

Chapter 7

Individual requirements

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

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- (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.