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BaFin

Bundesanstalt für
Finanzdienstleistungsaufsicht

Guidance Notice on trade suspension on non-exchanges in the context of bank resolution

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To all

- systematic internalisers within the meaning of Article 4(1) no. 20 of Directive 2014/65/EU and
- multilateral or organised trading facilities that are not operated by an exchange within the meaning of section 2 of the German Stock Exchange Act (*Börsengesetz – BörsG*)

in the Federal Republic of Germany.

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Terms and definitions

Term	Definition
Resolution authority	Federal Financial Supervisory Authority (BaFin) as resolution authority pursuant to section 3 (1) of the German Recovery and Resolution Act (<i>Sanierungs- und Abwicklungsgesetz – SAG</i>).
Bail-in tool	Bail-in tool within the meaning of Article 27 of the SRMR and/or section 90 of the SAG.
Bail-inable liabilities	In accordance with Article 3(1) no. 49 of the SRMR or section 2 (3) no. 10b of the SAG, bail-inable liabilities are liabilities and capital instruments other than those of CET1 capital, Additional Tier 1 capital or Tier 2 capital which are not excluded from the scope of application of the bail-in tool on the basis of Article 27(3) of the SRMR or section 91 (2) of the SAG.
Trading venue	A regulated market, a multilateral trading facility or an organised trading facility (see Article 4(1) no. 24 of Directive 2014/65/EU).
Multilateral trading facility (MTF)	A multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of Directive 2014/65/EU (see Article 4(1) no. 22 of Directive 2014/65/EU).
Organised trading facility (OTF)	A multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of Directive 2014/65/EU (see Article 4(1) no. 23 of Directive 2014/65/EU).
Systematic internaliser	An investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system (see Article 4(1) no. 20 of Directive 2014/65/EU).
WDCCI power	Power to write down and convert relevant capital instruments in accordance with Article 21 of the SRMR and section 89 of the SAG.
Central Securities Depository (CSD)	<p>Pursuant to Article 2(1) no. 1 of the Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 of 28 August 2014, p. 1; hereinafter referred to as the CSDR), a central securities depository is a legal person that operates a securities settlement system referred to in point (3) of Section A of the Annex and provides at least one other core service listed in Section A of the Annex to the CSDR. Under the Regulation, a central securities depository need not be a credit institution.</p> <p>In Germany, only Clearstream Banking AG currently holds the position of a Central Securities Depository.</p>

I. Introduction and objectives of this document

In accordance with section 79 of the SAG, the resolution authority may order support measures in the course of a resolution if necessary to ensure the effective application of the resolution order or to achieve the resolution objectives. Section 79 (3) of the SAG counts among the support measures. The resolution authority may (to the extent necessary to the performance of its duties) suspend or halt trading in financial instruments which have been issued by the institution affected by resolution action and which are traded on a trading venue or by a systematic internaliser or officially listed in accordance with Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184 of 6 July 2001, p.1).

The discontinuation or suspension of trading in financial instruments issued by an institution affected by resolution action is of particular importance for calming the financial market for the duration of the resolution action and protecting trading participants and investors from an inadequate price determination process. Furthermore, the discontinuation or suspension of trading also facilitates the technical implementation of the WDCCI power in accordance with section 89 of the SAG and Article 21 of the SRMR and/or the bail-in tool in accordance with section 90 of the SAG and Article 27 of the SRMR with respect to financial market infrastructure, in particular for central securities depositories (German Bundestag publication 19/22786, p. 179).

This Guidance Notice addresses the discontinuation and suspension of trading by systematic internalisers as well as by multilateral and organised trading facilities that are not operated by an exchange within the meaning of section 2 of the BörsG. It is addressed to all legal entities in Germany (hereinafter referred to as addressees) that (1) operate multilateral and/or organised trading facilities that are not part of an exchange and/or (2) are authorised as a systematic internaliser.¹ This Guidance Notice does not cover the discontinuation and suspension of trading on relevant exchanges and their organised markets and multilateral and organised trading facilities. That is addressed in the Guidance Notice External Bail-in Execution.²

This Guidance Notice anchors the discontinuation and suspension of trading in the context of a resolution by the addressees within the overall external bail-in execution process in the Federal Republic of Germany, and describes which information beyond the resolution order itself the resolution authority will make available to addressees and when it will be made available for the above-specified purpose, as well as what is expected of them with respect to implementation. Section II covers the theoretical and legal basis for (1) the discontinuation and suspension of trading and (2) the resumption of trading. Section III then discusses timing and information for addressees as well as requirements imposed on addressees. Section IV provides the relevant contact details for addressees.

¹ For more information, refer to https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_upreg.

² See Guidance Notice External Bail-in Execution at https://www.bafin.de/SharedDocs/Downloads/EN/Merkblatt/A/dl_merkblatt_externer_Bail_in_Implementierung_en.html.

II. Theoretical and legal basis

1. Discontinuation and suspension of trading

The discontinuation or suspension of trading in the course of a resolution is generally ordered by virtue of a resolution order. Pursuant to section 140 (4) of the SAG, the resolution authority publishes the resolution order on its website immediately after its decree and informs other authorities and further entities (pursuant to section 140 (2) of the SAG) as well as the institution under resolution. The resolution order is an administrative decision in the form of a general administrative act and usually enters into effect immediately upon publication on BaFin's website. This means that the affected addressee (e.g. systematic internaliser) must in principle initiate the discontinuation or suspension of trading without undue delay following publication by BaFin.

