

Chapter 8

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

8.3 Use of the own-initiative powers

8.3.1 The *FCA* may impose, under sections 55J or 55L of the *Act*, a variation of *permission* or a *requirement* so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation or *requirement* to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its *own-initiative powers*.

8.3.2 The *FCA* will consider exercising its *own-initiative power* where:

- (1) the information available to it indicates serious concerns about the *firm* or its business that need to be addressed immediately; and
- (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the *firm* in order to ensure the *firm* addresses these concerns.

8.3.3 It is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of the following characteristics:

- (1) information indicating significant loss, risk of loss or other adverse effects for *consumers*, where action is necessary to protect their interests;
- (2) information indicating that a *firm's* conduct has put it at risk of being used for the purposes of *financial crime*, or of being otherwise involved in crime;
- (3) evidence that the *firm* has submitted to the *FCA* inaccurate or misleading information so that the *FCA* becomes seriously concerned about the *firm's* ability to meet its regulatory obligations;
- (4) circumstances suggesting a serious problem within a *firm* or with a *firm's controllers* that calls into question the *firm's* ability to continue to meet the *threshold conditions*.

8.3.4 The *FCA* will consider the full circumstances of each case when it decides whether a variation of *Part 4A permission* under section 55J of the *Act* or an imposition of a *requirement* under section 55L of the *Act* is appropriate. The following is a non-exhaustive list of factors the *FCA* may consider.

- (1) The extent of any loss, or risk of loss, or other adverse effect on *consumers*. The more serious the loss or potential loss or other

adverse effect, the more likely it is that the *FCA's* exercise of *own-initiative powers* will be appropriate, to protect the consumers' interests.

- (2) The extent to which *customer* assets appear to be at risk. Exercise of the *FCA's own-initiative power* may be appropriate where the information available to the *FCA* suggests that *customer* assets held by, or to the order of, the *firm* may be at risk.
- (3) The nature and extent of any false or inaccurate information provided by the *firm*. Whether false or inaccurate information warrants the *FCA's* exercise of its *own-initiative powers* will depend on matters such as:
 - (a) the impact of the information on the *FCA's* view of the *firm's* compliance with the regulatory *requirements* to which it is subject, the *firm's* suitability to conduct *regulated activities*, or the likelihood that the *firm's* business may be being used in connection with *financial crime*;
 - (b) whether the information appears to have been provided in an attempt knowingly to mislead the *FCA*, rather than through inadvertence;
 - (c) whether the matters to which false or inaccurate information relates indicate there is a risk to *customer* assets or to the other interests of the *firm's* actual or potential *customers*.
- (4) The seriousness of any suspected breach of the requirements of the legislation or the *rules* and the steps that need to be taken to correct that breach.
- (5) The financial resources of the *firm*. Serious concerns may arise where it appears the *firm* may be required to pay significant amounts of compensation to *consumers*. In those cases, the extent to which the *firm* has the financial resources to do so will affect the *FCA's* decision about whether exercise of the *FCA's own-initiative powers* is appropriate to preserve the *firm's* assets, in the interests of the *consumers*. The *FCA* will take account of any insurance cover held by the *firm*. It will also consider the likelihood of the *firm's* assets being dissipated without the *FCA's* intervention, and whether the exercise of the *FCA's* power to petition for the winding up of the *firm* is more appropriate than the use of its *own-initiative powers* (see ■ chapter 13 of this guide).
- (6) The risk that the *firm's* business may be used or has been used to facilitate *financial crime*, including *money laundering*. The information available to the *FCA*, including information supplied by other law enforcement agencies, may suggest the *firm* is being used for, or is itself involved in, *financial crime*. Where this appears to be the case, and the *firm* appears to be failing to meet the *threshold conditions* or has put its *customers'* interests at risk, the *FCA's* use of its *own-initiative powers* may well be appropriate.
- (7) The risk that the *firm's* conduct or business presents to the *financial system* and to confidence in the *financial system*.
- (8) The *firm's* conduct. The *FCA* will take into account:

- (a) whether the *firm* identified the issue (and if so whether this was by chance or as a result of the *firm's* normal *controls* and monitoring);
 - (b) whether the *firm* brought the issue promptly to the *FCA's* attention;
 - (c) the *firm's* past history, management ethos and compliance culture;
 - (d) steps that the *firm* has taken or is taking to address the issue.
- (9) The impact that use of the *FCA's own-initiative powers* will have on the *firm's* business and on its *customers*. The *FCA* will take into account the (sometimes significant) impact that a variation of *permission* may have on a *firm's* business and on its *customers'* interests, including the effect of variation on the *firm's* reputation and on market confidence. The *FCA* will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its *statutory objectives*.