

Chapter 7

Individual requirements

7.1 Application and purpose

Application

7.1.1 **G** This chapter applies to every *firm* which has a *Part 4A permission*.

7.1.2 **G** [deleted]

Purpose

7.1.3 **G** The *Handbook* primarily contains provisions which apply to all *firms* or to certain categories of *firm*. However, a *firm* may apply for a waiver or modification of *rules* in certain circumstances as set out in ■ SUP 8; or it may receive individual *guidance* on the application of the *rules*, as set out in ■ SUP 9.

7.1.4 **G** The *FCA*, in the course of its supervision of a *firm*, may sometimes judge it necessary or desirable to impose additional *requirements* on a *firm* or in some way amend or restrict the activities which the *firm* has *permission* to undertake. The *guidance* in this chapter describes when and how the *FCA* will seek to do this.

7.1.5 **G** By waiving or modifying the requirements of a *rule* or imposing an additional *requirement* or *limitation*, the *FCA* can ensure that the *rules*, and any other *requirements* or *limitations* imposed on a *firm*, take full account of the *firm's* individual circumstances, and so assist the *FCA* in meeting its *statutory objectives* under the *Act*.

7.1.6 **G** In some circumstances, the *FCA* may consider that it is insufficient to impose such *requirements*, amendments or *limitations* and that it will use its powers under the *Act* to remove one or more such activities from or cancel the *Part 4A permission* of a *firm*, whether under its *own-initiative variation power* or, where the relevant *firm* is an *FCA-authorized person*, under its *additional own-initiative variation power*.

7.2 The FCA's powers to set individual requirements and limitations and cancel Part 4A permissions on its own initiative

- 7.2.1** **G** The *FCA* has the power under section 55J of the *Act* and, in respect of *FCA-authorized persons*, Schedule 6A to the *Act* to vary or cancel a *firm's Part 4A permission* and/or, under section 55L of the *Act*, to impose a requirement on a *firm*. Varying a *firm's Part 4A permission* can include removing one or more *regulated activities* from those to which the *Part 4A permission* relates, varying the description of such an activity and/or imposing a limitation on that *Part 4A permission*.
- 7.2.2** **G** The circumstances in which the *FCA* may vary or cancel a *firm's Part 4A permission* on its own initiative or impose a requirement on a *firm* under sections 55J or 55L of the *Act* include where it appears to the *FCA* that:
- (1) one or more of the threshold conditions for which the *FCA* is responsible is or is likely to be no longer satisfied by the *firm*; or
 - (2) it is desirable to vary or cancel a *firm's permission* in order to meet any of the *FCA's statutory objectives* under the *Act*; or
 - (3) a *firm* has not carried out one or more *regulated activities* to which its *Part 4A permission* applies for a period of at least 12 months, in which case those activities may be removed from the *permission*.
- 7.2.2A** **G** The *FCA* may also decide to vary or cancel an *FCA-authorized person's Part 4A permission* on its own initiative under Schedule 6A to the *Act*:
- (1) if that *person* appears to the *FCA* not to be carrying on any *regulated activity* to which the *permission* relates, including, without restriction, if the *person* has failed to:
 - (a) pay a periodic fee or levy under the *Handbook*; or
 - (b) provide the *FCA* with information required under the *Handbook*; and
 - (2) if that *person*, when served by the *FCA* with two notices under paragraph 2 of Schedule 6A, has not:
 - (a) responded in the manner directed, in those notices or otherwise, by the *FCA*; nor
 - (b) taken other steps as may also be so directed by the *FCA*;

the second of which notices will specify any proposed variation and its effective date or the effective date of the proposed cancellation.

7.2.2B

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- (1) The *FCA*, having served on the relevant *firm* notices under paragraph 2 of Schedule 6A to the *Act*, as described in ■ SUP 7.2.2AG, must serve notice, under paragraph 3 of Schedule 6A, on the *firm* of its subsequent decision whether or not to vary or cancel.
- (2) If the *FCA* decides to vary or cancel, the notice served under paragraph 3 must specify any variation and the date on which the variation or cancellation takes effect.
- (3) The *FCA* may publish, on the *Financial Services Register* and otherwise, notices it serves under paragraph 2 or 3 of Schedule 6A to the *Act* and will record on the *Financial Services Register* any such variation or cancellation.

