

Chapter 7

Individual requirements

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-authorized 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

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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

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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

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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

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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

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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

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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

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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

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