

Chapter 8

Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

8.1 Introduction

8.1.1

The *FCA* has powers under section 55J of the *Act* to vary or cancel an *authorised person's Part 4A permission* and a power under section 55L to impose requirements on an authorised person. The *FCA* may use these powers where:

- (1) the person is failing or is likely to fail to satisfy the *threshold conditions* for which the *FCA* is responsible;
- (2) the person has not carried on a *regulated activity* to which the *Part 4A permission* relates for a period of at least 12 months (or six months in the case of a *full-scope UK AIFM*);
- (3) it is desirable to exercise the power in order to advance one or more of its operational objectives; or
- (4) the person has failed to comply with a requirement in Part 5 of the *AIFMD UK regulation* (AIFs which acquire *control* of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement.

8.1.2

The powers under sections 55J and 55L of the *Act* to vary and cancel a *person's Part 4A permission* and to impose *requirements* are exercisable in the same circumstances. However, the statutory procedure for the exercise of the *own-initiative powers* to vary a *permission* or impose a *requirement* is different to the statutory procedure for the exercise of the cancellation power under section 55J and this may determine how the *FCA* acts in a given case. Certain types of behaviour which may cause the *FCA* to cancel *permission* in one case, may lead it to impose *requirements*, vary, or vary and later cancel, *permission* in another, depending on the circumstances. The non-exhaustive examples provided below are therefore illustrative but not conclusive of which action the *FCA* will take in a given case.

8.1.3

Separately, the *FCA* has its *additional own-initiative variation power*, under Schedule 6A to the *Act*, to vary or cancel the *Part 4A permission* of a *firm* that is an *FCA-authorised person* if:

- (1) it appears to the *FCA* that that *person* is carrying on no *regulated activity* to which the *permission* relates; and

- (2) that *person* has failed to respond as directed by the *FCA* to notices served by the *FCA* on that *person* under paragraph 2 of Schedule 6A.

Guidance on that power, which may be used in an enforcement context, is provided in ■ SUP 7.