Association of Mortgage Intermediaries' response to FCA CP17/37: Consultation on Industry Codes of Conduct and discussion on Principle 5

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 80% of UK mortgage intermediaries.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. Our members also provide access to associated protection products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Response

This paper blurs the lines between consulting on specific changes and discussing potential remedies, with not all of the consultative areas being accompanied by draft rules. The referral to "unregulated markets" in the consultation whereas "financial markets" is used the draft rules is unhelpful as it creates uncertainty around the scope of the proposed extension.

Questions

Q1. Do you agree that the FCA should support the take-up of industry codes through the general approach described? If not, how should the FCA consider codes for unregulated markets developed by industry practitioners?

We welcome clarification of the FCA's application of "unregulated markets" under the Senior Managers & Certification Regime (SMCR). In reviewing this paper it appears that its purpose and focus was on wholesale and investment markets, but we are concerned that by extension of this and the arrival of SMCR it is capable of a much wider application. We would consider that conduct rule 5 and the proper standard of market conduct might capture, for example, an individual mortgage adviser in respect of the regulated (e.g. residential mortgages) and unregulated business (e.g. commercial buy-to-let) they carry out. We consider that this might be an acceptable application of scope. However we would not expect the FCA's remit to extend into other related business lines such estate agency, lettings, conveyancing or surveying, so we would like confirmation of this.

Q2. Do you agree with our proposal to recognise certain industry codes of conduct in unregulated markets? If not, please provide your reasons.

As set out in Q1, we believe there needs to be clarity to which markets these will apply.

Q3. What challenges do you foresee for the FCA or industry with recognising certain industry codes?

No comment.

Q4. Do you agree with the proposed changes to the FCA Handbook designed to give effect to our proposals? If not, please provide your reasons.

We believe the term "financial markets" in the proposed rules needs to be defined, with examples of which markets are in and out of scope.

Q5. Do you agree with our proposed process for recognising certain industry codes? If not, how should we amend it?

No comment.

Q6. Do you agree with the criteria proposed for deciding which codes to recognise? If not, what additional or alternative criteria should we consider?

No comment.

Q7. Do you believe the FCA should consider extending the application of Principle for Businesses 5 (A firm must observe proper standards of market conduct) to unregulated as well as regulated activities? If not, please state why.

We reiterate our request for clarification around the remit of this extension to "unregulated markets".

Q8. What benefits and challenges do you believe this would pose to FCA authorised firms, the FCA or financial markets more generally?

We support efforts to raise standards relating to unregulated financial activities on the basis that the FCA will take sufficient enforcement action against firms and apply greater scrutiny of individuals applying for re-authorisation. We would expect this extension to minimise claims from the Financial Services Compensation Scheme, as these failures mainly relate to regulated firms carrying out unregulated fraudulent activity.