

Chapter 8

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

8.5 Cancelling a firm's Part 4A permission on its own initiative

8.5.1

The *FCA* will consider cancelling a *firm's Part 4A permission* using its *own-initiative powers* contained in sections 55J and 55Q respectively of the *Act* in two main circumstances:

- (1) where the *FCA* has very serious concerns about a *firm*, or the way its business is or has been conducted;
- (2) where the *firm's regulated activities* have come to an end and it has not applied for *cancellation* of its *Part 4A permission*.

8.5.2

The grounds on which the *FCA* may exercise its power to cancel an authorised person's permission under section 55J of the *Act* are the same as the grounds for variation and for imposition of requirements. They are set out in section 55J(1) and section 55L(2) and described in ■ EG 8.1.1. Examples of the types of circumstances in which the *FCA* may cancel a *firm's Part 4A permission* include:

- (1) non-compliance with a *Financial Ombudsman Service* award against the *firm*;
- (2) material non-disclosure in an application for authorisation or approval or material non-notification after authorisation or approval has been granted. The information which is the subject of the non-disclosure or non-notification may also be grounds for cancellation;
- (3) failure to have or maintain adequate financial resources, or a failure to comply with regulatory capital requirements;
- (4) non-submission of, or provision of false information in, regulatory returns, or repeated failure to submit such returns in a timely fashion;
- (5) non-payment of *FCA* fees or repeated failure to pay *FCA* fees except under threat of enforcement action; and
- (6) failure to provide the *FCA* with valid contact details or failure to maintain the details provided, such that the *FCA* is unable to communicate with the *firm*;
- (7) repeated failures to comply with *rules* or requirements;
- (8) a failure to co-operate with the *FCA* which is of sufficient seriousness that the *FCA* ceases to be satisfied that the *firm* is fit and proper, for example failing without reasonable excuse to:

- (a) comply with the material terms of a formal agreement made with the *FCA* to conclude or avoid disciplinary or other enforcement action; or
- (b) provide material information or take remedial action reasonably required by the *FCA*.

Sections 55J(6) and 55K of the *Act* sets out further grounds on which the *FCA* may cancel the permission of *authorised persons* which are *investment firms* and section 55J(6A) of the *Act* set out further grounds on which the *FCA* may cancel the permission of *authorised persons* who are *full-scope UK AIFMs*.

8.5.2A

The *FCA* may also vary or cancel, under Schedule 6A to the *Act*, 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 to notices served by the *FCA* on that *person* under paragraph 2 of Schedule 6A.

Schedule 6A specifies that the *FCA* may form the view that a *firm* is carrying on no such *regulated activity* on the basis of its failure to pay a periodic fee or levy or provide information to the *FCA*, in each case as required by the *Handbook*. Further *guidance* on this power is given in ■ SUP 7.

8.5.3

Depending on the circumstances, the *FCA* may need to consider whether it should first use its *own-initiative powers* to impose requirements on a *firm* or to vary a *firm's Part 4A permission* before going on to cancel it. Amongst other circumstances, the *FCA* may use this power where it considers it needs to take immediate action against a *firm* because of the urgency and seriousness of the situation.

8.5.4

Where the situation appears so urgent and serious that the *firm* should immediately cease to carry on all *regulated activities*, the *FCA* may first vary the *firm's Part 4A permission* so that there is no longer any *regulated activity* for which the *firm* has a *Part 4A permission*. If it does this, the *FCA* will then have a duty to cancel the *firm's Part 4A permission* - once it is satisfied that it is no longer necessary to keep the *Part 4A permission* in force.

8.5.5

However, where the *FCA* has cancelled a *firm's Part 4A permission*, it is required by section 33 of the *Act* to go on to give a direction withdrawing the *firm's authorisation*. Accordingly, the *FCA* may decide to keep a *firm's Part 4A permission* in force to maintain the *firm's status* as an *authorised person* and enable it (the *FCA*) to monitor the *firm's activities*. An example is where the *FCA* needs to supervise an orderly winding down of the *firm's regulated business* (see ■ SUP 6.4.22 (When will the relevant regulator grant an application for *cancellation of permission*)). Alternatively, the *FCA* may decide to keep a *firm's Part 4A permission* in force to maintain the *firm's status* as an *authorised person* to use administrative enforcement powers against the *firm*.