

Chapter 6

Applications to vary and
cancel Part 4A permission and
to impose, vary or cancel
requirements

Additional guidance for a firm winding down (running off) its business

1.	If a <i>firm</i> has <i>Part 4A permission</i> which enables it to hold <i>client money</i> or to carry on <i>regulated activities</i> including:
	(a) <i>carrying out contracts of insurance and effecting contracts of insurance; or</i>
	(b) <i>accepting deposits;</i>
	(c) <i>safeguarding and administration of assets; or</i>
	(d) <i>meeting of repayment claims or managing dormant asset funds (including the investment of such funds);</i>
	it may require a long period (usually in excess of six months) in which to wind down (run off) its business. In these circumstances, it will usually be appropriate for the <i>firm</i> to apply for a variation of <i>Part 4A permission</i> before commencing the wind down.
2.	A <i>firm</i> that believes that it may need to apply for a variation of <i>Part 4A permission</i> as a first step towards cancellation of its <i>permission</i> should discuss its plans with its supervisory contact at the relevant regulator.
3.	If appropriate, in the interests of its <i>statutory objectives</i> (limited to the operational objectives in the case of the <i>FCA</i>), the <i>appropriate regulator</i> will require details of the <i>firm's</i> plans and will discuss them with the <i>firm</i> and monitor the winding down or transfer of the <i>firm's</i> business. During the period in which it is winding down, a <i>firm</i> will also be required to notify any material changes to the information provided such as, for example, receipt of new complaints and changes to plans.
4.	If, after its <i>Part 4A permission</i> has been varied, a <i>firm</i> has wound down its business, complied with any <i>requirements</i> imposed and ceased to carry on <i>regulated activities</i> (or expects to do so within the next six months), it should then make an application for cancellation of its <i>Part 4A permission</i> (see SUP 6.4 (Applications for cancellation of permission)).
Use of own-initiative powers	
5.	If, for example, the <i>FCA</i> or the <i>PRA</i> has concerns relating to any of the <i>statutory objectives</i> (limited to the operational objectives in the case of the <i>FCA</i>), it may use its <i>own-initiative variation power</i> (see SUP 7 (Individual requirements) and EG 8 (Variation and cancellation of permission on the <i>FCA's</i> own initiative and intervention against incoming firms)), to vary the <i>Part 4A permission</i> of a <i>firm</i> which is winding down or transferring its <i>regulated activities</i> .
5A	If, for example, the <i>appropriate regulator</i> has concerns relating to any of its <i>statutory objectives</i> (limited to the operational objectives in the case of the <i>FCA</i>), it may use its <i>own-initiative requirements power</i> to impose on a <i>firm</i> that is winding down or transferring its <i>regulated activities</i> , any <i>requirement</i> , or vary or cancel a <i>requirement</i> imposed by it on that <i>firm</i> .
Reporting requirements: general	
6.	If a <i>firm</i> is winding down (running-off) its business, the routine reporting requirements in SUP 16 (Reporting requirements) will apply unless the <i>firm</i> is granted a waiver. In addition, a <i>firm</i> may be asked to submit additional reports, for example, to enable the <i>appropriate regulator</i> to monitor the wind down.
1.	If a <i>firm</i> makes an application in accordance with SUP 6 to effect the winding down of <i>regulated activities</i> which it is carrying on including the repayment of <i>client money</i> , or the return of <i>client deposits</i> , <i>custody assets</i> or any other property belonging to <i>clients</i> , the <i>appropriate regulator</i> will expect it to have formal plans to ensure that:
(1)	the <i>regulated activities</i> are wound down in an orderly manner;

