

**PART 4A PERMISSION (OWN-INITIATIVE VARIATION AND CANCELLATION)
INSTRUMENT 2022**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 19 May 2022.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

| (1) | (2) |
|--|---------|
| Glossary of definitions | Annex A |
| Supervision manual (SUP) | Annex B |
| Dispute Resolution: Complaints sourcebook (DISP) | Annex C |
| Compensation sourcebook (COMP) | Annex D |

Amendments to material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.

Citation

- F. This instrument may be cited as the Part 4A Permission (Own-Initiative Variation and Cancellation) Instrument 2022.

By order of the Board
16 May 2022

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

additional own-initiative variation power the *FCA's* power under Schedule 6A to the *Act* (Variation or cancellation of *Part 4A permission* on initiative of *FCA*: additional power) to vary or cancel the *Part 4A permission* of an *FCA-authorised person* otherwise than on the application of that *person*.

Amend the following definitions as shown.

limitation a limitation incorporated in a *Part 4A permission* under section 55E(5) of the *Act* (Giving permission): the *FCA*), section 55F(4) of the *Act* (Giving permission: the *PRA*) ~~or~~, section 55J(10) of the *Act* (Variation or cancellation on initiative of regulator) or paragraph 1(6) of Schedule 6A to the *Act* (Variation or cancellation of *Part 4A permission* on initiative of *FCA*: additional power).

own-initiative powers the *FCA's* or the *PRA's* own-initiative variation power and own-initiative requirement power, which powers are supplemented, in respect of *FCA-authorised persons*, by the *FCA's* additional own-initiative variation power. The latter power is, for the avoidance of doubt, not within the scope of this definition.

own-initiative variation power ~~The~~ the *FCA's* or the *PRA's* power under section 55J of the *Act* (Variation or cancellation on initiative of regulator) to vary or cancel a *Part 4A permission* otherwise than on the application of a *firm*, which power is supplemented, in respect of *FCA-authorised persons*, by the *FCA's* additional own-initiative variation power. The latter power is, for the avoidance of doubt, not within the scope of this definition.

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

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

6.1 Application, interpretation and purpose

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Purpose

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- 6.1.6 G This chapter does not cover the *FCA's* use of its *own-initiative variation power* or, in respect of *FCA-authorised persons*, its *additional own-initiative variation power* to vary or cancel a *firm's Part 4A permission* or its *own-initiative requirement power* to impose, vary or cancel a *requirement* (see *SUP 7* (Individual requirements) and *EG 8* (Variation and cancellation of permission and imposition of requirements on the *FCA's* own initiative and intervention against incoming firms)).

6.2 Introduction

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Firms with long term liabilities to customers

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- 6.2.1 G In certain circumstances the *FCA* and/or the *PRA* may use their *own-initiative powers* or the *FCA* may use its *additional own-initiative variation power* (see *SUP 7* and *EG 8*) (Variation and cancellation of permission and imposition of requirements on the *FCA's* own initiative and intervention against incoming firms)).

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6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

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Commencing new regulated activities

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6.3.4 G (1) *Firms should be aware that the appropriate regulator may exercise its own-initiative variation power or, in respect of FCA-authorised persons, the FCA may exercise its additional own-initiative variation power, in each case to vary or cancel their Part 4A permission ~~if they do not~~ (see section 55J of the Act (Variation or cancellation on initiative of regulator)) and Schedule 6A to the Act (Variation or cancellation of Part 4A permission on initiative of FCA: additional power)) if the firm does not:*

- (a) commence a *regulated activity* for which they have *Part 4A permission* within a period of at least 12 months from the date of being given permission to carry on that particular activity; ~~or~~
- (b) carry on a particular regulated activity for which they have *Part 4A permission* for a period of at least 12 months (irrespective of the date of grant); or
- (c) respond, in the manner or by taking the steps directed by the FCA, to notices given by the FCA under paragraph 2 of Schedule 6A to the Act, which notices are given on the basis that it appears to the FCA that the relevant firm is carrying on no regulated activity to which its permission relates (for detail on the circumstances in which such notices may be issued, see SUP 7.2.2AG to SUP 7.2.2DG and SUP 7.2.3AG).

