

## Chapter 6

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

## 6.4 Applications for cancellation of permission

6.4.1 G [deleted]

6.4.1A G Under section 55H(3) of the *Act* (Variation by FCA at request of authorised person), if an *FCA-authorised person* applies to the *FCA*, the *FCA* may cancel its *Part 4A permission*. Cancellation applies to a *firm's* entire *Part 4A permission*, that is to every activity and every *specified investment* and not to the individual elements such as *specified investments*. Changes to the individual elements of a *permission* would require a variation.

6.4.2 G [deleted]

6.4.2A G Under section 55H(4) of the *Act*, the *FCA* may refuse an application from a *firm* to cancel its *Part 4A permission* if it considers that it is desirable to do so in order to advance any of its operational objectives.

6.4.3 G

- (1) A *firm* may apply to the relevant regulator to cancel its *Part 4A permission* before it has ceased carrying on all *regulated activities*. However, where a *firm* makes a formal application for cancellation of its *permission* when it has not yet ceased carrying on *regulated activities*, the relevant regulator will expect the *firm*:
  - (a) to cease those *regulated activities* within the short term (normally no more than six months from the date of application for cancellation); and
  - (b) to have formal plans to cease its *regulated activities* in an orderly manner.
- (2) *Firms* should note, however, that the relevant regulator will not grant an application for cancellation of *Part 4A permission* until the *firm* can demonstrate that it has ceased carrying on all *regulated activities* (■ SUP 6.4.19 G).
- (3) The relevant regulator may apply additional procedures or require additional information, as if the *firm* had entered into a long term wind down of business (see ■ SUP 6 Annex 4), if it considers it appropriate to the circumstances of the *firm*.

6.4.4 G Additional guidance for a *firm* carrying on *insurance business*, accepting deposits, operating a *dormant asset fund* or which holds *client money* or

customer's assets is given in ■ SUP 6 Annex 4. As noted in ■ SUP 6.2.9 G, it will usually be appropriate for a *firm* to apply for variation of its *Part 4A permission* and/or the imposition, variation or cancellation of a *requirement* while winding down (running off) its *regulated activities* and before applying to cancel its *Part 4A permission*.

**The application for cancellation of permission**

6.4.5

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- (1) Subject to (1A), a *firm* other than a *credit union* wishing to cancel its *Part 4A permission*, must apply online at the *appropriate regulator* website using the form specified on the *online notification and application system*.
- (1A) An *FCA-authorised person* wishing to cancel its *Part 4A permission* which covers only *credit-related regulated activities* must submit any form, notice or application by using the form in ■ SUP 6 Annex 6 and submitting it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (2) [deleted]
- (3) [deleted]
- (4) Until the application has been determined, a *firm* which submits an application for cancellation of *Part 4A permission* must inform the relevant regulator of any significant change to the information given in the application immediately it becomes aware of the change.
- (5) Where a *firm* is obliged to submit any form, notice or application online under (1), if the *online notification and application system* fails and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must submit any form, notice or application by using the form in ■ SUP 6 Annex 6D and submitting it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

6.4.5A

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- (1) If the *online notification and application system* fails and online submission is unavailable for 24 hours or more, the relevant regulator will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 6.4.5 D (5) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification) should be used.
- (2) Where ■ SUP 6.4.5 D (5) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

6.4.6

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- (1) In addition to applying for cancellation of *Part 4A permission* in accordance with ■ SUP 6.4.5 D, a *firm* may discuss prospective cancellations with its supervisory contact at the *appropriate regulator*. Alternatively a *firm* can contact the Supervision Hub on 0300 500 0597.
- (2) To contact the Cancellations Team:
  - (a) write to: Cancellations Team, The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN; or; or

(b) email [cancellation.team@fca.org.uk](mailto:cancellation.team@fca.org.uk)

(3) If a *firm* which has applied for cancellation decides to remain authorised it should inform the relevant regulator immediately using one of the methods in ■ SUP 6.4.6 G (2).

