

Changes to the FCA's cancellation of authorisation process

Policy statement

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Chapter 1

Changes to the FCA's cancellation of authorisation process

- 1.1 The grounds for the Financial Conduct Authority (FCA) to cancel a firm's authorisation were set out in legislation in the Financial Services and Markets Act 2000 (FSMA). Since that time, the FCA's regulatory population has significantly expanded. The current process is therefore no longer sufficient to allow the FCA to quickly remove a firm's authorisation where they suspect they are no longer carrying out authorised activity and reflect that in the Financial Services Register. This poses significant risks to consumers.
- 1.2 The government therefore intends to provide an additional process through which the FCA can cancel the authorisation of firms no longer carrying out FCA-regulated activities. The situations in which it will be triggered are set out in paragraph 1.18. That is, where the FCA suspect that an authorised firm may no longer be carrying on any regulated activity to which their permissions apply, such as, when a firm has failed to pay its fees or file returns, contrary to its obligations under FCA rules. The existing process for cancelling authorisations will remain in place for those circumstances set out in paragraph 1.8.

The Financial Services Register

- 1.3 Consumers need to have confidence in financial services and the firms and individuals providing them. Firms carrying on any one of a broad range of regulated activities in the financial services field must be authorised to do so in the UK by either the FCA or the PRA under part 4A of the Financial Services and Markets Act (FSMA) or be exempt from authorisation¹.
- 1.4 To support public trust and transparency in financial services the FCA is required to keep a publicly accessible record that includes all the firms that are, or have been, authorised by either the PRA or the FCA². The FCA does this online via the Financial Services Register ('the Register')³.
- 1.5 The Register allows consumers to check that firms offering financial products and services are authorised, the products and services they are authorised to provide, and whether those firms, or certain individuals at the firms, have been sanctioned or had other action taken against them.

¹ Such regulated activities are set out in section 22 of the Financial Services and Markets Act 2000 (FSMA) and the FSMA (Regulated Activities) Order 2001, public online guidance as to which is set out in the FCA's Perimeter Guide

² Section 347 of FSMA.

³ <https://register.fca.org.uk/>

- 1.6 The Register's accuracy is integral to ensuring consumers considering a financial product or service have the required information to take informed decisions. It is therefore important that the FCA can keep this as up to date as possible, so that consumers have the latest information regarding a firm's authorisation status.

cancelling a firm's authorisation – the existing FSMA process

- 1.7 Authorised firms are required to give the FCA prompt notice if they intend to cease carrying on one or more regulated activities permanently⁴. FSMA provides that the FCA can cancel authorisations granted by the FCA or PRA, having consulted the PRA where specified⁵.
- 1.8 Where a firm has not notified the FCA that it is no longer carrying on any regulated activity, but the FCA believes that the firm is not carrying on such an activity, the FCA must demonstrate that one of the grounds set out in Section 55J⁶ of FSMA is met in order to cancel the firm's authorisation. The grounds are:
- the firm is failing, or is likely to fail, to satisfy those of the Threshold Conditions set out in Schedule 6 of FSMA, for which the FCA is responsible;
 - the firm has failed, during a period of at least 12 months, to carry on a regulated activity in respect of which it has authorisation; or
 - it is desirable to exercise the power in order to advance one or more of the FCA's operational objectives, set out in section 1B(3) of FSMA.
- 1.9 If the FCA suspects a firm has ceased any authorised activity, the FCA spends significant time seeking to gather evidence from the firm to build a clear picture to demonstrate that the above grounds have been triggered, in order to exercise the cancellation power. This includes:
- attempting contact on numerous occasions;
 - searching internal and external databases for alternate contact details and repeating attempts to contact; and
 - if necessary, formally requiring relevant information from the firm under section 165 of FSMA⁷, failure to provide which is a breach of FSMA.
- 1.10 In order to cancel a firm's authorisation in these circumstances, the FCA must follow the procedure currently set out in FSMA. This procedure is the same for any cancellation of authorisation under section 55J, even where the firm appears to have stopped carrying on regulated activities and has not engaged with the FCA in the course of its enquiries noted above.