7.2.2C

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Apart from the circumstances described in ■ SUP 7.2.2AG(1), the *FCA* may also form the view, under Schedule 6A to the *Act*, that a *firm* is no longer conducting any *regulated activity* to which its *permission* relates in light of, without restriction:

- (1) one or more reports, provided to the *FCA* by the *firm*, under ■ SUP 16 or otherwise, indicating that it is no longer doing so;
- (2) the *firm's* failure, on two or more occasions, to respond substantively to *FCA* correspondence, requesting a response, sent to:
 - (a) the address of the *firm's* principal place of business in the *United Kingdom*, as notified to the *FCA* in accordance with ■ SUP 15.5.4R(1); or
 - (b) one or more other postal or electronic addresses previously provided to the *FCA* by the *firm*, or otherwise used by the *firm*, for the purpose of correspondence with the *FCA* and not known by the *FCA* to have been superseded in that regard; or
- (3) correspondence from the *FCA*, sent to such an address, being returned or otherwise notified to the *FCA* as undelivered.

7.2.2D

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- (1) The *FCA's additional own-initiative variation power* under Schedule 6A to the *Act* has, unlike the *FCA's own-initiative variation power* under section 55J of the *Act*, a single basis: that it appears to the *FCA* that the relevant *FCA-authorised person* is not carrying on any *regulated activity* to which its *Part 4A permission* relates.
- (2) If the *FCA* uses its *additional own-initiative variation power*, it is therefore more likely to cancel the relevant *firm's permission*, rather than merely vary it by removing or amending the description of one or more such activities or by imposing one or more *limitations*.
- (3) The *FCA* will, however, consider all relevant facts and circumstances, including, without restriction:
 - (a) the relevant *firm's* responses, if any, to the notices given by the *FCA* under paragraph 2 of Schedule 6A; and

- (b) if applicable, the factors described in ■ SUP 6.4.22G, including whether there are any matters relating to the *firm* requiring investigation,
- before deciding whether to use its *additional own-initiative variation power* and whether to use it to cancel or vary.
- 7.2.3** **G** The *FCA* may also use its *own-initiative powers* for enforcement purposes. ■ EG 8 sets out in detail the *FCA's* powers under sections 55J and 55L of the *Act* and the circumstances under which the *FCA* may use its *own-initiative powers* in this way, whether for enforcement purposes or as part of its day to day supervision of *firms*. This chapter provides additional guidance on when the *FCA* will use these powers for supervision purposes.
- 7.2.3A** **G** The *FCA* may use its *additional own-initiative variation power*, under Schedule 6A to the *Act*, where it appears to the *FCA* that an *FCA-authorised person* is conducting no *regulated activity* to which its *Part 4A permission* relates, in an enforcement context, including, without restriction:
- (1) during an investigation into the *FCA-authorised person* in question and/or a *person* associated with that *FCA-authorised person*;
 - (2) when considering the possibility of such an investigation; or
 - (3) during proceedings against the *FCA-authorised person* in question and/or a *person* associated with that *FCA-authorised person*.
- 7.2.4** **G** The *FCA* may use its *own-initiative powers* and *additional own-initiative variation power* only in respect of a *firm's Part 4A permission*; that is, a *permission* granted to a *firm* under sections 55E or 55F of the *Act* (Giving permission) or having effect as if so given.
- 7.2.4A** **G** The *FCA* will consult the *PRA* before using its *own-initiative powers* in relation to a *PRA-authorised person*, or a member of a group which includes a *PRA-authorised person*.
- 7.2.4B** **G** In the case of a dual-regulated *PRA-authorised person*, the *FCA* may exercise its *own-initiative variation power* to add a new *regulated activity* other than a *PRA-regulated activity* to those activities already included in the *firm's Part 4A permission*, or to widen the description of a *regulated activity*, only after consulting with the *PRA*.
- 7.2.5** **G** If the *FCA* exercises its *own-initiative powers*, it will do so by issuing a *supervisory notice*. The procedure that will be followed is set out in ■ DEPP 2.
- 7.2.5A** **G** If the *FCA* exercises its *additional own-initiative variation power*, under Schedule 6A to the *Act*, it will do so, as described more fully in ■ SUP 7.2.2AG and ■ SUP 7.2.2BG, after:
- (1) issuing notices under paragraph 2 of that Schedule; and

- (2) deciding to exercise the power, issue a notice under paragraph 3 of that Schedule,

which notices the *FCA* may decide to publish, in which case Schedule 6A to the *Act* provides that the *FCA* may do so in such manner as it considers appropriate.

7.2.6 G A *firm* has a right of referral to the *Tribunal* in respect of the *FCA* exercising its *own-initiative powers* on the *firm's Part 4A permission*.