**6.4.7** G When an application is received, the relevant regulator will send the *firm* a written acknowledgement. The *firm* will be required to provide information which, in the opinion of the relevant regulator, is necessary for it to determine whether to grant or refuse the application for cancellation of *Part 4A permission*.

**Information to be supplied to the relevant regulator as part of the application for cancellation of permission**

**6.4.8** G The information which the relevant regulator may request on the circumstances of the application for cancellation and the confirmations which the relevant regulator may require a *firm* to provide will differ according to the nature of the *firm* and the activities it has *Part 4A permission* to carry on.

**6.4.9** G A *firm* will be expected to demonstrate to the relevant regulator that it has ceased carrying on *regulated activities*. The relevant regulator may require, as part of the application, a report from the *firm* that includes, but is not limited to, the confirmations referred to in ■ SUP 6.4.12 G (as appropriate to the *firm's* business). The relevant regulator may also require additional information to be submitted with the report including, in some cases, confirmation or verification from a professional adviser on certain matters to supplement the report (see ■ SUP 6.4.15 G).

**6.4.10** G

(1) If a *firm* is subject to the complaints rules in *DISP*, the *FCA* may request confirmation from the *firm* that there are no unresolved, unsatisfied or undischarged complaints against the *firm* from a *customer* of the *firm*.

(2) If there are unresolved or undischarged complaints against a *firm* from a *customer* of the *firm*, the *FCA* may request confirmation, as appropriate, of the steps (if any) which have been taken under the *firm's* complaints procedures and the amount of compensation claimed. The *FCA* may also request an explanation of the arrangements made for the future consideration of such complaints.

**6.4.11** G If the *firm* is carrying on *designated investment business* with *retail clients*, the *FCA* may request confirmation that the *firm* has written, or intends to write, to all *retail clients* with, or for whom, the *firm* has conducted *regulated activities* within a certain period.

**Confirmations and resolutions**

**6.4.12** G The relevant regulator will usually require the report in ■ SUP 6.4.9 G to be signed by a *director* or other officer with authority to bind the *firm*. It may include confirmations from the *firm* that, in relation to business carried on under its *Part 4A permission*, it has:

- (1) ceased carrying on all *regulated activities*;
- (2) properly disbursed funds in its *client bank accounts* and closed those accounts;
- (3) discharged all insurance or *deposit liabilities*; and
- (4) properly transferred all *investments*, title documents and other property that it held on behalf of *clients*.

**6.4.13** G The relevant regulator may also require a resolution from the *firm's governing body*, for example to support the application for cancellation of *permission*, expressed to be irrevocable, and to give the signatory the authority to sign the formal report to the relevant regulator.

**6.4.14** G Under section 398 of the *Act* (Misleading the FCA or PRA: residual cases), it is an offence, in purported compliance with a requirement imposed by or under the *Act* (including the directions in ■ SUP 6.4.5 D), for a *person* to knowingly or recklessly give the regulator information that is false or misleading. If necessary, a *firm* should take appropriate professional advice when supplying information required by the regulator(s). An *insurer*, for example, may ask an *actuary* to check assumptions in respect of future *claims* made under *contracts of insurance*.

**Reports from professionals**

**6.4.15** G The relevant regulator may require additional information, including professional advice, to supplement or support the report in ■ SUP 6.4.9 G where it considers this appropriate. Examples of reports that may be requested by the relevant regulator include, but are not limited to those detailed in ■ SUP 6.4.16 G.

**6.4.16** G **Types of reports. See ■ SUP 6.4.15 G**

Category of firm	Type of report
<i>a bank or building society</i>	<ul style="list-style-type: none"> <li>• an audited balance sheet which confirms that, in the auditor's opinion, the <i>firm</i> has no remaining <i>deposit liabilities</i> to <i>customers</i>;</li> <li>• a report from auditors or <i>reporting accountants</i>;</li> </ul>
<i>a securities and futures firm</i>	<ul style="list-style-type: none"> <li>• a report from auditors or <i>reporting accountants</i></li> </ul>
<i>an insurer</i>	<ul style="list-style-type: none"> <li>• an audited closing balance sheet which demonstrates that the <i>firm</i> has no insurance liabilities to <i>policyholders</i>;</li> <li>• a report from the auditors or <i>reporting accountants</i>; and</li> <li>• in some cases, an actuarial opinion as to the likelihood of any remaining liabilities to <i>policyholders</i>.</li> </ul>

