Association of Mortgage Intermediaries' response to FCA CP17/40:
Transitioning FCA firms and individuals to the Senior Managers & Certification Regime

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

We are disappointed that despite the promise to make the transition as simple, clear and proportionate as possible, a paper running to 1,243 pages has been published. This is now a long way from the proportionate regime promised by the executive team at the FCA. It would be unreasonable for firms to rely on a consultation narrative or policy statement where ultimately it is the rules that set out the requirements, and to which firms will be held accountable. There appears to be little consideration of how firms are expected to have the resource to digest 1,189 pages of rules. With this paper difficult to follow, our comments are limited to our understanding of how the rules have been drafted.

It is also unhelpful that such significant changes to a sector are being communicated in a disjointed and siloed way. We cannot see the benefit in this paper having been prepared separately to the first consultation. If the FCA continues with its proposals to only issue final rules after the closure of this second paper, rather than publishing revised proposals to take into account the separate responses to the two papers, it not only lacks collaboration with industry but also casts doubt over the whole consultation process. **We are fundamentally concerned that in not having answers to issues raised on CP17/25 we are unable to properly assess the impacts set out in CP17/40 on our member firms. We have not repeated our initial concerns as this would be duplication, but this should not be interpreted as acceptance or agreement to the interpretations resulting in this paper.**

Due to the complex nature of the changes here, cutting across many parts of the Handbook, we consider the tables and flowcharts in the narrative to be very helpful. However tracking these into the proposed new and amended rules is exceptionally difficult. Accordingly we would welcome confirmation and assurance that if firms comply with the advice in the tables and flowcharts then they will have "safe harbour". If there is a contradiction between the rules and the tables and charts, then the rules will be subservient and amended to reflect the stated policy intention.

Questions

Q1. Do you have any comments on our proposed transitional arrangements?

Our members, who are solo-regulated firms, advise on mortgages and insurance. There are areas of the proposed rules that apply to our firms yet the commencement date has been marked as 2018. There should be a distinction between the dates of application depending on the firm rather than an assumption that a section of the Handbook only applies to insurers.

The transitional approach seems appropriate, but this has to be reflected against our previous comments.

Q2. Do you have any comments on our proposed mapping of functions for Core and Limited Scope firms?

No, but this has to be reflected against our previous comments.

Q3. Do you have any comments on our approach to conversion for Core and Limited Scope firms?

No, but this has to be reflected against our previous comments.

Q4. Do you agree with our approach to new and in-flight applications by Core and Limited Scope firms?

This seems appropriate, but this has to be reflected against our previous comments.

Q5. Do you agree with our approach to Core and Limited Scope applicant firms?

This seems appropriate, but this has to be reflected against our previous comments.

Q6. Do you have any comments on our proposed mapping of functions for Enhanced firms?

No, but this has to be reflected against our previous comments.

Q7. Do you have any comments on our approach to conversion for Enhanced firms?

No, but this has to be reflected against our previous comments.

Q8. Do you agree with our approach to new and in-flight applications by Enhanced firms?

This seems appropriate, but this has to be reflected against our previous comments.

Q9. Do you agree with our approach to Enhanced applicant firms?

This seems appropriate, but this has to be reflected against our previous comments.

Q10. Do you have any comments on our proposed changes to forms?

No, but this has to be reflected against our previous comments.

Q11. Do you have any feedback on our proposed amendments to the Fitness & Propriety questions?

We would like assurance that the proposals relating to criminal checks comply with current law and we seek clarification on the FCA's explicit rules around this for Senior Managers.

Access to the DBS checking service is currently only available to those registered employers who are entitled by law to ask an individual to reveal their full criminal history (other than protected cautions and convictions), including spent convictions (asking 'an exempted question'). An exemption question applies when the individual will be working in specific occupations/positions, as set out in The Rehabilitation of Offenders Act 1974. Although the FCA was granted the exception in 2007 and therefore able to register with DBS itself, we do not believe that current legislation (or government guidance) allows for this to be extended to financial services firms themselves. Whilst in practice firms could ask individuals to apply to the DBS and provide the employer with a copy of the certificate in order to satisfy the firm's obligations around fitness and propriety, the obligations that the FCA has set out under SUP 10C.10.16R and 10C.10.17G in respect of Senior Managers suggest this course of action would not be compliant. We would therefore like clarity on whether the FCA expects firms to register with DBS themselves and if so, that they have the authority to do so.

Our members consider that as they have employees and appointed representative employees visiting customers at home or who are "vulnerable", the access to the deepest level of DBS criminal record data is important.

Q12. Do you have any comments on our proposal to extend the use of REP008 to all SM&CR firms?

This is not a proportionate approach and should not apply to Limited Scope firms.

Q13. Do you have any comments on our proposal to require a nil return to be submitted where no Conduct Rules breaches have occurred, and to apply the late returns fee to late or non-submitters of REP008?

It is illogical to require a sole trader to have to submit a return to self-certify each year that they have not breached the Conduct Rules. For Core and Enhanced firms, the REP008 must be included as part of the RAMR process and be prompted rather than by exception. If this is not the case then the late fee is disproportionate.

Q14. Do you have any comments on our proposed consequential amendments?

Paragraph 7.16 refers to "a small number of additional permanent changes to the legal instrument that accompanied CP17/25" which includes "clarification of which Senior Management Functions apply to Limited Scope firms." No further information is provided and we cannot locate this 'clarification' within the rules. This is yet another example of why firms cannot rely on the narrative as the FCA chooses which detail is important for firms. It also throws into question the FCA's stance of treating these two papers as separate, as it is has clearly decided that some changes relating to the first paper needed to be made and further consulted on in this paper. Yet seismic issues raised after the first paper, such as the treatment of Appointed Representatives and changes to the FCA Register, are not intending to be further consulted on.

We are disappointed that proposed changes to the remit of SMF24 – Chief Operations function have been classed as a 'consequential amendment', yet responsibility for areas such as cyber security are made explicit and this will impact all Enhanced Firms.

With regard to the simple statement “Principal firms remain responsible for the oversight and conduct of their Appointed Representatives and come under the SM&CR”, we are concerned that there is no specific guidance as to the implications of this. In order to maintain a level-playing field between advice firms in the investment, pensions, mortgage and insurance sectors further clarification is needed. Firm principals deserve regulatory guidance as to what is expected of them with regard to approving both the firms they appoint and those who work for those firms.

In addition we need to reiterate our concerns over the proposed changes to the FCA Register and its content. It is an essential tool in activity between manufacturers and distributors and between consumers and advisers. We are happy to expand on this in bi-lateral meetings, but need to impress how our firms do not want to see any dilution in the information on the Register.

Q15. Do you agree with our proposal to implement the new Conduct Rules prescribed responsibility for firms subject to the Banking Regime ahead of the Commencement of the extended SM&CR?

No comment.

Q16. Do you have any comments on our proposal to apply the late returns fee to late or non-submitters of REP008?

No comment.