- 7.2.7** G
- (1) A *firm* has no right of referral to the *Tribunal* in respect of the *FCA* exercising its *additional own-initiative variation power*, under Schedule 6A to the *Act*, on the *firm's Part 4A permission*.
 - (2) The *FCA* cannot exercise that power, on which *guidance* is given in ■ SUP 7.2.2AG to ■ SUP 7.2.2DG, until it has given the *firm* two notices in writing and considered any response to those notices.
 - (3) Such response will, if it complies with an applicable *FCA* direction, given in those notices or otherwise, lead to the *FCA* not exercising that power.
 - (4) The date on which the *FCA* proposes to exercise that power and, if different, the date on which the resulting variation or cancellation of the *firm's Part 4A permission* is proposed to take effect, must be specified in the second of those notices and both dates must be at least 14 *days* after the date on which that notice is given.
 - (5) Further, a *firm* can apply, within 12 *months* of the exercise of the *FCA's* power taking effect, to the *FCA* under Schedule 6A to the *Act* for the retrospective annulment of the decision to exercise it.
 - (6) More detailed *guidance* on such annulment is given in ■ SUP 7.4.
 - (7) Whatever decision the *FCA* takes on that application, both the *firm* and the *FCA* have a right of referral to the *Tribunal* in respect of the matter.

7.3 Criteria for varying a firm's permission or imposing, varying or cancelling requirements on the FCA's own initiative

- 7.3.1** **G** The FCA expects to maintain a close working relationship with certain types of *firm* and expects that routine supervisory matters arising can be resolved during the normal course of this relationship by, for example, issuing individual *guidance* where appropriate (see ■ SUP 9.3). However, where the FCA deems it appropriate, it will exercise its *own-initiative powers*:
- (1) in circumstances where it considers it appropriate for the *firm* to be subject to a formal *requirement*, breach of which could attract enforcement action; or
 - (2) if a variation is needed to enable the *firm* to comply with the *requirement*, due to agreements the *firm* may have with third parties. (For example a *firm* may be under a contractual obligation to do something, but only if it can do so lawfully. In this case, if the FCA considers the *firm* must not do it, then the FCA would need to prevent it doing so through a variation in its *Part 4A permission* to enable the *firm* to avoid breaching the contractual obligation.)
- 7.3.2** **G** The FCA may also seek to exercise its *own-initiative powers* in certain situations, including the following:
- (1) If the FCA determines that a *firm's* management, business or *internal controls* give rise to material risks that are not fully addressed by existing requirements, the FCA may seek to use its *own-initiative powers*.
 - (2) If a *firm* becomes or is to become involved with new products or selling practices which present risks not adequately addressed by existing requirements, the FCA may seek to vary the *firm's Part 4A permission* in respect of those risks.
 - (3) If there has been a change in a *firm's* structure, *controllers*, activities or strategy which generate material uncertainty or create unusual or exceptional risks, then the FCA may seek to use its *own-initiative powers*. (See also ■ SUP 11.7 for a description of the FCA's ability to impose a requirement on the acquisition of *control* of a *firm* under section 55O of the Act.)
 - (4) At the request of, or to assist an overseas regulator as set out in section 55Q of the Act.

(5) The *FCA* may separately exercise its *additional own-initiative variation power*, as described in ■ SUP 7.2.2AG to ■ SUP 7.2.2DG and ■ SUP 7.2.3AG.

7.3.3

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Pursuant to sections 55L, 55N, 55O, 55P and 55Q of the *Act*, within the scope of its functions and powers, the *FCA* may seek to impose *requirements* which include but are not restricted to:

- (1) requiring a *firm* to submit regular reports covering, for example, trading results, management accounts, *customer* complaints, connected party transactions;
- (2) where appropriate, requiring a *firm* to maintain prudential limits, for example on large *exposures*, foreign currency *exposures* or liquidity gaps;
- (3) requiring a *firm* to submit a business plan;
- (4) limiting the *firm's* activities;
- (5) requiring an *FCA-authorised person* to maintain a particular amount or type of financial resources.

7.3.4

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The *FCA* will seek to give a *firm* reasonable notice of an intent to vary its *permission* or impose a *requirement* and, except when exercising its *additional own-initiative variation power*, to agree with the *firm* an appropriate timescale. However, if the *FCA* considers that a delay may create a risk to any of the *FCA's statutory objectives*, the *FCA* may need to act immediately using its powers under section 55J and/or 55L of the *Act* with immediate effect.

