



Thursday, 21 January 2016

REP-CRIM: a questionnaire or just enough rope to hang oneself?

Last month, without a fanfare, the FCA published CP15/42, the latest of its Quarterly Consultation Papers – see [here](#). According to the FCA, QCPs generally relate to miscellaneous changes to the Handbook and "tend to be minor". However, in this instance, there is a significant and potentially burdensome proposal that will affect all but the smallest firms: the introduction of a new Annual Financial Crime Report.

What is the Annual Financial Crime Report?

It is not just a questionnaire as the sub-heading to the template report might suggest. It is a new report that certain firms will be required to submit to the FCA on an annual basis, in which numerical data and other less objective responses will be sought. The FCA has made it clear that, while the information gathered will help it to identify financial crime risks and trends within the financial services industry generally (as, for instance, one might expect of a questionnaire), it will also use the data collected by the return to support its financial crime supervision – and to focus its resources on the firms that pose the highest financial crime risk.

Some of the information that firms will be required to provide will be indicative of the systems and controls they have in preventing financial crime – so, the questions and firms' answers to them are highly significant. Firms should be aware that there may be supervisory – and even enforcement – consequences arising from the answers they give.

When will the new rules come into force?

31 December 2016 (assuming no change to the rules as consulted on). The rules setting out the requirements in relation to the new report will be contained in new section of the Supervision manual (SUP). Guidance Notes for completion of the report will be contained in a new annex to SUP.

Who will have to submit REP-CRIM?

The majority of firms which are subject to the Money Laundering Regulations 2007 (together with managing agents at Lloyd's and insurers) will be caught. Broadly, only certain small intermediaries and consumer credit firms with a reported total revenue of less than £5 million, and authorised professional firms will be exempt.

TRIVERS SMITH

When will my firm have to submit REP-CRIM?

The report will need to be submitted annually on a single entity basis, within 30 business days of your firm's accounting reference date.

How will firms be required to submit REP-CRIM?

Via GABRIEL.

What will have to be reported on the new REP-CRIM report?

The information required to be reported is summarised in the Annex to this briefing – see Appendix 6 of CP15/42 for more details and in particular draft SUP 16 Annex 42AR which sets out the proposed template. To complete some fields firms may be required to collect data that may not be readily available to them and manage that data in a manner with which they may not be accustomed. Information will therefore take significant time to collate and analyse.

What does my firm need to be doing to prepare?

As mentioned above, the rules are likely to come into force on 31 December 2016; the FCA is not proposing any transitional relief. So, many firms may find themselves having to submit forms very soon after the rules come into force. If, for example, your firm's year-end is 31 December 2016 (the day on which the new rules are likely to come into force) it seems likely that your first report would be due by 13 February 2017 at the latest.

This means that many firms will need to start capturing and collating the required data soon, if not now, despite the fact that these rules are still subject to consultation. The FCA says that it has aimed not to ask for information which will require firms to make significant systems changes to gather; but it is clear that there will be costs in compiling data which firms may not have kept before, at least not in the format required by the form and with the various breakdowns.

When does the FCA's consultation on the Annual Financial Crime Report end?

Consultation closes on **Thursday 18 February 2016**. Firms are encouraged to raise any concerns they have with their trade association or with the FCA directly.

FOR FURTHER INFORMATION, PLEASE CONTACT

10 Snow Hill
London EC1A 2AL
T: +44 (0)20 7295 3000
F: +44 (0)20 7295 3500
www.traverssmith.com



Jane Tuckley

Partner

E: jane.tuckley@traverssmith.com
T: +44 (0)20 7295 3238



Mark Evans

Partner

E: mark.evans@traverssmith.com
T: +44 (0)20 7295 3351



Tim Lewis

Partner

E: tim.lewis@traverssmith.com
T: +44 (0)20 7295 3321



Phil Bartram

Partner

E: phil.bartram@traverssmith.com
T: +44 (0)20 7295 3437



Stephanie Biggs

Partner

E: stephanie.biggs@traverssmith.com
T: +44 (0)20 7295 3433

Annex

Annual Financial Crime Report - Summary of Information Required

OPERATING JURISDICTIONS

- The jurisdictions in which the firm operates as at end of the reporting period – "operates" is defined as where the firm has a physical presence through a legal entity.
- Those jurisdictions considered by the firm to be high-risk– the guidance notes suggest that the firm should specify (from a drop down list) those jurisdictions which the firm considers to be high-risk, regardless of whether the firm operates in those jurisdictions.

CUSTOMER INFORMATION

- The total number of the firm's relationships with PEPs, non-EEA correspondent banks and all other high-risk customers, with a breakdown showing total numbers during the reporting period and the number of new customers in the reporting period.
- The number of customer relationships in certain pre-defined geographical areas as at the end of the reporting period.
- The number of firm's customers "linked to those jurisdictions considered by the firm to be high-risk" – links to a high risk jurisdiction could include customers which are resident/domiciled/incorporated/and/or carrying out business in a jurisdiction identified as high risk by the firm.
- The number of customer relationships refused or exited for financial crime/reputational risk reasons.

COMPLIANCE INFORMATION

- The number of suspicious activity reports (SARs) under Part 7 of the Proceeds of Crime Act 2002 – broken down to show the number of internal reports submitted to MLRO, the number of SARs disclosed to NCA and the percentage of SAR notifications which were consent requests – in each case as at end of reporting period.
- The number of SARs disclosed to NCA under the Terrorism Act 2000.
- The number of investigative court orders received as at end of reporting period.
- The number of restraint orders being serviced/in effect as at the end of the reporting period together with the number of new restraint orders received during reporting period.
- The number of relationships maintained with natural or corporate persons (excluding group members) which introduce business to the firm, with a breakdown showing number of relationships refused or exited for financial crime reasons during the reporting period.
- If the firm has appointed representatives, the number of relationships refused or exited due to financial crime reasons.
- The total full time equivalent (FTE) of UK staff with financial crime responsibilities, together with the percentage of that FTE dedicated to fraud responsibilities – this FTE figure should be provided on a "best endeavours" basis to two decimal points.

SANCTIONS

- Whether the firm uses automated system(s) to conduct screening of sanctions lists – a yes/no answer is required. The guidance notes say that there is no explicit regulatory or legal requirement for the use of automated screening tools – but any firm which does not currently use such automated systems will have to consider carefully whether answering "no" can be justified (for instance on the basis that, due to its size, scope of activities and number of customers, it would not be proportionate to require it) or whether it might raise questions about the firm's systems and controls.
- The number of "true" customer sanctions matches and the number of "true" payments sanctions matches.
- Whether the firm conducts repeat customer sanctions screening – again, a yes/no answer is required and again a firm should consider carefully before answering no and instead whether it should institute repeat screening.

FRAUD

- Indication of the firm's view of the top three most prevalent frauds which the FCA should be aware of and whether they are increasing, decreasing or unchanged – this part of the form is more questionnaire than compliance return and the FCA says that the identified fraud typologies do not necessarily need to be those by which the firm has been specifically impacted.