Association of Mortgage Intermediaries' response to FCA Mission:
Our Approach to Authorisation

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 potential for an open and reflective regulator that was signalled with the publication of the Mission a year ago, the FCA continues to use language which applies undue focus on protecting its reputation and dedicating resources inappropriately to limited aspects of its objectives. The belief that promoting technology, as a priority, is part of the FCA's competition objective continues to be misguided. This paper indicates a regulator that continues to work in siloes, with several statements being made that suggest a lack of understanding of what happens in practice in many of the markets it is responsible for regulating.

We do not believe the regulator is taking a proportionate approach to authorisation, nor is it effective enough. This paper sets out a theoretical approach without any acknowledgement of feedback that has been given over the last year or any measurement of the FCA's performance against its aims. We therefore repeat comments we have previously made.

We agree with the FCA's aim to ensure that if a firm fails "they leave the market in an orderly way which mitigates potential harm to consumers and the market", however it should be clear from the escalating claims in the Financial Services Compensation Scheme (FSCS) that the regulator is failing in this regard. This paper starts from an assumption of good delivery, without sufficient critical self-assessment.

We do not believe that the FCA is applying its Threshold Conditions rigorously enough to individuals with a history of previous misconduct, despite having the scope to do so. Whilst the paper categorises consumer harm, it does not go further in recognising that where an individual has been responsible for mis-selling products, providing unsuitable advice or not treating customers fairly, they should not be re-authorised. Yet we continue to see cases of such individuals re-entering the sector. There is a failure to adequately consider the damaging impact of poor firms on the competitive landscape and of the costs of failure on better firms.

Whilst high-level statements have been made that the FCA uses "a range of information sources to assess whether firms or individuals meet - and will continue to meet - our minimum standards, including market research and intelligence and our experience of supervising already-authorised firms that provide similar financial services", no further information is given around measuring the success of this approach, which we believe is ineffective. There needs to be a much clearer conduit of market intelligence flowing between the FSCS and FCA. There should be a small team at each end actively looking at the loss flows, the involvement of directors and advisers, and monitoring their current activity in markets. This team should display passion to identify and prevent poor behaviours and outcomes.

Although the FCA has since confirmed that it will be separately consulting on the future of the Financial Services Register, we would like to note the statements that have been made in this paper. We agree with the belief that the Register builds public trust and transparency in financial services. We also agree with the FCA that:

- "knowing that firms are effectively regulated means users of financial services can make confident choices about the products they buy"
- the publication of firms' details on the Register "help[s] ensure consumers can have trust in financial services."
- "as well as allowing consumers to check that those offering financial products and services are regulated, the Register also means consumers can check whether individuals or firms have been sanctioned or had other action taken against them. The historical nature of the Register ensures that firms remain traceable through changes such as mergers or name changes."
- as part of measuring the success of its change programme, it should develop a set of indicators which includes: "it will be easier for consumers to find out whether firms and individuals are authorised or approved by us". This would not be achievable without the Register.

Finally, the poor communication and lack of collaboration around the change in debt management permissions last year is another example of why we are concerned with the regulator's protective approach. Authorisations issued a communication to all firms regarding changes to the "no debt management" limitation, yet the new options were not appropriate for mortgage intermediaries. Not only had there had been no consideration or understanding of how these options would apply to these business models, but there was a refusal to admit that the communication and options were inappropriate. Half a year of resisting ensued before the regulator finally issued clarification, distributed only on a narrow basis, but ultimately refusing to make system changes. As a trade body we communicated with our firms and subsequently published guidance on this issue, which should have been the responsibility of the regulator.

Questions

Q1. Do you have a clear understanding of the Threshold Conditions that firms and individuals must meet for authorisation? If not, in which areas would you like us to be more specific?

Our concern is that the Threshold Conditions are not rigorously applied when firms and individuals apply for authorisation. We continue to see individuals who have acted inappropriately at a previous firm (which has since folded into the FSCS leaving significant mis-selling claims) become re-authorised by the FCA under a new guise. The FCA should recognise and be concerned about the difference in a firm that fails financially and one that fails and leaves liabilities, as the latter suggests a problem with the advice or product.

Fraud, mis-representation and mis-selling are indeed the primary reasons for the FSCS claims being paid by our members, not financial failure. The Threshold Conditions are "de minimis", with the conduct required by the rulebook higher yet this is rarely reflected in assessments.

