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REP-CRIM: The verdict is in

On 29 July 2016, the FCA published a policy statement ([PS16/19](#)) setting out final details of its new Annual Financial Crime Report (to be known by the catchy abbreviation "**REP-CRIM**"). While the finalised requirements incorporate some significant improvements on the original proposals, REP-CRIM is nonetheless likely to add to the compliance burden of many firms. Firms that are subject to REP-CRIM will need to report for the current 2016 reporting year on a "best endeavours" basis. The first wave of reports will be due in March 2017. Some affected firms will need to begin collating the required data during 2016 in order to meet the first reporting deadline.

We previously published [a briefing](#) on the original proposals for REP-CRIM in January 2016. This document is an updated version of that briefing, identifying certain key changes that have occurred since the consultation.

What is REP-CRIM?

REP-CRIM is a new report that certain firms will be required to submit to the FCA on an annual basis. While many sections of the report require numerical data, certain questions also ask for subjective responses based on a firm's assessment of the financial crime risks relevant to its business. The FCA has stated that the purpose of REP-CRIM is to provide data which will support the regulator's financial crime supervision strategy. The intention is that the FCA will be able to assess the level of financial risk posed by different firms more accurately and that this will allow it to target specialist supervisory resources more appropriately.

Some of the information that is required by REP-CRIM will be indicative of the systems and controls that the firm uses in preventing financial crime. Firms should therefore be aware that the information they provide may lead to supervisory consequences and, in certain cases, possibly even enforcement action.

Which firms will be required to submit REP-CRIM?

All firms that are subject to the Money Laundering Regulations 2007 ("**MLRs**") will be required to submit REP-CRIM unless they fall within a specific exemption. Exempt entities include authorised professional firms, P2P platform operators and consumer credit firms that only have limited permissions. In addition, other firms may be excluded where they have **total reported revenue of less than £5 million** as at their last ARD. The exclusions are narrow and are not available to banks, building societies, mortgage lenders or mortgage

administrators, or firms offering life and annuity insurance products. **The vast majority of FCA authorised firms will therefore be caught.**

Firms that are subject to the reporting requirement are only required to complete REP-CRIM in relation to those areas of their businesses that are subject to the MLRs.

At present, in a change from its original consultation, the FCA has delayed the introduction of REP-CRIM for general insurers and insurance intermediaries. The FCA will apply REP-CRIM reporting to these firms at a future date which has not yet been announced.

When will the new rules come into force and where can I find them?

The new requirements will apply for financial years ending with an accounting reference date ("ARD") that falls on or after **31 December 2016**. As a result, firms with a 31 December year end will be required to report in respect of 2016 and all subsequent years.

The new rules will be contained in a section of the FCA Handbook (SUP 16.23) with REP-CRIM itself and its associated guidance notes in two new annexes to SUP 16 (Annex 42A and Annex 42B respectively).

When will my firm have to submit REP-CRIM?

The report must be submitted within **60 business days of the firm's ARD**, which has been extended from the 30 business day period originally proposed. For example, if your firm has an ARD of 31 December 2016, you would need to file REP-CRIM by 27 March 2017 at the latest.

The FCA has recognised that for the 2016 reporting year, firms may not yet have been able to collate the information required to complete REP-CRIM in full. As a result, for reports filed in respect of financial years ending between 31 December 2016 and 30 December 2017 (inclusive), the FCA's rules permit REP-CRIM to be completed on a "best endeavours" basis. Firms should note that "best endeavours" is nonetheless still a high standard which will require them to be proactive about obtaining the necessary information.

Which clients and counterparties are covered by the report?

The FCA has clarified that references to "customers" or "clients" in REP-CRIM have the standard meaning given in the FCA Handbook, rather than the meaning in the MLRs. This may simplify reporting for firms whose client records are based on the FCA's definition. Where questions in REP-CRIM or its associated guidance notes refer to "customers" or "clients", firms should **not** need to include information on fund investors or deal counterparties which are not also regulatory clients in their responses.

This should significantly reduce the work involved for smaller firms when completing the returns as compared with the original FCA proposal.

Can a firm report REP-CRIM on a group basis?

Yes, provided that all firms that are included in the report would be subject to the requirement to submit REP-CRIM on a solo basis – i.e. the aggregated data must not include any firms that are not subject to the reporting requirement on their own. Submission on a group basis is optional, not mandatory and firms can identify which firms they wish to include in a group return (i.e. it need not be the entire group). This is a change from the consultation, which envisaged that reporting could only take place on a single entity basis.

It appears from the FCA's guidance notes to REP-CRIM that firms which have different ARDs can still be included in the group report. When their individual reports would otherwise fall due, those firms should then submit a nil return.

How will firms be required to submit REP-CRIM?

All firms except for electronic money institutions must submit REP-CRIM via the FCA's GABRIEL system. The FCA has stated that it will provide further detail on how electronic money institutions should submit REP-CRIM in advance of the first reporting period.

What will have to be reported in REP-CRIM?

The information that must be reported is summarised in the Annex to this briefing. Firms that wish to see the format and content of REP-CRIM in full should refer to pages 7 and 8 of the legal instrument set out in Appendix 1 to the [FCA's policy statement](#) (pages 35 and 36 of the PDF), supplemented by pages 9 to 24 of the legal instrument (pages 37 to 54 of the PDF). In order to complete some fields, firms may need 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 may take significant time to collate and analyse.

What does my firm need to do in advance of our first reporting date?

