

Chapter 7

Individual requirements

7.1 Application and purpose

Application

- 7.1.1 **G** This chapter applies to every *firm* which has a *Part 4A permission*.
- 7.1.2 **G** The application of this chapter to an *incoming EEA firm*, *incoming Treaty firm* or *UCITS qualifier* with a *Part 4A permission* (a "*top-up permission*") is limited as explained in ■ SUP 7.2.4 G.

Purpose

- 7.1.3 **G** The *Handbook* primarily contains provisions which apply to all *firms* or to certain categories of *firm*. However, a *firm* may apply for a waiver or modification of *rules* in certain circumstances as set out in ■ SUP 8; or it may receive individual *guidance* on the application of the *rules*, as set out in ■ SUP 9.
- 7.1.4 **G** The *FCA*, in the course of its supervision of a *firm*, may sometimes judge it necessary or desirable to impose additional *requirements* on a *firm* or in some way amend or restrict the activities which the *firm* has *permission* to undertake. The *guidance* in this chapter describes when and how the *FCA* will seek to do this.
- 7.1.5 **G** By waiving or modifying the requirements of a *rule* or imposing an additional *requirement* or *limitation*, the *FCA* can ensure that the *rules*, and any other *requirements* or *limitations* imposed on a *firm*, take full account of the *firm's* individual circumstances, and so assist the *FCA* in meeting its *statutory objectives* under the *Act*.

7.2 The FCA's powers to set individual requirements and limitations on its own initiative

- 7.2.1** **G** The FCA has the power under sections 55J and 55L of the Act to vary a firm's Part 4A permission and/or impose a requirement on a firm. Varying a firm's Part 4A permission includes imposing a limitation on that Part 4A permission.
- 7.2.2** **G** The circumstances in which the FCA may vary 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; or
 - (2) it is desirable to vary 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 regulated activity to which its Part 4A permission applies for a period of at least 12 months.
- 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.
- 7.2.4** **G** The FCA may use its own-initiative powers 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. In respect of an incoming EEA firm, an incoming Treaty firm, or a UCITS qualifier, this power applies only in relation to any top-up permission that it has. There are similar but more limited powers under Part XIII of the Act in relation to the permission of an incoming EEA firm or incoming Treaty firm under Schedules 3 or 4 to the Act (see ■ EG 8.26 to ■ EG 8.27).
- 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.
- 7.2.6** **G** 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*.

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

- 7.3.1** **G** The FCA expects to maintain a close working relationship with certain types of *firm* and expects that routine supervisory matters arising can be resolved during the normal course of this relationship by, for example, issuing individual *guidance* where appropriate (see ■ SUP 9.3). However, where the FCA deems it appropriate, it will exercise its *own-initiative powers*:
- (1) in circumstances where it considers it appropriate for the *firm* to be subject to a formal *requirement*, breach of which could attract enforcement action; or
 - (2) if a variation is needed to enable the *firm* to comply with the *requirement*, due to agreements the *firm* may have with third parties. (For example a *firm* may be under a contractual obligation to do something, but only if it can do so lawfully. In this case, if the FCA considers the *firm* must not do it, then the FCA would need to prevent it doing so through a variation in its *Part 4A permission* to enable the *firm* to avoid breaching the contractual obligation.)
- 7.3.2** **G** The FCA may also seek to exercise its *own-initiative powers* in certain situations, including the following:
- (1) If the FCA determines that a *firm's* management, business or *internal controls* give rise to material risks that are not fully addressed by existing requirements, the FCA may seek to use its *own-initiative powers*.
 - (2) If a *firm* becomes or is to become involved with new products or selling practices which present risks not adequately addressed by existing requirements, the FCA may seek to vary the *firm's Part 4A permission* in respect of those risks.
 - (3) If there has been a change in a *firm's* structure, *controllers*, activities or strategy which generate material uncertainty or create unusual or exceptional risks, then the FCA may seek to use its *own-initiative powers*. (See also ■ SUP 11.7 for a description of the FCA's ability to impose a requirement on the acquisition of *control* of a *firm* under section 55O of the *Act*.)
 - (4) At the request of, or to assist an overseas regulator as set out in section 55Q of the *Act*.

7.3.3

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Pursuant to sections 55L, 55N, 55O, 55P and 55Q of the *Act*, within the scope of its functions and powers, the *FCA* may seek to impose *requirements* which include but are not restricted to:

- (1) requiring a *firm* to submit regular reports covering, for example, trading results, management accounts, *customer* complaints, connected party transactions;
- (2) where appropriate, requiring a *firm* to maintain prudential limits, for example on large *exposures*, foreign currency *exposures* or liquidity gaps;
- (3) requiring a *firm* to submit a business plan;
- (4) limiting the *firm's* activities;
- (5) requiring an *FCA-authorised person* to maintain a particular amount or type of financial resources.

7.3.4

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The *FCA* will seek to give a *firm* reasonable notice of an intent to vary its *permission* or impose a requirement and 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.