Where a firm fails and leaves a number of complaints, a legacy of poor advice and claims against it, those responsible should not be allowed back into the sector. With the requirements of integrity, competence and capability clearly not met by these individuals, we do not see why the FCA would grant authorisation. The paper even states that the FCA should not be authorising individuals who "have knowingly sold inappropriate services or defrauded customers" yet we do not see this carried out in practice.

As well as not considering past behaviour, we are also not seeing enough regulatory scrutiny around references from previous (active) employers. This issue is particularly acute where Appointed Representatives have been dismissed by the Principal firm for misconduct but have subsequently been given permissions by the FCA as a directly authorised firm. Whilst the Senior Managers & Certification Regime will introduce new requirements that should make conduct breaches transparent between authorised firms, the gap between firms' recruitment processes and the FCA's authorisation process will significantly widen if the regulator does not adopt an effective approach. There cannot be an unlevel playing field where it is easier for these "rolling bad apples" to be directly authorised by the FCA.

We are regularly asked to bring examples to the FCA's attention, but there are apparently "good reasons" set out for the approvals given. These reasons are not agreed by other regulated firms.

Q2. What are your views on our approach to supporting firms and individuals to meet the minimum standards and promoting competition? How could we improve it?

We believe the FCA has misinterpreted its competition objective and by inappropriately prioritising technology it has created an anti-competitive market for new entrants.

One would expect a regulator to adopt a neutral stance towards different business models, and as such it would be reasonable for a regulator to ensure a level playing field. The FCA however continues to push a technology-driven agenda as part of a wider public relations exercise to further a global reputation for innovation.

The FCA cannot claim that it "does not provide consultancy-type advice" when it admits to adopting a "tailored approach to authorisation" for innovative firms, which includes one-to-one support and extensive feedback. For firms not applying through the Regulatory Sandbox or Advice Unit, the authorisations process is very different. The FCA has always maintained it will not approve firms' business models. It requires firms to have knowledge of their area of financial services, be sufficiently competent and have an appropriate governance framework when applying to be authorised. Firms are justifiably expected to have an understanding of regulation. Crucially, there is a fee for firms to apply to be authorised. Firms are required to invest money and time in their application, giving some assurance that these firms are serious about the service and product they want to provide to consumers. In contrast, the FCA gives "innovative" firms:

- "an initial meeting with the relevant parts of the FCA to discuss the firm's proposal";
- "a dedicated point of contact to provide regulatory support at agreed milestones". Therefore no regulatory knowledge is required prior to application and we have heard some innovative firms praise the FCA because they have not had to spend money on compliance support;
- "specific feedback on the regulatory implications of the firm's model – this could include follow-up meetings with relevant FCA experts to discuss specific issues, informal steers and individual guidance". Incredibly this goes as far as "helping firms understand the rules, or supporting them as they shape their business model in more detail"
- "help on how to apply for authorisation if the firm is currently unauthorised"
- a fee-free environment

The FCA continues to promote the Sandbox and Advice Unit channels as “free” for firms to use, however it has failed to adequately answer how the costs for running these units are apportioned. It is concerning that there is a lack of transparency around which firms are paying for these units and by how much, not to mention the FCA’s inappropriate cross-subsidisation of fees where established regulated firms pick up the bill for technology-based entrants which may or may not end up being authorised.

There appears to be a misunderstanding of the FCA’s current supervisory model in this paper. Since the FCA moved to a “flexible” and “fixed portfolio” approach to supervision, the majority of firms no longer have access to a supervisor. However the paper states that “staff in our customer contact centre provide online and telephone help, often to small firms who cannot afford to pay for consultancy services”. In reality even firms with hundreds of advisers and small building societies will have to call the customer centre (because they will be categorised as “flexible portfolio” firms) as this is their only point of contact with the regulator. We are also concerned that by making this statement the regulator is of the view that firms should be paying for consultancy services. It should be the role of the regulator to communicate its own rules and regulation to firms, and to provide clarification where there is ambiguity or conflict. Yet the FCA has become reluctant to issue guidance over recent years for fear of judicial review, which is unhelpful for firms. The FCA appears to have found resources to clarify its rules for and provide a dedicated contact to “innovative” firms, but is unable to do so for the firms that are paying the regulatory bill. It is also the case that the contact centre is reluctant to give precise answers, often referring firms back to the rule book as they cannot give firm specific advice or guidance. We understand this but the approach needs to be consistent.

Q3. Do you think we have suggested the correct commitments to make to firms making authorisation applications? If not, what other commitments could we make?

This has been answered elsewhere.

Q4. Do you think we have prioritised the right strategic goals? If not, what additional strategic goals do you think would add most public value to our work?

No. We refer to our comments elsewhere.