A discontinuation or suspension of trading may generally take one of two possible forms, whereby the form to be applied is always decided at the discretion of the resolution authority based on the specific situation:

a. ***only financial instruments affected by the WDCCI/bail-in:***

Trading is discontinued or suspended only for those financial instruments affected by the WDCCI power and/or bail-in tool. This means that the discontinuation or suspension of trading affects all financial instruments of the institution under resolution which are either written down and/or converted. The financial instruments affected by the WDCCI power and/or bail-in tool are listed in the resolution order and the associated annexes.

b. ***for all financial instruments issued by the institution:***

Trading is discontinued or suspended for all financial instruments of the institution under resolution. Because all financial instruments are affected, these are in principle not explicitly listed in the resolution order or the associated annexes.

2. Resumption of trading

The discontinuation or suspension of trading in financial instruments will likely be in effect at least for as long as it takes to complete the technical implementation of the WDCCI power and/or the bail-in tool with the central securities depository and other financial market infrastructure. However, it may be in effect for longer than this, for instance in order to calm the financial market for the duration of the resolution action and to protect trading participants and investors from an inadequate price determination process.

The resumption of trading is ordered by the resolution authority by virtue of a further administrative decision in the form of a general administrative act, provided the relevant requirements have been satisfied. Alternatively, the resolution authority may set the duration of the suspension period in advance in the resolution order. Ideally, trading will resume as soon as the custodian banks have posted the changes resulting from the order of the WDCCI power and/or bail-in tool to the securities accounts of their clients and/or the financial markets have calmed following the intervention of the authorities.

III. Timing, information and requirements

1. Discontinuation and suspension of trading: timing and information

The **time** from when the discontinuation or suspension of trading enters into effect is usually when the resolution order is made public by way of publication on the resolution authority's website or the time of the announcement specified therein. This means that addressees of this Guidance Notice must comply with the order without undue delay. Ideally, the process for resolution would entail publication of the resolution order in the night from Sunday to Monday, meaning that the addressee would suspend trading in the affected financial instruments by no later than 7.30 a.m.³

To facilitate technical implementation, addressees receive an e-mail containing **relevant information** soon after the resolution order is made public so as to (1) enable them to more easily identify the financial instruments of the institution affected by the WDCCI power and/or bail-in tool and (2) facilitate a more efficient technical implementation of the trading suspension within the addressees' own systems. Once again, what information is to be provided by the resolution authority depends on one of two situations:

a. ***only financial instruments affected by the WDCCI/bail-in:***

If trading is to be discontinued or suspended only for the financial instruments affected by the WDCCI power and/or bail-in tool, the addressees receive an e-mail with (1) the resolution order (and annexes thereto) and (2) an MS Excel list with the ISINs of the affected financial instruments.

b. ***for all financial instruments issued by the institution:***

If trading is to be discontinued or suspended for all financial instruments of the institution, the addressees receive an e-mail containing only the resolution order.

Once the discontinuation or suspension of trading has been successfully implemented, the addressees must send confirmation to the resolution authority by e-mail (see section IV) without undue delay.

2. Resumption of trading: timing and information

The resumption of trading is ordered – similar to the order to discontinue or suspend trading – by virtue of an administrative decision taking the form of a general administrative act. Alternatively, the resolution authority may set the duration of the suspension period in advance in the resolution order. The **time** to resume trading will either be set in the administrative decision ordering the resumption of trading, or – if no time is specified therein – as soon as the relevant administrative decision has been published on the BaFin website. If the resolution authority has set the suspension period in advance in the resolution order, trading may resume once this period has expired. The addressees of this Guidance Notice must implement the resumption of trading without undue delay.

Shortly after the administrative decision ordering the resumption of trading has been made public, the addressees will receive an e-mail containing the **relevant information**: these are particularly, the order to resume trading as well as any annexes thereto. Once trading has successfully resumed, the addressees must send a confirmation to the resolution authority by e-mail (see section IV) without undue delay.

³ See ideal process in accordance with the Guidance Notice External Bail-in Execution. Deviations from the ideal process may occur depending on the crisis situation.

3. Requirements

In order to render it possible to implement the discontinuation/suspension of trading in the event of a resolution, it is necessary that the addressees make the following **preparations**:

- The addressees must provide the resolution authority with a contact person concerning the discontinuation/suspension of trading and the resumption of trading, as well as a (valid) e-mail address.
- The addressees must ensure that the contact person and e-mail address are updated at least annually or as need.
- The addressees must ensure that the aforementioned relevant information can be transmitted via an encrypted e-mail channel in the event of a resolution.
- The addressees must establish processes and have a technical-organisational structure and staffing resources to enable the discontinuation/suspension and resumption of trading without undue delay following the order.

The addressees of this Guidance Notice are asked to make these preparations without undue delay once this Guidance Notice has been published. Addressees should note that the resolution authority can only provide them with the aforementioned relevant information in the event of a resolution if a contact person has been nominated and an encrypted e-mail communication is possible.

IV. Contact details for the addressees

The addressees of this Guidance Notice are asked to nominate a contact person and provide a (functional) e-mail address by contacting the Division Resolution Tools and Coordination at resolutiontools.ABF14@bafin.de.