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Chris Bentley
Reporting Policy
Financial Conduct Authority
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By email: cp15-42@fca.org.uk

23 February 2016

Dear Mr Bentley

REP-CRIM

The City of London Law Society ("**CLLS**") represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

This letter has been prepared by the CLLS Regulatory Law Committee (the **"Committee"**). The Regulatory Committee not only responds to consultations but also proactively raises concerns where it becomes aware of issues which it considers to be of importance in a regulatory context.

We suggest that the FCA reconsider the proposal for REP-CRIM, at least in the form put forward in the Quarterly CP. Some of the items do not chime well with requirements made under a delegated statutory power – which is the status that FCA rules have. In particular, questions asking for a firm's opinion, as opposed to the purely factual material typically required through FCA returns, do not appear properly the stuff of a statute-based requirement.

Further, many of the data items appear to be the same as (or obvious derivative information from) information provided by firms to Government requirements. The FCA's commentary in the CP makes no obvious mention of having considered whether the material is available from those Government sources, as required by the Hampton Principles – that businesses should not have to give the same piece of information twice, and should not have to provide unnecessary information. We are also concerned as to whether the FCA has considered whether there might be instances in which providing accurate information may result in a

form of "tipping off" contrary to the Money Laundering Regulations etc, such as when there are very few instances of matters for which detail is sought in the return.

We have a few more specific comments as follows:

- We do not think that the draft return, under the proposed rules, is likely to be as limited in application as the CP suggests. We suspect that this is because the proposed rules employ the wrong defined term. The proposed exclusion (16.22.2 in App 6) seems to take out of the disapplication any firm that is an "investment firm" by which we assume they actually intended to use "MiFID investment firm". The former defined term brings into scope, for example all IFA type firms, that are outside the latter term because of the article 3 exclusion in MiFID.

- Some of the items in the return lack proper clarification or definition. The term "all other high-risk customers" (in item 4) is not clear as to whether the FCA contemplates the response to be the firm's own assessments or is intended to refer to some provision of the Money Laundering Regulations or JMLSG guidance. Also, the phrase "customers linked to those jurisdictions considered by the firm to be high risk" (item 21) is unexplained – there is no steer on what kind of links are contemplated here and whether links are intended to be limited to residence, nationality or something else.

The specific issues mentioned above are, in reality, good illustrations of the wider point – that the proposal needs further thought and refinement, as well as further consultation (if the FCA decides to pursue the proposal).

If you would find it helpful to discuss any of these comments then we would be happy to do so. Please contact Karen Anderson by telephone on +44 (0) 20 7466 2404 or by email at Karen.Anderson@hsf.com in the first instance.

Yours sincerely

Karen Anderson
Chair, CLLS Regulatory Law Committee

THE CITY OF LONDON LAW SOCIETY
REGULATORY LAW COMMITTEE

Individuals and firms represented on this Committee are as follows:

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