⁴ Principle 11 of the FCA's Principles for Businesses. See FCA Handbook at PRIN 2.1. There are also specific rules which underpin this requirement.

⁵ See section 55J(4) of FSMA.

⁶ <http://www.legislation.gov.uk/ukpga/2000/8/section/55J>

⁷ <http://www.legislation.gov.uk/ukpga/2000/8/part/XI/crossheading/powers-to-gather-information>

1.11 Where it proposes to cancel a firm's authorisation, the FCA must give that firm a warning notice and allow the firm at least 14 days to make representations in response. Following this, the FCA must give the firm a decision notice. The firm can, within 28 days, appeal the decision to the Upper Tribunal. The FCA can only cancel the firm's authorisation once that 28-day period has ended and the firm has not appealed.

Rationale for this change

- 1.12 Since these grounds for cancellation were introduced, the FCA-regulated population has significantly expanded, such that it now regulates approximately 59,000 firms⁸, many of which are small firms whose primary business is not financial services.
- 1.13 Given this increase, the FCA must handle a considerably higher number of cases that may meet the above grounds for cancellation. The FCA estimates that, at any point in time, the number of authorised firms no longer carrying out FCA-regulated activities, without themselves having sought cancellation of their authorisations, is around 300 to 400. While this is a very small proportion of the total FCA-regulated population, the government nevertheless considers that it creates a risk, particularly in regard to the Register.
- 1.14 The Complaints Commissioner flagged these risks in the 2019 report⁹, specifically referencing the risk that fraudsters utilise the inaccuracies in the Register to their benefit, cloning inactive firms to scam consumers.
- 1.15 Due to this risk and the importance of transparency, the government agrees that it is important that the FCA can cancel the authorisation of a firm that is no longer carrying on regulated activities and remove them from the Register as quickly as possible. It will also allow the FCA to use resources more efficiently to better deliver in the public interest¹⁰. The government have therefore agreed to introduce a new cancellation process applicable in these circumstances.
- 1.16 The government believes that not only consumers, but the wider FCA-regulated population of compliant firms, will benefit from the resulting greater consumer confidence in the Register and their services.

The new process

1.17 The new proposed process will sit alongside the existing cancellation procedure. This will mean that, in certain situations, where the FCA suspect that an authorised firm may no longer be carrying on any regulated activity to which their permissions apply, they can streamline the firm's cancellation through the new process rather than relying on the need to meet the conditions set out in paragraph 1.8.

⁸ www.fca.org.uk/about/the-fca

⁹ See page 15 of the 2018/19 Annual Report of the Financial Regulators Complaints Commissioner - <https://frccommissioner.org.uk/wp-content/uploads/OCC-Annual-report-2018-2019.pdf>

¹⁰ The FCA has a statutory duty to act in the public interest.

- 1.18 We intend that the following situations should, non-exclusively, allow the FCA to commence the new process:
- an FCA-authorized firm's failure to:
 - pay fees that it is required to pay, under a rule imposed by the FCA
 - file a return that it is required to submit, under a rule imposed by the FCA, as part of FCA's reporting requirements in the FCA's Supervision Manual
 - or keep up to date its core information requirements (for example, we have in mind the information referred to in SUP 15.5 in the FCA's Handbook).
 - repeated failure to respond to FCA correspondence sent to the last known physical or electronic address of the person provided to the FCA
 - or correspondence the FCA has sent to the firm using the last known physical or electronic address has been returned undelivered.
- 1.19 Where any of these grounds are met the FCA would be able to serve a first notice by letter (or by electronic means where agreed with a firm). The detail of how to and on whom to serve a "relevant document" is addressed under section 414 of FSMA. The notice would have to be served to the last address provided to the FCA by the firm.
- 1.20 In the event that the firm does not respond within 28 days, including after a second notice is sent, the FCA will publish a notice on their website, and on the firm's Register entry, stating that action has been commenced with a view to removing the firm's authorisation on the basis that it appears they are no longer carrying on a regulated activity. After one month of the publication of this public notice the FCA will cancel the firm's authorisation.
- 1.21 At any stage of the procedure, until cancellation, the firm in question can notify the FCA in writing that it is carrying on a regulated activity. The FCA will then end the procedure and can remove any public notice it has placed.

