

Chapter 8

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

8.2 Varying a firm's Part 4A permission or imposing requirements on the FCA's own initiative

8.2.1

When it considers how it should deal with a concern about a *firm*, the *FCA* will have regard to its *statutory objectives* and the range of regulatory tools that are available to it. It will also have regard to:

- (1) the responsibilities of a *firm's* management to deal with concerns about the *firm* or about the way its business is being or has been run; and
- (2) the principle that a restriction imposed on a *firm* should be proportionate to the objectives the *FCA* is seeking to achieve.

8.2.2

The *FCA* will proceed on the basis that a *firm* (together with its directors and senior management) is primarily responsible for ensuring the *firm* conducts its business in compliance with the *Act*, the *Principles* and other *rules*.

8.2.3

In the course of its supervision and monitoring of a *firm* or as part of an enforcement action, the *FCA* may make it clear that it expects the *firm* to take certain steps to meet regulatory requirements. In the vast majority of cases the *FCA* will seek to agree with a *firm* those steps the *firm* must take to address the *FCA's* concerns. However, where the *FCA* considers it appropriate to do so, it will exercise its formal powers under sections 55J or 55L of the *Act* to vary a *firm's* permission or to impose a requirement to ensure such requirements are met. This may include where:

- (1) the *FCA* has serious concerns about a *firm*, or about the way its business is being or has been conducted;
- (2) the *FCA* is concerned that the consequences of a *firm* not taking the desired steps may be serious;
- (3) the imposition of a formal statutory requirement reflects the importance the *FCA* attaches to the need for the *firm* to address its concerns;
- (4) the imposition of a formal statutory requirement may assist the *firm* to take steps which would otherwise be difficult because of legal obligations owed to third parties.

8.2.4

■ SUP 7 provides more information about the situations in which the *FCA* may decide to take formal action in the context of its supervision activities, including the use of its *additional own-initiative variation power*.

8.2.5

[deleted]

8.2.6

Examples of circumstances in which the *FCA* will consider varying a *firm's Part 4A permission* because it has serious concerns about a *firm*, or about the way its business is being or has been conducted include where:

- (1) in relation to the grounds for exercising the power under section 55J(1)(a) or section 55L(2)(a) of the *Act*, the *firm* appears to be failing, or appears likely to fail, to satisfy the *threshold conditions* relating to one or more, or all, of its *regulated activities*, because for instance:
 - (a) the *firm's* material and financial resources appear inappropriate for the scale or type of *regulated activity* it is carrying on, for example, where it has failed to take *account* of the need to manage risk professional indemnity insurance or where it is unable to meet its liabilities as they have fallen due; or
 - (b) the *firm* appears not to be a fit and proper *person* to carry on a regulated activity because:
 - (i) it has not conducted its business in compliance with high standards which may include putting itself at risk of being used for the purposes of *financial crime* or being otherwise involved in such crime;
 - (ii) it has not been managed soundly and prudently and has not exercised due skill, care, and diligence in carrying on one or more, or all, of its *regulated activities*;
 - (iii) it has breached requirements imposed on it by or under the *Act* (including the *Principles* and the *rules*), for example in respect of its disclosure or notification requirements, and the breaches are material in number or in individual seriousness;
 - (c) the *firm's* business model is not suited to its *regulated activities*, for example, where the *firm's* business model is not compatible with its affairs being conducted in a sound and prudent manner;
 - (d) the *firm* is not capable of effective supervision by the *FCA*, for example, where the way in which its business is organised or its membership of a group is likely to prevent effective supervision;
- (2) in relation to the grounds for exercising the power under section 55J(1)(c)(i) or section 55L(2)(c), it appears that the interests of *consumers* are at risk because the *firm* appears to have breached any of *Principles 6 to 10* of the *FCA's Principles* (see ■ PRIN 2.1.1R) to such an extent that it is desirable that *limitations, restrictions, or prohibitions* are placed on the *firm's regulated activity*.