(1A) The *appropriate regulator* may exercise its *own-initiative variation power* to cancel an *investment firm's Part 4A permission* if the *investment firm* has provided or performed no *investment services and activities* at any time during the period of six months ending with the day on which the *warning notice* under section 55Z(1) of the Act is given (see EG 8) and, if the investment firm is an FCA-authorised person, note also the FCA's additional own-initiative variation power.

[Note: article 8(a) of MiFID]

(2) ~~If the *appropriate regulator* considers that such a variation or cancellation of the *firm's Part 4A permission* is appropriate, it will discuss the proposed action with the *firm* and its reasons for not commencing or carrying on the *regulated activities* concerned.~~
[deleted]

...

7 Individual requirements

7.1 Application and purpose

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Purpose

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7.1.5 G ...

7.1.6 G In some circumstances, the FCA may consider that it is insufficient to impose such requirements, amendments or limitations and that it will use its powers under the Act to remove one or more such activities from or cancel the Part 4A permission of a firm, whether under its own-initiative variation power or, where the relevant firm is an FCA-authorised person, under its additional own-initiative variation power.

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 sections 55J and 55L section 55J of the Act and, in respect of FCA-authorised 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 includes 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 a one or more regulated activity 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.

7.2.2 G The FCA may also decide to vary or cancel an FCA-authorised 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.

7.2.2 G (1) The FCA, having served on the relevant firm notices under paragraph B (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.

7.2.2 G Apart from the circumstances described in SUP 7.2.2AG(1), the FCA may C 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.

7.2.2 G (1) The FCA's additional own-initiative variation power under Schedule D (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.

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7.2.3 G The FCA may use its *additional own-initiative variation power*, under
A 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.

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7.2.5 G If the FCA exercises its *additional own-initiative variation power*, under
A 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.

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- 7.2.7 G** (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.

7.3 Criteria for varying a firm's permission or imposing, varying or cancelling requirements on the FCA's own initiative

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- 7.3.2 G** The FCA may also seek to exercise its *own-initiative powers* in certain situations, including the following:
- (1) ...
- ...
- (5) The FCA may separately exercise its additional own-initiative variation power, as described in SUP 7.2.2AG to SUP 7.2.2DG and SUP 7.2.3AG.

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- 7.3.4 G The *FCA* will seek to give a *firm* reasonable notice of an intent to vary its *permission* or impose a *requirement* and, except when exercising its *additional own-initiative variation power*, to agree with the *firm* an appropriate timescale. However, if the *FCA* considers that a delay may create a risk to any of the *FCA's statutory objectives*, the *FCA* may need to act immediately using its powers under section 55J and/or 55L of the *Act* with immediate effect.

Insert the following new section, SUP 7.4, after SUP 7.3 (Criteria for varying a firm's permission or imposing, varying or cancelling requirements on the FCA's own initiative). The text is not underlined.

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-authorized 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 G
- (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*.

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Treating complainants fairly

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1.10 Complaints reporting rules

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Information requirements

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1.10.5A **R** Where the FCA grants a person's application for annulment of a cancellation or variation of its Part 4A permission under Schedule 6A to the Act and on the date of the annulment, the period for reports to be submitted to the FCA in accordance with DISP 1.10.5R has passed, the period within which the reports are to be submitted under DISP 1.10.5R does not apply. The person must submit such reports to the FCA within 30 business days of the date on which the annulment takes effect.

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2 Jurisdiction of the Financial Ombudsman Service

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2.3 To which activities does the Compulsory Jurisdiction apply?

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General

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2.3.6 **G** Schedule 6A to the Act sets out a procedure to enable the FCA to cancel or vary the Part 4A permission of a person who, it appears to the FCA, is not carrying on the regulated activity to which the Part 4A permission relates. In some cases, this may result in the person no longer being a respondent following cancellation of all their Part 4A permissions. Paragraph 5 of Schedule 6A to the Act sets out a procedure for the subsequent annulment of the decision to cancel or vary the person's Part 4A permission in specified circumstances where the FCA is satisfied that it is just and reasonable to do so. Where the FCA grants an application for annulment, either with conditions or unconditionally, paragraph 6 of Schedule 6A to the Act sets out

its effect, which includes that the cancellation or variation of the *Part 4A permission* is treated as if it had never taken place. As a result of the effect of the annulment, the *person* may therefore be a *respondent* for the purposes of any *complaints* which arise during the period in which the *person's Part 4A permission* was cancelled or varied.