Firms should:

- identify which entities within their groups will be subject to the requirement to submit REP-CRIM and the applicable submission dates for those entities;
- review the reporting template and associated guidance notes as soon as possible to identify the required data they will need to complete the report;
- benchmark the existing data that is available to them against those requirements;
- identify any gaps which they will need to remedy by collecting additional information; and
- where the firm relies on third parties for AML-related services, consider requesting data reports from service providers in a manner consistent with REP-CRIM.

Firms may also wish to update the reporting schedules in their compliance manuals or similar documents to incorporate references to REP-CRIM and the applicable filing deadlines where appropriate.

What were the other key changes from the FCA's original consultation?

The finalised rules introduce a number of changes to the original proposals, many of which will be welcomed by firms. The most significant changes are as follows:

- **High risk jurisdictions** – the guidance now clarifies that the firm only needs to assess the risk associated with jurisdictions in which the firm operates or which it has assessed as high risk in the previous two years. This addresses concerns that firms might otherwise have had to carry out assessments of all jurisdictions in order to identify those which they consider high risk. In addition, the FCA has clarified that whether a jurisdiction is high risk should be based on the firm's own assessment of risk, which may or may not involve the use of publicly available indices.
- **Introducers** – the final guidance states that a firm only needs to count relationships with introducers that directly introduce customers or clients to the firm under a formal agency/broker agreement in return for a direct or indirect fee, commission or other monetary benefit. This will be a welcome clarification for firms who may receive business through a broader network of informal contacts.
- **Most prevalent types of fraud** – the questions relating to the firm's views on the most prevalent types of fraud are no longer mandatory, although the FCA encourages firms to complete that section of REP-CRIM if they can.

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These changes, along with a number of others, reflect comments on the consultation paper made by an industry association with Travers Smith's input.

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Annex

Annual Financial Crime Report (REP-CRIM) – Summary of information required

GROUP REPORTING

- FRNs of all additional firms included in the report (if the firm wishes to submit a group report).

OPERATING JURISDICTIONS

- The jurisdictions in which the firm operates as at the end of the reporting period. "Operates" is defined as where the firm carries on its business or has a physical presence through a legal entity, including representative offices or jurisdictions in which the firm carries on business using a services passport or an establishment passport.
- The jurisdictions which the firm has assessed and considered as high risk where the firm either operates in that jurisdiction or has assessed it as high risk within the previous 2 years.

CUSTOMER INFORMATION

- The total number of the firm's customer relationships with Politically Exposed Persons ("PEPs") and/or PEP-connected persons as at the end of the reporting period and the number of new relationships with PEPs and/or PEP-connected persons during the reporting period.
- Where the firm is a bank, the total number of the firm's customer relationships with non-EEA correspondent banks as at the end of the reporting period and the number of new relationships with such banks during the reporting period.
- The total number of the firm's customer relationships with all other high-risk customers as at the end of the reporting period and the number of new relationships with such customers during the reporting period.
- The number of the firm's customer relationships in certain pre-defined geographical areas as at the end of the reporting period.
- The number of the firm's customers "linked to those jurisdictions considered by the firm to be high risk" as at the end of the reporting period. For these purposes, customers are linked to a high risk jurisdiction if they are resident, domiciled or incorporated in a jurisdiction that the firm has identified as high risk.
- The number of customer relationships refused by the firm for financial crime reasons and the number of customer relationships exited by the firm for financial crime reasons during the reporting period.

COMPLIANCE INFORMATION

- The number of Suspicious Activity Reports under Part 7 of the Proceeds of Crime Act 2002 ("SARs") submitted internally to the nominated officer / MLRO within the firm as at the end of the reporting period.
- The number of SARs disclosed to the National Crime Agency as at the end of the reporting period.
- The number of those SARs which were consent requests under section 335 of the Proceeds of Crime Act 2002.
- The number of SARs disclosed to the National Crime Agency under the Terrorism Act 2000 during the reporting period.
- The number of investigative court orders received as at the end of the reporting period.
- The number of restraint orders being serviced or in effect as at the end of the reporting period and the number of new restraint orders received during the reporting period.
- The total full time equivalent ("FTE") of UK staff with financial crime roles as at the end of the reporting period and the percentage of that FTE dedicated to fraud responsibilities.

INTRODUCERS

- The number of relationships maintained with natural or corporate persons (excluding group members) which introduce business to the firm and the number of such relationships exited for financial crime reasons during the reporting period. This is limited to introducers appointed under a formal agency / broker agreement who introduce customers or clients for a fee, commission or other monetary benefit.
- If the firm has appointed representatives, the number of appointed representative relationships exited due to financial crime reasons.

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SANCTIONS-SPECIFIC INFORMATION

- Whether the firm uses automated system(s) to conduct screening against relevant sanctions lists – a yes/no answer is required. (The guidance notes state 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 such screening – or whether it must raise questions about the firm's systems and controls.)
- The number of "true" customer sanctions matches and the number of "true" payments sanctions matches during the reporting period.
- Whether the firm conducts repeat customer sanctions screening – again, a yes/no answer is required and again the firm should consider carefully before answering no to ensure that this can be justified or whether it should institute repeat screening.

FRAUD [NB – THIS SECTION IS NOT MANDATORY]

- An 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. The fraud typologies may or may not be those by which the firm has been specifically impacted, but should be those that the firm considers most prevalent as at the end of the reporting period. The guidance notes provide a number of pre-set typologies, but there is also a free-text option allowing the firm to identify a type of fraud that is not provided in the pre-set options, where appropriate.