instruments related to the suspended security such as derivatives (where the underlying security has been suspended) or instruments issued by the same issuer. When trading of a security is suspended by a CA, the CA should determine whether there are related instruments and decide whether to use its powers under Article 50 to also suspend trading in those instruments. Similarly, a CA which receives a notification may wish to consider if there are related instruments which should also be suspended.

Notifications under Article 41(1) and (2):

17. MiFID requires that Article 41 (2) notifications must be sent to ESMA and all CAs regardless of whether the instruments are traded in their jurisdiction.
18. All communications sent internally amongst national CAs should be sent through SARIS. For the operation of the SARIS, national CAs should read this Protocol in conjunction with the relevant ESMA internal documents¹.

Timing:

19. Article 41(1) and (2) can both be interpreted purposively as obliging CAs to inform other CAs without delay of a decision by a MO, or by a CA, to suspend or remove a financial instrument from trading. The same rationale is also embodied in the general requirement under Article 58(1) to immediately supply other CAs with information required for the purpose of carrying out their duties. As a general principle, national CAs commit to inform other CAs as soon as practically possible after the publication of the relevant event.
20. The drafting of Article 41 is sequential (suspension/removal, decision made public, notification). However, there may be special circumstances, e.g. dual listing, in which the CA may wish to pre-notify another CA of a future suspension or removal of a financial instrument from trading before its publication and before it becomes effective.
21. CAs who wish to pre-notify other CAs of suspensions and restorations that are not yet public should be mindful that the information being exchanged may be price sensitive and may use SARIS or other appropriately secure methods of communication.

Communication processes

22. CAs should follow the process detailed below and, in due course, will give consideration to improvements to the process on the basis of further experience.

¹ IT solution Business Requirements Document (Ref. ESMA/2013/ITMG/14)

List of contact details:

23. So as to facilitate the functioning of the system, ESMA staff will maintain a list of the persons working for each NCA who are authorised to interact with the SARIS and their email addresses. CAs have agreed to notify the ESMA staff without delay of changes to contact details in the list.
24. ESMA staff should be informed separately in those cases where in the notifying authority's opinion, a suspension might have wider financial stability implications (e.g. the suspension of trading for a systemically relevant institution as a result of a bankruptcy/insolvency)².

Method:

25. Notifications should be submitted without delay to other CAs using SARIS after the decision to suspend is made public³ (Ref. ESMA/2011/15).
26. All the CAs in whose jurisdiction the suspended financial instrument is traded shall notify as soon as practically possible through SARIS their decision:
 - If a CA or MO suspends/removes/restores an instrument in response to a notification from a CA, the notified CA is required to report through SARIS that it has also suspended/removed/restored that financial instrument and also whether they suspended as well any or all related financial instruments.
27. When a notified national CA in whose jurisdiction is traded the suspended financial instrument has not followed the suspension agreed by another CA, it will inform through SARIS about the specific reasons for which that suspension could have caused "a significant damage to the investors' interest or the orderly functioning of the market" in case the notification was issued under Article 41.2 of MiFID. Where the notification was issued following Article 41.1 of MiFID, this report might be done on a voluntary basis.

Notification of related suspended instruments

28. When at the time of the suspension of a security traded on a regulated market it is decided that one or several related financial instruments should be suspended for the same reasons, there should only be one notification for the whole set of instruments suspended (i.e. there should not be one notification for each of the instruments).
29. If the notification intends to capture all financial instruments related to the suspended security, CAs have agreed that it is sufficient to state in the notification that 'all related financial instruments traded on the regulated market have been suspended'.
30. If the notification intends to capture only a sub-set of instruments related to the suspended security, reference should be made in the notification to the other suspended instruments.

Other trading venues

31. In the exchange of information (notification and responses), national CAs should clearly indicate whether the suspension/restoration has also taken place in the MTF/s under its jurisdiction using the available free field of SARIS, regardless whether that suspension falls under Article 41.1 or Ar-

² Articles 22 to 24 and 31 (e) of ESMA Regulation.

³ This mitigates issues surrounding the handling of price sensitive information.

title 41.2 of MiFID, whenever this information is available to the CA under the current MiFID framework.

Restorations of trading:

32. Restorations of trading are not contemplated by Article 41. However, to ensure that the system of Article 41 notifications works effectively CAs have agreed and committed to notify other CAs of the date and time trading has been restored as soon as practically possible after the effective restoration (there might also be circumstances where it would be possible for a CA to inform others in advance of a restoration).

Transitory provision:

33. NCAs will use the email system, as described in the previous version of this Protocol⁴ only until SARIS goes live. SARIS will go live in the third Quarter 2013. ESMA will notify the NCAs at least two months in advance of the go-live date.