7.4 Annulment of FCA decision to exercise its additional own-initiative variation power

- 7.4.1** **G** If the *FCA* decides to exercise its *additional own-initiative variation power*, the relevant *FCA-authorised person* can apply, under paragraph 4 of Schedule 6A to the *Act*, within 12 *months* of the decision taking effect, to the *FCA* for that decision to be retrospectively annulled. The *FCA* must notify that *person* of its right to apply when notifying that *person*, under paragraph 3 of Schedule 6A, of the decision to exercise the power and can direct what information should be included in the application and what form it should take.
- 7.4.2** **G** The *FCA* can annul the decision unconditionally or subject to such conditions as it considers appropriate or refuse to annul. The *FCA* is permitted by Schedule 6A to the *Act* to annul, whether unconditionally or subject to conditions, only if satisfied that, in all the circumstances, it is just and reasonable to do so.
- 7.4.3** **G** Schedule 6A to the *Act* specifies that the conditions that the *FCA* can impose when annulling include, without restriction:
- (1) the removal or modification of the description of one or more of the *regulated activities* that the relevant *firm* was permitted to carry on immediately before the decision annulled was taken; and
 - (2) the withdrawal or variation of one or more approvals previously given by the *FCA* under section 59 of the *Act* in respect of one or more roles at the *firm*, which condition, if imposed, the *FCA* considers can apply only to approvals that will otherwise be restored as a result of the annulment.
- Schedule 6A specifies that such variations of *permission* and withdrawals or variations of approval take effect, if imposed as conditions, on the date on which the relevant annulment takes effect.
- 7.4.4** **G** In determining whether and subject to what conditions it is just and reasonable to annul, the *FCA* will consider all the relevant circumstances, including, without restriction:
- (1) the applicant *firm's* reasons for failing to respond as directed to the relevant notices served on it under paragraph 2 of Schedule 6A to the *Act*;

(2) what explanation the *firm* has for the facts that led the *FCA* to form the view that it was no longer carrying on any *regulated activity* to which its *permission* related; and

(3) if applicable, what remedial steps the *firm* proposes to take in relation to those.

7.4.5

G Other factors the *FCA* may consider, in so determining, may include, without restriction:

(1) the applicant *firm's* ability to comply, after annulment, with the *threshold conditions* and whether any concerns arising in this regard can be addressed via the imposition of conditions;

(2) whether the *firm* applied promptly after the cancellation or variation of its *permission* has taken effect and, if it did not, its reasons for such delay;

(3) whether and, if so, in what manner, to what extent and why the *firm* has breached section 19 or 20 of the *Act* since the cancellation or variation took effect;

(4) where the relevant decision is that the applicant *firm's permission* be cancelled, the extent to which the *firm*:

(a) has followed, since the cancellation, the requirements of the regulatory system that would have applied to it but for the cancellation, including, without restriction, those in *DISP* and *COMP*; and

(b) is willing, to the extent it was unable to follow those requirements during the period of cancellation, to address, after annulment, the consequences of not following those requirements, in particular the effects on other *persons*; and

(5) whether any awards or directions by the *Ombudsman* against the *firm* have not yet been complied with.

7.4.6

G The effect of annulment is specified by Schedule 6A to the *Act*:

(1) the relevant variation or cancellation is treated as never having taken place; but

(2) where, by virtue of that fact, any *person* becomes subject to a statutory obligation in relation to which the *FCA* has functions, the *FCA* is permitted, in exercising those functions, to treat that *person* as not having become subject to that obligation;

(3) in which case the *FCA* must notify that *person* appropriately.

7.4.7

G (1) If the *FCA* decides to annul, it will give the relevant *firm* a notice in writing, specifying the date on which the annulment takes effect and the conditions, if any, attached to the annulment.

(2) Where the *FCA* proposes to refuse to annul, it will give the relevant *firm* a *warning notice* and, where the *FCA* decides to refuse to annul,

it will give the relevant *firm* a *decision notice*. Detail of the procedure under which those two notices will be provided is given in ■ DEPP 2 and ■ 3.

- (3) Whatever the *FCA's* decision, either or both of the *firm* and the *FCA* can refer the matter to the *Tribunal*.
- (4) In determining such a reference, the *Tribunal* may give such directions, and may make such provision, as it considers reasonable for placing the *firm* and other *persons* in the same position (as nearly as may be) as if the *firm's permission* had not been varied or cancelled.

7.4.8

G The following other chapters of the *Handbook* contain *rules* making provision for and *guidance* as to the effect of annulment:

- (1) ■ FEES 4, ■ FEES 4A, ■ FEES 5, ■ FEES 6, ■ FEES 7A to ■ FEES 7D and ■ FEES 13;
- (2) ■ DISP 1 and ■ DISP 2; and
- (3) ■ COMP 6.

