



European Securities and
Markets Authority

Protocol

Operation of notifications of MiFID Article 41 suspensions and removals of financial instruments from trading



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. The protocol will be kept under review in light of practical experience.

Powers to suspend trading under MiFID:

4. 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.
5. 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:

6. 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.
7. 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.
8. 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 & legal obligations

9. 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.
10. MiFID does not harmonise 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.

11. The following table 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). The categories will be kept under review in light of practical experiences.
12. 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.
13. 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.

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	<p>The removal of a financial instrument from trading.</p> <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.

Financial instruments covered by Article 41:

14. 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).
15. 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.

Addressees of notifications under Article 41(1) and (2):

16. MiFID requires that Article 41 notifications must be sent to all CAs regardless of whether the instruments are traded in their jurisdiction. All communications sent internally amongst national CAs should be sent through the e-mail addresses included in the document Contact Details of competent authorities for Article 41 MiFID notification purposes (Ref. ESMA/2011/SMSC/15).

Timing:

17. 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.
18. 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.
19. 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 should use appropriately secure methods of communication.

Communication processes

20. 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.

List of contact details:

21. The aforementioned list of contact details to be used by CAs for communicating Article 41 notifications has been prepared and will be updated by the ESMA staff (Ref. ESMA/2011/15). CAs have agreed to notify the ESMA staff without delay of changes to contact details in the list. This is the only list which should be used for the purposes of Article 41.

22. 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)¹.

Method:

23. Notifications should be emailed without delay to other CAs using the specified Article 41 contact e-mail addresses after the decision to suspend is made public² (Ref. ESMA/2011/15).
24. All the CAs in whose jurisdiction the suspended financial instrument is traded shall respond as soon as practically possible to the notifying CA acknowledging receipt of the notification and informing them about their decision:
- If a CA or MO suspends/removes/restores an instrument in response to a notification from a CA, it is required to notify *the notifying CA* that it has also suspended/removed/restored that financial instrument and also whether they suspended as well any or all related financial instruments³.
 - 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 *the notifying competent authority and ESMA staff* 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

25. 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).
26. 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'.
27. 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:
- Where there is a manageable⁴ list of related suspended financial instruments it should be attached in the form of Excel table. Specifications:
 - o ISIN code should be included whenever it exists. Only in case the instrument is not referenced by ISIN code, national CAs should use other system; or
 - o In those cases where the information provided by regulated markets or market data vendors is considered complete and accurate by the notifying CA (including ISIN codes) a link to a publicly available webpage can be added to the notification e-mail.

¹ Articles 22 to 24 and 31 (e) of ESMA Regulation.

² This mitigates issues surrounding the handling of price sensitive information.

³ That can be done by copying the notifying CA in the email sent to the market operator/s.

⁴ The exact determination of what is a "manageable list of instruments" is left to each CA's discretion.

- Where the list of related suspended financial instruments is not easily manageable, in the box “Related instruments” of the notification template, national CAs should indicate the categories of instruments suspended. That description should indicate which categories of financial instruments have been suspended (e.g. derivatives with the same underlying, fixed income instruments, preference shares...). National CAs should aim at providing meaningful information in this case, so as to facilitate the labor of the recipient CAs and market operators.

In those cases where the information provided by regulated markets or market data vendors is considered complete and accurate by the notifying CA a link to a publicly available webpage can be added.

Other trading venues

28. 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 in the box “Trading venue/s in the notifying CA’s jurisdiction” of the notification template, regardless whether that suspension falls under Article 41.1 or Article 41.2 of MiFID, whenever this information is available to the CA under the current MiFID framework.

Restorations of trading:

29. 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).
30. Generally, the notification process ends after all CAs have been informed of a suspension/removal/restoration once. If a CA or MO suspends/removes/restores an instrument in response to a notification from a CA, it is not required to notify other CAs that it has also suspended/removed/restored a financial instrument.

Format:

31. The email header should follow the following format:

Subject: [Suspension/Removal/Restoration] re [name of issuer] at [operator of RM/CA] request

32. Notifications should be made by completing the following pro-forma within the email.

From:	Name of CA (Member State) Contact name & telephone number
Name of issuer:	
Particulars of financial instrument (ISIN /AII whenever it exists):	
Trading venue/s in the notifying CA’s jurisdiction	
Other trading venue/s in the EU where the instrument is traded (OPTIONAL)	

<u>FIELD: according to the best knowledge of the notifying CA)</u>	
Reason for [suspension]/[removal]/[restoration]: (including category from table where appropriate)	
Suspension requested by operator of regulated market:	Yes/No
Suspension requested by competent authority:	Yes/No
Effective date & time (UTC) of suspension:	
Effective date & time (UTC) of restoration (if already known):	
Related instruments (indication about the ISIN codes of the main related instruments and/or main categories of related instruments suspended)	
Comments:	