⁴ Available in <http://www.esma.europa.eu/system/files/2012-378.pdf>

Article 41: Categories of Trading Halts, Suspensions, Restorations and Removals of Financial Instruments from Trading

Category	Description	Article 41 coverage	Legal obligation of CAs which receive notification from another CA
Trading halt	Short-term trading halt triggered by (or requested for) 'technical reasons'. Examples include: - Price volatility; - Systems breakdown; - Purely local technical reasons	Not covered	Not applicable

Categories	Description	Requesting entity (CA/MO)	Article 41 coverage	Legal obligation of CAs which receive notification from another CA
1. Market management arrangements	Post company disclosure trading interruption for market management purposes	CA	Notification at the discretion of the CA	If notified, require the suspension of trading, unless suspension could cause significant damage to the investors' interests or the orderly functioning of the market
		MO	Notification at the discretion of the CA	If notified, no obligation to require suspension under Article 41, but CA may use discretion provided under Article 50(2)(j) to suspend trading.

2. 'Undisclosed price sensitive information (PSI)'	In case of evidence or suspicion that market moving information has not been disclosed (for example, if a CA becomes aware that an issuer has failed to disclose price sensitive information and there is potential information leakage). The trading suspension is typically lifted when the PSI is disclosed but there may be reasons why it is not immediately lifted.	CA	Covered	Require the suspension of trading, unless suspension could cause significant damage to the investors' interests or the orderly functioning of the market
		MO	Covered	No obligation to require suspension under Article 41, but CA may use discretion provided under Article 50(2)(j) to suspend trading.
3. Issuer's failure to disclose periodic information on time	When: - An issuer fails to disclose periodic information because of underlying problems (e.g. auditor refuses to approve accounts); or - There are concerns that delayed disclosure of periodic information could lead to rumors and unrest in the market.	CA	Covered	Require the suspension of trading, unless suspension could cause significant damage to the investors' interest or the orderly functioning of the market
		MO	Covered	No obligation to require suspension under Article 41, but CA may use discretion provided under Article 50(2)(j) to suspend trading.

4. Suspected market abuse	CAs may suspend trading of a financial instrument if there are concerns about potential market manipulation and/or insider dealing.	CA	Covered	Require the suspension of trading, unless suspension could cause significant damage to the investors' interests or the orderly functioning of the market
		MO	Covered	No obligation to require suspension under Article 41, but CA may use discretion provided under Article 50(2)(j) to suspend trading.
5. Other noncompliance with rules of regulated market	When a MO requests a trading suspension because the issuer or the financial instrument no longer complies with the rules of the regulated market (non-compliance with rules other than those identified in other categories of suspensions).	MO	Covered	No obligation to require suspension under Article 41, but CA may use discretion provided under Article 50 (2) (j) to suspend trading
6. Filing of tender offers and related events	CAs may suspend trading in response to the filing of a tender offer on the shares/equities of an issuer admitted to trading on a regulated market (typically until the tender offer is approved by the CA)	CA	Covered	Require the suspension of trading, unless suspension could cause significant damage to the investors' interests or the orderly functioning of the market.

7. Other disorderly trading conditions	A trading suspension in response to an event that may: <ul style="list-style-type: none"> - undermine the price formation process; - lead to information asymmetry in the market; - prejudice investors/consumers (e.g. terrorist attack); - be a result of a bankruptcy/insolvency; or - lead to other disorderly conditions 	CA	Covered	Require the suspension of trading, unless suspension could cause significant damage to the investors' interests or the orderly functioning of the market
		MO	Covered	No obligation to require suspension under Article 41, but CA may use discretion provided under Article 50(2)(j) to suspend trading.
8. Removal from trading	The removal of a financial instrument from trading. <p>Examples include:</p> <ul style="list-style-type: none"> - non-compliance with the rules of the regulated market; - company being wound up <p>The following actions would, for instance, not trigger a notification:</p> <ul style="list-style-type: none"> -a change in ISIN -financial instrument has reached maturity. 	CA	Covered	Require removal from trading, whether on a regulated market or under other trading arrangements, unless removal could cause significant damage to the investors' interests or the orderly functioning of the market.
		MO	Covered	No obligation to require removal under Article 41, but CA may use discretion provided under Article 50(2)(k) to remove from trading.

9. Restorations	The restoration of a financial instrument to trading of previously notified suspensions (unless the original suspension notification specified the time at which trading would be restored)	CA	Not covered	In order to ensure the system of Article 41 notifications works effectively CAs should notify restorations of trading to other CAs immediately.
		MO	Not covered	No obligation to communicate a restoration to trading of a financial instrument, however in order to ensure the system of Article 41 notifications works effectively CAs should notify restorations of trading by the MO to other CAs as soon as the information is available.