Annex D

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6 Relevant persons and successors in default

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6.2 Who is a relevant person?

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6.2.5 G Schedule 6A to the Act sets out a procedure to enable the FCA to cancel or vary the Part 4A permission of a person who, it appears to the FCA, is not carrying on the regulated activity to which the Part 4A permission relates. In some cases, this may result in the person no longer being a relevant person following cancellation of all their Part 4A permissions. Paragraph 5 of Schedule 6A to the Act sets out a procedure for the subsequent annulment of the decision to cancel or vary the person's Part 4A permission in specified circumstances where the FCA is satisfied that it is just and reasonable to do so. Where the FCA grants an application for annulment, either with conditions or unconditionally, paragraph 6 of Schedule 6A to the Act sets out its effect, which includes that the cancellation or variation of the Part 4A permission is treated as if it had never taken place. As a result of the effect of the annulment, the person may therefore be a relevant person for the purposes of any claims which arise during the period in which the person's Part 4A permission was cancelled or varied.

Annex E

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

8.1 Introduction

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8.1.2 The powers under sections 55J and 55L of the Act to vary and cancel a *person's Part 4A permission* and to impose ~~requirements~~ *requirements* are exercisable in the same circumstances. However, the statutory procedure for the exercise of the *own-initiative powers to vary a permission or impose a requirement* is different to the statutory procedure for the exercise of the cancellation power under section 55J and this may determine how the *FCA* acts in a given case. Certain types of behaviour which may cause the *FCA* to cancel ~~permission~~ *permission* in one case, may lead it to impose ~~requirements~~ *requirements*, vary, or vary and later cancel, ~~permission~~ *permission* in another, depending on the circumstances. The non-exhaustive examples provided below are therefore illustrative but not conclusive of which action the *FCA* will take in a given case.

8.1.3 Separately, the *FCA* has its *additional own-initiative variation power*, under Schedule 6A to the *Act*, to vary or cancel the *Part 4A permission* of a *firm* that is an *FCA-authorised person* if:

- (1) it appears to the *FCA* that that *person* is carrying on no *regulated activity* to which the *permission* relates; and
- (2) that *person* has failed to respond as directed by the *FCA* to notices served by the *FCA* on that *person* under paragraph 2 of Schedule 6A.

Guidance on that power, which may be used in an enforcement context, is provided in *SUP 7*.

8.2 Varying a firm's Part 4A permission or imposing requirements on the FCA's own initiative

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8.2.4 *SUP 7* provides more information about the situations in which the *FCA* may decide to take formal action in the context of its supervision activities, including the use of its *additional own-initiative variation power*.

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8.3 Use of the own-initiative powers

8.3.1 The *FCA* may impose, under sections 55J or 55L of the Act, a variation of ~~permission~~ *permission* or a ~~requirement~~ *requirement* so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation or *requirement* to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its *own-initiative powers*.

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8.3.4 The *FCA* will consider the full circumstances of each case when it decides whether a variation of *Part 4A permission* under section 55J of the Act or an imposition of a ~~requirement~~ *requirement* under section 55L of the Act is appropriate. The following is a non-exhaustive list of factors the *FCA* may consider.

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8.5 Cancelling a firm's Part 4A permission on its own initiative

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8.5.2 The *FCA* may also vary or cancel, under Schedule 6A to the Act, the *Part 4A*
A *permission* of a *firm* that is an *FCA-authorised person* if:

- (1) it appears to the *FCA* that that *person* is carrying on no *regulated activity* to which the *permission* relates; and
- (2) that *person* has failed to respond as directed to notices served by the *FCA* on that *person* under paragraph 2 of Schedule 6A.

Schedule 6A specifies that the *FCA* may form the view that a *firm* is carrying on no such *regulated activity* on the basis of its failure to pay a periodic fee or levy or provide information to the *FCA*, in each case as required by the *Handbook*.
Further *guidance* on this power is given in *SUP 7*.