EXPLANATORY MEMORANDUM TO

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

2010 No. [DRAFT]

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.

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).

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 can answer any queries regarding the instrument.