Restoration of authorisation

- 1.22 We view it as unlikely that a firm that is continuing to carry on a regulated activity would miss the FCA's repeated notifications and public announcements and unknowingly have its authorisation cancelled through this new process. However, to mitigate this potential risk, this new process will allow for authorisation to be restored where required and appropriate.
- 1.23 Restoration would be conditional on the following facts:
- immediately before the cancellation the firm was carrying on a regulated activity covered by its former authorisation
 - it appearing to the FCA that the firm had a reasonable excuse for its failure to respond to warnings given by the FCA under the new process
 - the firm complying with the requirement which was the ground for the use of the process by a specified date (i.e. paid the fee, submitted the

return, provided the information, replied to the correspondence or provided the up-to-date contact details)

- and, the firm attesting that there is no other reason to the best of the firm's knowledge to suggest that it fails to meet the Threshold Conditions.

1.24 Where a firm's authorisation is restored under this proposed process, the intended effect is for the authorisation to be deemed to have continued without cancellation. We propose the power to apply for restoration of the permission will be available for one year from the date on which the permission was cancelled. If the FCA refuse restoration, firms will be entitled to refer this to the Upper Tribunal.

1.25 FSMA requires certain individuals to be approved by the FCA. Under the proposed process, these approvals will be cancelled along with the firm's authorisation. For the status of approved persons to be restored, the FCA would have to obtain written consent from those individuals.¹¹

Restoration at the FCA's initiative

1.26 The government considers there is minimal risk that a firm knowingly continues its regulated activity after cancellation, and that consumers continue their relationship with that firm believing it remains authorised by the FCA. However, to provide additional protection for consumers, we propose to allow the FCA to initiate restoration of a firm's authorisation where there is evidence indicating significant potential consumer detriment.

1.27 As above, the intended effect of restoration is for the authorisation to be deemed to have continued without cancellation. This would, for example, allow a customer who has an eligible complaint¹² against a firm whose authorisation has been restored to bring a complaint to the Financial Ombudsman Service (FOS) for conduct that occurred after the cancellation.

1.28 At present, the FCA cannot restore the authorisation of a firm where it has cancelled its authorisation through the current process.¹³ We do not think it is desirable to give the FCA this power more broadly and therefore our proposal does not extend the restoration power to those existing situations.

Who will be affected?

1.29 The proposed new process will allow the FCA to cancel an authorisation where it has been given by the FCA.

1.30 The change is proposed to apply solely to firms both authorised and regulated by the FCA, often described as solo-regulated firms¹⁴. Firms regulated by the Prudential Regulation Authority (PRA), often described as dual regulated firms, are not proposed to be in scope.

¹¹ If those individuals did not consent this would not prevent the firm's authorisation from being restored but the firm would be under the usual obligation to appoint an approved person where required by FSMA and FCA's rules.

¹² That is, one that would fall within the jurisdiction of the FOS if the firm was authorised at the time of the conduct complained of. As to the criteria for the scope of the jurisdiction of FOS please see the FCA Handbook at DISP 2.2.

¹³ The FCA could grant a new authorisation to the firm where it is satisfied that firm meets the Threshold Conditions.

¹⁴ Such firms are FCA-authorised persons. See the FCA Handbook Glossary.

- 1.31 A firm will only be considered for this new process where the FCA suspect that an authorised firm may no longer be carrying on any regulated activity to which their permissions apply, such as, if it fails to pay its fees or file returns, contrary to its obligations under FCA rules. In all other situations, the existing FSMA process will apply.

Next steps

- 1.32 The government intends to take forward this measure when Parliamentary time allows.
- 1.33 Following Royal Assent, the FCA will set out its proposals for how it will implement these changes. We anticipate that this will provide further detail on the process, including, as necessary, the effect of restoration for consumers, what types of situations may satisfy the conditions for restoration and the individuals at the firm who can make an application for restoration.