Chapter 6

Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements
Additional guidance for a firm winding down (running off) its business

1. If a firm has Part 4A permission which enables it to hold client money or to carry on regulated activities including:
   (a) carrying out contracts of insurance and effecting contracts of insurance; or
   (b) accepting deposits;
   (c) safeguarding and administration of assets; or
   (d) meeting of repayment claims or managing dormant account funds (including the investment of such funds);

   it may require a long period (usually in excess of six months) in which to wind down (run off) its business. In these circumstances, it will usually be appropriate for the firm to apply for a variation of Part 4A permission before commencing the wind down.

2. A firm that believes that it may need to apply for a variation of Part 4A permission as a first step towards cancellation of its permission should discuss its plans with its supervisory contact at the relevant regulator.

3. If appropriate, in the interests of its statutory objectives (limited to the operational objectives in the case of the FCA), the appropriate regulator will require details of the firm's plans and will discuss them with the firm and monitor the winding down or transfer of the firm's business. During the period in which it is winding down, a firm will also be required to notify any material changes to the information provided such as, for example, receipt of new complaints and changes to plans.

4. If, after its Part 4A permission has been varied, a firm has wound down its business, complied with any requirements imposed and ceased to carry on regulated activities (or expects to do so within the next six months), it should then make an application for cancellation of its Part 4A permission (see SUP 6.4 (Applications for cancellation of permission)).

Use of own-initiative powers

5. If, for example, the FCA or the PRA has concerns relating to any of the statutory objectives (limited to the operational objectives in the case of the FCA), it may use its own-initiative variation power (see SUP 7 (Individual requirements) and EG 8 (Variation and cancellation of permission on the FCA's own initiative and intervention against incoming firms)), to vary the Part 4A permission of a firm which is winding down or transferring its regulated activities.

5A If, for example, the appropriate regulator has concerns relating to any of its statutory objectives (limited to the operational objectives in the case of the FCA), it may use its own-initiative requirements power to impose on a firm that is winding down or transferring its regulated activities, any requirement, or vary or cancel a requirement imposed by it on that firm.

Reporting requirements: general

6. If a firm is winding down (running-off) its business, the routine reporting requirements in SUP 16 (Reporting requirements) will apply unless the firm is granted a waiver. In addition, a firm may be asked to submit additional reports, for example, to enable the appropriate regulator to monitor the wind down.

1. If a firm makes an application in accordance with SUP 6 to effect the winding down of regulated activities which it is carrying on including the repayment of client money, or the return of client deposits, custody assets or any other property belonging to clients, the appropriate regulator will expect it to have formal plans to ensure that:

   (1) the regulated activities are wound down in an orderly manner;
### SUP 6 : Applications to vary and cancel Part 4A permission and to impose, vary or cancel...

| (2) | the regulated activities are properly completed and all client deposits, client money, custody assets or any other property belonging to clients are repaid, returned or transferred to another Authorised person; and |
| (3) | the interests of customers are not adversely affected. |

2. [deleted]

1. A **firm** must comply with CASS 5.5.80 Rand CASS 7.11.34R (Client money: discharge of fiduciary duty) and CASS 7.11.50 R (Allocated but unclaimed client money) if it is ceasing to hold client money. A **firm** must also cease 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). These rules apply to both repayment and transfer to a third party.

1. **A firm** carrying on **insurance business** which, ultimately, intends to cease insurance business completely, will first need to apply for a variation of its **Part 4A permission** while it is running off its business. The **firm** should apply for a variation of **Part 4A permission** to remove the activity of **effecting contracts of insurance** from its permission, thus restricting its activities to **carrying out insurance contracts** to enable it to run off its remaining insurance liabilities (see SUP 6.2.9 G ).

2. Examples of variations of **Part 4A permission** which may be appropriate in the context of winding down **insurance business** include:

   1. Removing one or more regulated activities (for example, when a **firm** which has **Part 4A permission** to carry on insurance business enters into run-off, its **Part 4A permission** will need to be varied to remove the activity of **effecting contracts of insurance** in relation to new contracts of insurance); a new contract of insurance excludes contracts effected under a term of a subsisting contract of insurance. Thus the **firm**'s permission will be restricted to **carrying out insurance contracts** to enable it to run off its existing liabilities; or
   2. Imposing a limitation on regulated activities in a **firm**'s **Part 4A permission**.

2A **A firm** may also have imposed on it a new requirement, or any existing requirement imposed on a **firm** may be varied or cancelled. In the context of winding down insurance business, it may for example be appropriate to impose a requirement on the type of investments a **firm** holds to support its insurance liabilities.

3. **An insurer** ceasing to **effect contracts of insurance** is required to submit a scheme of operations in accordance with SUP App 2 (Insurers: scheme of operations). The PRA may require other information depending on the circumstances, for example an actuarial assessment of the **firm**’s run-off.

4. **A firm** that is ceasing **effecting new contracts of insurance** in all categories of specified investment should refer to SUP App 2 for details of the specific reporting requirements that apply.

5. **An insurer** should note that the PRA will not cancel a **firm**’s permission until all the **firm**’s insurance liabilities have been discharged, including any potential insurance liabilities. A **firm** is, therefore, advised to submit an application for cancellation of its **Part 4A permission** when its run-off is completed.

1. A **firm** making an application in accordance with SUP 6 which requires any approval from the Society of Lloyd’s should apply to the Society for this in addition to applying to the relevant regulator.

2. **Where a firm** has **Part 4A permission** to manage the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s then, if it wishes to vary its **Part 4A permission** to remove this regulated activity or to cancel its **Part 4A permission** completely, special procedures will apply.