(2)	the <i>regulated activities</i> are properly completed and all <i>client deposits</i> , <i>client money</i> , <i>custody assets</i> or any other property belonging to <i>clients</i> are repaid, returned or transferred to another <i>Authorised person</i> ; and
(3)	the interests of <i>customers</i> are not adversely affected.
2.	[deleted]
1	A <i>firm</i> must comply with CASS 5.5.80 and CASS 7.11.34R (Client money: discharge of fiduciary duty) and CASS 7.11.50 R (Allocated but unclaimed client money) if it is ceasing to hold <i>client money</i> . A <i>firm</i> must also cease to hold or control <i>custody assets</i> in accordance with instructions received from <i>clients</i> and COBS 6.1.7 R or article 49 of the <i>MiFID Org Regulation</i> (see COBS 6.1ZA.9EU) (Information concerning safeguarding of designated investments belonging to clients and client money). These <i>rules</i> apply to both repayment and transfer to a third party.
1.	A <i>firm</i> carrying on <i>insurance business</i> which, ultimately, intends to cease <i>insurance business</i> completely, will first need to apply for a variation of its <i>Part 4A permission</i> while it is running off its business. The <i>firm</i> should apply for a variation of <i>Part 4A permission</i> to remove the activity of <i>effecting contracts of insurance</i> from its <i>permission</i> , thus restricting its activities to <i>carrying out insurance contracts</i> to enable it to run off its remaining insurance liabilities (see SUP 6.2.9 G).
2.	Examples of variations of <i>Part 4A permission</i> which may be appropriate in the context of winding down <i>insurance business</i> include: <ol style="list-style-type: none"> (1) removing one or more <i>regulated activities</i> (for example, when a <i>firm</i> which has <i>Part 4A permission</i> to carry on <i>insurance business</i> enters into run-off, its <i>Part 4A permission</i> will need to be varied to remove the activity of <i>effecting contracts of insurance</i> in relation to new <i>contracts of insurance</i>); a new <i>contract of insurance</i> excludes contracts effected under a term of a subsisting <i>contract of insurance</i>. Thus the <i>firm's permission</i> will be restricted to <i>carrying out contracts of insurance</i> to enable it to run off its existing liabilities; or (2) imposing a <i>limitation on regulated activities</i> in a <i>firm's Part 4A permission</i>.
2A	A <i>firm</i> may also have imposed on it a new <i>requirement</i> , or any existing <i>requirement</i> imposed on a <i>firm</i> may be varied or cancelled. In the context of winding down <i>insurance business</i> , it may for example be appropriate to impose a <i>requirement</i> on the type of investments a <i>firm</i> holds to support its insurance liabilities.
3.	An <i>insurer</i> ceasing to <i>effect contracts of insurance</i> is required to submit a <i>scheme of operations</i> in accordance with SUP App 2 (Insurers: scheme of operations). The <i>PRA</i> may require other information depending on the circumstances, for example an actuarial assessment of the <i>firm's</i> run-off.
4.	A <i>firm</i> that is ceasing <i>effecting new contracts of insurance</i> in all categories of <i>specified investment</i> should refer to SUP App 2 for details of the specific reporting requirements that apply.
5.	An <i>insurer</i> should note that the <i>PRA</i> will not cancel a <i>firm's permission</i> until all the <i>firm's</i> insurance liabilities have been discharged, including any potential insurance liabilities. A <i>firm</i> is, therefore, advised to submit an application for cancellation of its <i>Part 4A permission</i> when its run-off is completed.
1.	A <i>firm</i> making an application in accordance with SUP 6 which requires any approval from the <i>Society of Lloyd's</i> should apply to the <i>Society</i> for this in addition to applying to the relevant regulator.
2.	Where a <i>firm</i> has <i>Part 4A permission</i> to <i>manage the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i> then, if it wishes to vary its <i>Part 4A permission</i> to remove this <i>regulated activity</i> or to cancel its <i>Part 4A permission</i> completely, special procedures will apply.
3.	(1) As a first step, the <i>firm</i> should apply to the relevant regulator for a variation of its <i>Part 4A permission</i> to limit the <i>regulated activity</i> , after the <i>Lloyd's syndicates</i> have been closed, to permit no new business. Once the <i>syndicates</i> have been closed, the <i>firm's</i> consent from the <i>Society</i> to <i>manage syndicates</i> will also lapse

