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*Association of Mortgage Intermediaries' response to FCA CP 22/27 Introducing a gateway for firms that approve financial promotions*

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This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB). AMI is the trade association representing over 80% of UK mortgage intermediaries. AFB sits within AMI and represents second charge (formerly secured loan) brokers.

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. AMI members also provide access to associated protection products. AFB members also provide access to unsecured products.

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

## Introduction

We ask the FCA to consider our points raised in this section, alongside answers to the main consultation questions.

We are broadly supportive of the concept of a financial promotions regulatory gateway. However, the consultation paper conveys mixed messages. It proposes to address harms occurring predominantly in the high risk investment and BNPL markets, yet the solution is a blanket policy across all financial services sectors. We encourage the FCA to consider whether the financial promotions regulatory gateway needs to apply as widely as proposed or whether a more tailored approach would achieve its desired aims.

To achieve proportionate regulation, we feel the FCA should identify 'high risk' markets (such as consumer investment and BNPL as highlighted in the consultation paper), with these markets subject to the highest application fee and level of reporting. For 'lower risk' markets, such as the mortgage intermediary sector, a reduced application fee and less onerous reporting requirements feels sensible as it recognises the importance of a financial promotions regulatory gateway but acknowledges that some sectors require further oversight and scrutiny than others.

The policy proposals detailed within this consultation have a limited impact on mortgage intermediary firms, as typically financial promotions fall into the following categories:

- Those approved by the firm for its own communication.
- Those approved for use by Appointed Representatives (ARs).
- Those approved for use by unauthorised firms within the same corporate group.

- Those approved by the authorised firm for onward communication by an unauthorised firm (such as a promotion about an authorised firm's products or services which is used by an estate agency).
- Those used by lead generation firms to generate leads, which are purchased by mortgage intermediary firms.

However, this emphasises the importance of the exemptions stated within HM Treasury's (HMT) consultation response. It is crucial that the exemptions highlighted by Treasury are carried forward through secondary legislation. If not, we would expect the FCA to open a further consultation as this would drastically change the extent of our support and response.

We are concerned by the FCA's approach to consulting on an application fee for the approval of financial promotions before the primary consultation (CP 22/27) has closed. This risks a short-sighted approach where the FCA proposes an application fee informed by more limited feedback and without robust assessment and challenge from stakeholders. As highlighted in our response to FCA fees and levies 2023/24 consultation, we encourage the FCA to review its regulatory gateway fee proposal once it has received feedback from stakeholders on CP22/27 as this feedback is important and will likely influence its final decision.

Linked to this, we are concerned that the consultation paper has not included a question on the cost benefit analysis and therefore respondents have not had the opportunity to provide views on a key part of the policy making process.

Finally, we request that CP22/27 responses are shared with HMT to help demonstrate the strength of industry support for certain exemptions.

## **Q1: Do you agree with our proposed approach to assessing applications?**

We agree.

It's important that there's a transitional period to reduce the impact on existing businesses whilst they await review of their application.

We encourage the FCA to consider the application process for firms that apply for the permission to approve adverts on behalf of unauthorised lead generation firms. At present authorised firms are effectively sharing approval (dependent on the nature of the promotion) but the introduction of a permission and accompanying fee will alter this approach, as it is unlikely to be commercially viable for each firm to apply for the permission.

We could find ourselves in a situation where a small number of firms are responsible for signing off lead generator promotions, spanning multiple financial services sectors. Firms without the regulatory gateway permission may buy leads obtained using these approved promotions. A concern is that mortgage intermediary firms could be seen as implicitly approving promotions without the permission if they are accepting leads generated via a particular promotion that has been signed off by another firm. Any clarity the FCA can provide would be welcomed.

We wanted to highlight that the proposed Handbook guidance suggests that firms intending to apply for a grant of approver permission should 'discuss its plans with its supervisory contact at the FCA as early as possible before making an application'. However, there will be many firms that do not have a dedicated FCA supervisory contact and therefore this will not be possible.

**Q2: Do you agree with our proposed approach to determining whether to refuse an application or to grant permission on terms which are different from those for which application has been made?**

We agree.

**Q3: Do you agree with our proposal not to make changes to the Financial Ombudsman Service's CJ for complaints about the approval of a financial promotion?**

We agree.

**Q4: Do you agree with our proposal for s21 approvers to submit a notification to us within 1 week of every approval, withdrawal or amendment of a financial promotion?**

We feel one week is sufficient for promotions targeted at consumers engaging in higher risk markets but is perhaps too frequent for lower risk sectors where there is a reduced likelihood of immediate consumer harm.

For example, a promotion for cryptocurrency where the consumer can act on the advert in real time is very different to a promotion encouraging customers to contact a mortgage broker ahead of their fixed rate deal coming to an end. With the latter, there is a protracted advice process before a customer is required to commit to a particular decision and therefore a longer notification period (say two weeks) is likely to still be sufficient to capture poor compliance standards before potential consumer harm occurs.

This in tandem with the FCA's use of technology to unearth misleading or poor quality adverts<sup>1</sup> feels a sufficient level of oversight.

**Q5: Do you agree with our proposal for s21 approvers to submit regular reports to us on financial promotions approved for unauthorised firms?**

On the basis that secondary legislation will include exemptions as tabled by HMT, then yes we agree.

**Q6: Do you agree with the proposed metrics and bi-annual report frequency?**

Echoing our previous comments, a bi-annual report frequency feels excessive for lower risk sectors particularly as firms with the permission will have already been assessed by the FCA as being competent to approve certain financial promotions. For sectors deemed to be lower risk by the FCA, firms within scope should be required to submit data annually.

**Q7: Do you intend to apply for permission to approve financial promotions?**

As a trade body, we are unable to answer this question.

We would question the appropriateness of this question within the consultation, as the FCA will not receive responses from a statistically representative sample to extract meaningful insight. If the intention is to understand potential demand for the new permission to assist the FCA with internal

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<sup>1</sup> <https://www.fca.org.uk/news/press-releases/financial-watchdog-blocks-thousands-misleading-ads>

planning such as allocation of resources, we would encourage it to use other means to gather this type of data.

**Q8: Do you agree with our proposed changes to the non-Handbook guidance for the approval of financial promotions for unauthorised firms?**

No comment.