3. **As a first step**, the **firm** should apply to the relevant regulator for a variation of its **Part 4A permission** to limit the regulated activity, after the Lloyd’s syndicates have been closed, to permit no new business. Once the syndicates have been closed, the **firm**’s consent from the Society to manage syndicates will also lapse.
(2) After a period of one year from the date of closure of the Lloyd’s syndicates the firm may apply to vary its Part 4A permission, to remove the regulated activity or to cancel its Part 4A permission entirely, as appropriate. At this time, a firm’s approval from the Society of Lloyd’s as a managing agent will cease.

4. Firms which wish to discuss these procedures in more detail should contact their appropriate supervisory contact and the Society of Lloyd’s, as appropriate.

1. As stated in SUP 6.2.9 G, where a bank, or other firm with permission that includes accepting deposits, wishes to cancel its Part 4A permission, it will generally need to apply for a variation of that permission while it winds down its business.

2. When a firm is winding down its business activities, it may be appropriate to:
   (1) vary its Part 4A permission by imposing a limitation that no new deposits will be accepted; or
   (2) vary its Part 4A permission by imposing a limitation on the purchasing of investments for its own account; or
   (3) impose on it requirements concerning solvency.

3. After a bank has discussed with the appropriate regulator the type of variation of Part 4A permission and/or requirement the bank requires to wind down its business, it should make an application as directed in SUP 6.3.15 D and follow the guidance and procedures in SUP 6 as well as the additional procedures set out in this annex.

4. As appropriate, one or more of the following may be imposed on a firm:
   (1) a requirement that the firm takes certain steps or refrains from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
   (2) a limitation on accepting deposits, for example a limitation that no new deposits will be accepted;
   (3) a requirement restricting the granting of credit or the making of investments;
   (4) a requirement prohibiting the firm from soliciting deposits either generally or from persons who are not already depositors.

5. The information concerning the circumstances of these applications and the confirmations a firm is required to give to the regulator(s) concerned will differ according to the nature of the bank and its Part 4A permission. If appropriate, it may include, but will not necessarily be limited to:
   (1) a plan containing the arrangements made in respect of the business of any current depositors, for example how and when the firm intends to repay or novate arrangements with depositors; or
   (2) confirmation that the bank will not take any new deposits, will not roll over or renew any existing deposits at maturity and will repay all remaining deposits (including accrued interest) as they fall due for repayment.

Dealing with residual deposits: general

6. Where a firm has residual deposits which, for whatever reason, cannot be repaid, they may be protected by a number of different methods. The precise applicability of the courses to be followed depends upon the particular circumstances of the individual firm. The appropriate regulator’s supervisory approach will be determined by the course of action taken.

Holding funds on trust

7. In some circumstances, it may be appropriate for the firm to make an irrevocable transfer of funds, at least equal to the total of its deposits, to an independent trustee to be held on trust for the benefit of the depositors. Any such proposal should be discussed in advance with the appropriate regulator. The amount of funds held on trust should at all times exceed the total of all deposits, in order to provide for contingencies. Trust account arrangements are appropriate only in respect of solvent institutions. The guidance in paragraph 13 of this section applies in most cases.

8. (1) A plan containing the arrangements should be made by the firm in respect of the business of any current depositors, for example how and when the firm intends to repay or novate arrangements with depositors.
   (2) The trustee should be an independent and appropriately qualified third party, nominated by the institution and acceptable to the appropriate regulator.
(a) The trustee should usually be a major UK bank. If appropriate, an additional trustee from within the institution may be appointed, preferably in an advisory role. An internal trustee may help to ensure continuity if the firm and the trust are likely to remain in existence for the foreseeable future.

(b) The appropriate regulator should be consulted about, or pre-notified of, a potential change of trustee.

(c) Trustees are responsible for fulfilling their obligations under the trust deed. In practice, the appropriate regulator may wish to point out that certain factors need to be given consideration by the trustees and the institution (for example, the procedures for paying out to depositors).

9. The appropriate regulator would require to see an opinion by the firm’s legal advisers, confirming the validity and enforceability of the trust and in particular specifying the extent (if any) to which the trust arrangements may be set aside in future. The appropriate regulator reserves the right to request sight of the proposed trust documentation itself.

10. The trustee has the right (and probably the obligation) to invest the funds, and in doing so should normally seek to "match" the maturity profile of the firm’s deposit base. However, the following could result in deposit liabilities exceeding trust funds at any time:

(a) maturity mismatches, that is, whether there are insufficient liquid funds across the maturity bands to repay depositors; or

(b) changes in interest rates; or

(c) the trustee’s fees and disbursements.

11. The trustee should not deposit, or otherwise invest, trust funds except in segregated accounts with third-party authorised institutions.

(1) An auditor’s report, similar to that used to determine whether all the deposits have been repaid by a firm, should be provided to confirm that all depositors have been repaid before the discharge of a trust is allowed.

(2) Auditors’ reports, from the trust’s auditors, should subsequently be obtained at intervals to demonstrate that funds in the trust continue to be at least equal to the remaining liabilities to depositors and that repayments have been properly made. The firm retains the ultimate responsibility to provide information to the appropriate regulator.

(3) The appropriate regulator may, however, require the inclusion of a clause in the trust deed requiring the trustee to provide such information as may be requested.

12. Entering into a trust arrangement does not "transfer" deposits or discharge the firm’s contractual obligations to its depositors.

Holding the funds in segregated accounts

13. The firm may place and retain an amount at all times at least equal to its deposit liabilities in a segregated account with its usual bankers. The advantage of this course of action is that if all deposit liabilities are matched by funds in such an account, then the firm is not carrying on the regulated activity of accepting deposits in contravention of the Act.

14. Placing funds in a segregated account does not discharge a firm’s contractual obligations to its depositors.