	(2)	After a period of one year from the date of closure of the Lloyd's <i>syndicates</i> the <i>firm</i> may apply to vary its <i>Part 4A permission</i> , to remove the <i>regulated activity</i> or to cancel its <i>Part 4A permission</i> entirely, as appropriate. At this time, a <i>firm's</i> approval from the <i>Society of Lloyd's</i> as a <i>managing agent</i> will cease.
4.		<i>Firms</i> which wish to discuss these procedures in more detail should contact their appropriate supervisory contact and the <i>Society of Lloyd's</i> , as appropriate.
1. As stated in SUP 6.2.9 G, where a <i>bank</i> , or other <i>firm</i> with permission that includes <i>accepting deposits</i> , wishes to cancel its <i>Part 4A permission</i> , it will generally need to apply for a variation of that <i>permission</i> while it winds down its business.		
2. When a <i>firm</i> is winding down its business activities, it may be appropriate to: <ul style="list-style-type: none"> (1) vary its <i>Part 4A permission</i> by imposing a <i>limitation</i> that no new <i>deposits</i> will be accepted; or (2) vary its <i>Part 4A permission</i> by imposing a <i>limitation</i> on the purchasing of <i>investments</i> for its own account; or (3) impose on it <i>requirements</i> concerning solvency. 		
3. After a <i>bank</i> has discussed with the <i>appropriate regulator</i> the type of variation of <i>Part 4A permission</i> and/or <i>requirement</i> the <i>bank</i> requires to wind down its business, it should make an application as directed in SUP 6.3.15 D and follow the <i>guidance</i> and procedures in SUP 6 as well as the additional procedures set out in this annex.		
4. As appropriate, one or more of the following may be imposed on a <i>firm</i> : <ul style="list-style-type: none"> (1) a <i>requirement</i> that the <i>firm</i> takes certain steps or refrains from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way; (2) a <i>limitation</i> on <i>accepting deposits</i>, for example a <i>limitation</i> that no new <i>deposits</i> will be accepted; (3) a <i>requirement</i> restricting the granting of <i>credit</i> or the making of <i>investments</i>; (4) a <i>requirement</i> prohibiting the <i>firm</i> from soliciting <i>deposits</i> either generally or from <i>persons</i> who are not already <i>depositors</i>. 		
5. The information concerning the circumstances of these applications and the confirmations a <i>firm</i> is required to give to the regulator(s) concerned will differ according to the nature of the <i>bank</i> and its <i>Part 4A permission</i> . If appropriate, it may include, but will not necessarily be limited to: <ul style="list-style-type: none"> (1) a plan containing the arrangements made in respect of the business of any current <i>depositors</i>, for example how and when the <i>firm</i> intends to repay or novate arrangements with <i>depositors</i>; or (2) confirmation that the <i>bank</i> will not take any new <i>deposits</i>, will not roll over or renew any existing <i>deposits</i> at maturity and will repay all remaining <i>deposits</i> (including accrued interest) as they fall due for repayment 		
Dealing with residual deposits: general		
6. Where a <i>firm</i> has residual <i>deposits</i> which, for whatever reason, cannot be repaid, they may be protected by a number of different methods. The precise applicability of the courses to be followed depends upon the particular circumstances of the individual <i>firm</i> . The <i>appropriate regulator's</i> supervisory approach will be determined by the course of action taken.		
Holding funds on trust		
7. In some circumstances, it may be appropriate for the <i>firm</i> to make an irrevocable transfer of funds, at least equal to the total of its <i>deposits</i> , to an independent trustee to be held on trust for the benefit of the <i>depositors</i> . Any such proposal should be discussed in advance with the <i>appropriate regulator</i> . The amount of funds held on trust should at all times exceed the total of all <i>deposits</i> , in order to provide for contingencies. Trust account arrangements are appropriate only in respect of solvent institutions. The <i>guidance</i> in paragraph 13 of this section applies in most cases.		
8. (1) A plan containing the arrangements should be made by the <i>firm</i> in respect of the business of any current <i>depositors</i> , for example how and when the <i>firm</i> intends to repay or novate arrangements with <i>depositors</i> . (2) The trustee should be an independent and appropriately qualified third party, nominated by the institution and acceptable to the <i>appropriate regulator</i> .		

(a) The trustee should usually be a major *UK bank*. If appropriate, an additional trustee from within the institution may be appointed, preferably in an advisory role. An internal trustee may help to ensure continuity if the *firm* and the trust are likely to remain in existence for the foreseeable future.

(b) The *appropriate regulator* should be consulted about, or pre-notified of, a potential change of trustee.

(c) Trustees are responsible for fulfilling their obligations under the trust deed. In practice, the *appropriate regulator* may wish to point out that certain factors need to be given consideration by the trustees and the institution (for example, the procedures for paying out to depositors).

9. The *appropriate regulator* would require to see an opinion by the *firm's* legal advisers, confirming the validity and enforceability of the trust and in particular specifying the extent (if any) to which the trust arrangements may be set aside in future. The *appropriate regulator* reserves the right to request sight of the proposed trust documentation itself.

10. The trustee has the right (and probably the obligation) to invest the funds, and in doing so should normally seek to "match" the maturity profile of the *firm's deposit* base. However, the following could result in *deposit* liabilities exceeding *trust* funds at any time:

(a) maturity mismatches, that is, whether there are insufficient liquid funds across the maturity bands to repay depositors; or

(b) changes in interest rates; or

(c) the trustee's fees and disbursements.

11. The trustee should not deposit, or otherwise invest, trust funds except in segregated accounts with third-party authorised institutions.

(1) An auditor's report, similar to that used to determine whether all the *deposits* have been repaid by a *firm*, should be provided to confirm that all depositors have been repaid before the discharge of a trust is allowed.

(2) Auditors' reports, from the trust's auditors, should subsequently be obtained at intervals to demonstrate that funds in the trust continue to be at least equal to the remaining liabilities to depositors and that repayments have been properly made. The *firm* retains the ultimate responsibility to provide information to the *appropriate regulator*.

(3) The *appropriate regulator* may, however, require the inclusion of a clause in the trust deed requiring the trustee to provide such information as may be requested.

12. Entering into a trust arrangement does not "transfer" deposits or discharge the *firm's* contractual obligations to its depositors.

Holding the funds in segregated accounts

13. The *firm* may place and retain an amount at all times at least equal to its *deposit* liabilities in a segregated account with its usual bankers. The advantage of this course of action is that if all deposit liabilities are matched by funds in such an account, then the *firm* is not carrying on the *regulated activity* of *accepting deposits* in contravention of the *Act*.

14. Placing funds in a segregated account does not discharge a *firm's* contractual obligations to its depositors.