

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** G
- (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** G
- 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** G
- (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

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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

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- (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.