**6.4.17** **G** If a *firm* is transferring its business, the relevant regulator may require a professional opinion in respect of certain aspects of the transfer. For example, the relevant regulator may require a legal opinion on the validity of arrangements to transfer *regulated activities, client money, client deposits, custody assets* or any other property belonging to *clients*, to another *authorised person*. Alternatively, an auditor or *reporting accountant* may be requested to verify that a transfer has been properly accounted for in the *firm's* books and records. Transfers of insurance and banking business are subject to statutory requirements (see ■ SUP 18).

**Approved persons**

**6.4.18** **G** (1) A *firm* which is applying for cancellation of *Part 4A permission* and which is not otherwise *authorised by*, or under, the *Act* should, at the same time:

(a) comply with:

- (i) ■ SUP 10A.14.8R (for a *firm* that has *appointed representatives*);
- (ii) ■ SUP 10C.14.5R (for an *SMCR firm*); or
- (iii) the corresponding *PRA* requirements; and

(b) notify the the *FCA* or *PRA* of persons ceasing to perform *controlled functions* specified by that regulator.

These forms should give the effective date of withdrawal, if known (see ■ SUP 10A and ■ SUP 10C (*FCA's* regimes for approved persons)).

**When will the relevant regulator grant an application for cancellation of permission?**

**6.4.19** **G** The relevant regulator will usually not cancel a *firm's Part 4A permission* until the *firm* can demonstrate that, in relation to business carried on under that permission, it has, as appropriate:

- (1) ceased carrying on *regulated activities* or fully run off or transferred all insurance liabilities;
- (2) repaid all *client money* and client deposits;
- (3) discharged *custody assets* and any other property belonging to *clients*; and
- (4) discharged, satisfied or resolved complaints against the *firm*.

**6.4.20** **G** If it is not possible for a *firm* to demonstrate a relevant matter referred to in ■ SUP 6.4.19 G, for example, depositors are uncontactable, the *firm* will be expected to have satisfied the relevant regulator that it has made adequate provisions for discharging any liabilities to *clients* which do not involve the *firm* carrying on *regulated activities*.

**6.4.21** **G** Before the relevant regulator cancels a *firm's Part 4A permission*, the *firm* will be expected to be able to demonstrate that it has ceased or transferred all *regulated activities* under that *permission*. For example, the *firm* may be

asked to provide evidence that a transfer of business (including, where relevant, any *client money*, *customer assets* or *deposits* or insurance liabilities) is complete. As noted in ■ SUP 6.4.9 G, the relevant regulator may require the *firm* to confirm this by providing a report, in a form specified by the relevant regulator:

- (1) as part of the application for cancellation of *permission*, if the *firm* has ceased carrying on all *regulated activities* under its *Part 4A permission* at the time of application (see ■ SUP 6.4.9 G); or
- (2) after the application but before its determination, if the *firm* has not ceased carrying on *regulated activities* under its *Part 4A permission* at the time of application.

### 6.4.22

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In deciding whether to cancel a *firm's Part 4A permission*, the relevant regulator will take into account all relevant factors in relation to business carried on under that *permission*, including whether:

- (1) there are unresolved, unsatisfied or undischarged complaints against the *firm* from any of its *customers*;
- (2) the *firm* has complied with ■ CASS 5.5.80 R and CASS 7.11.34R (Client money: discharge of fiduciary duty) and ■ CASS 7.11.50 R (Client money: allocated but unclaimed client money) if it has ceased to hold *client money*; these *rules* apply to both repayment and transfer to a third party;
- (3) the *firm* has ceased to hold or control *custody assets* in accordance with instructions received from *clients* and ■ COBS 6.1.7 R or article 49 of the *MiFID Org Regulation* (see ■ COBS 6.1ZA.9EU) (Information concerning safeguarding of designated investments belonging to clients and client money);
- (4) the *firm* has repaid all *client deposits*, if it is ceasing to carry on *regulated activities* including *accepting deposits*;
- (5) the relevant regulator or another regulator has commenced an investigation against the *firm* or continuing enforcement action against the *firm*;
- (6) there are any matters affecting the *firm* which should be investigated before a decision on whether the *firm* should have its *Part 4A permission* cancelled by the relevant regulator or be disciplined;
- (7) the *firm* has unsettled or unexpired liabilities to *consumers*, for example, outstanding contracts (such as *deposits* or insurance liabilities);
- (8) the *firm* has settled all its debts to the *appropriate regulator*; and
- (9) the factors set out in ■ SUP 6.4.19 G apply.

**The FCA and the PRA enforcement and investigation powers against a former authorised person**

6.4.23 **G** If an application for cancellation of a *firm's Part 4A permission* has been granted and a *firm's status as an authorised person* has been withdrawn (see ■ SUP 6.5) it will remain subject to certain investigative and enforcement powers as a former *authorised person*. These include:

- (1) information gathering and investigation powers in Part XI of the *Act* (Investigation gathering and investigations) (see ■ EG 3 (Use of information gathering and investigation powers));
- (2) powers to apply to court for *injunctions* and restitution orders in Part XXV of the *Act* (Injunctions and restitution) (see ■ EG 10 (Injunctions) and ■ EG 11 (Restitution and redress));
- (3) powers in Part XXIV of the *Act* (Insolvency) to petition for administration orders or winding up orders against *companies* or insolvent *partnerships*, or bankruptcy orders (or in Scotland sequestration awards) against individuals (see ■ EG 13 (Insolvency));
- (4) powers in Part XXVII of the *Act* (Offences) to prosecute offences under the *Act* and other specified provisions (see ■ EG 12 (Prosecution of criminal offences)).

6.4.24 **G** However, the following powers may not be used against former *authorised persons*:

- (1) powers to take disciplinary action against *firms* by publishing statements of misconduct under section 205 of the *Act* (Public censure) or imposing financial penalties under section 206(1) of the *Act* (Financial penalties); and
- (2) the power to require *firms* to make restitution under section 384 of the *Act* (Power of FCA or PRA to require restitution).

6.4.25 **G** Consequently, the relevant regulator considers that it will have good reason not to grant a *firm's application for cancellation of permission* where:

- (1) the *FCA* and/or the *PRA* proposes to exercise any of the powers described in ■ SUP 6.4.24 G; or
- (2) the *FCA* and/or the *PRA* has already begun disciplinary and/or restitution proceedings against the *firm* by exercising either or both of these powers against the *firm*.

6.4.26 **G** The *FCA's* use of those powers is outlined in ■ DEPP 6 (Penalties).

**How long will an application take?**

6.4.27 **G** (1) Under section 55V(1) of the *Act* (Determination of applications), the relevant regulator has six months to consider a completed application.



- (2) If the relevant regulator receives an application which is incomplete, that is, where information or a *document* required as part of the application is not provided, section 55V(2) of the Act requires the relevant regulator to determine the incomplete application within 12 months of the initial receipt of the application.
- (3) Within these time limits, however, the length of the process will relate directly to the complexity of cancellation requested and whether the *firm* has fully wound down (run off) its activities at the time it applies.

**6.4.27A** G The *FCA* publishes standard response times on its website setting out how long the application process is expected to take in practice. From time to time, the *FCA* also publishes its performance against these times.

**How will the relevant regulator make the decision?**.....

**6.4.28** G A decision to grant an application for cancellation of *permission* will be taken by appropriately experienced staff at the relevant regulator. Where, however, the staff dealing with the application recommend that a *firm's* application for cancellation of *Part 4A permission* be refused, the decision will be subject to the regulator's formal decision making process.

**6.4.29** G See *DEPP* for *guidance* on the *FCA's* decision making procedures, including the procedures it will follow if it proposes to refuse an application for cancellation of *Part 4A permission*.