By email: Cp15-42@fca.org.uk

Mr Chris Bentley, Reporting Policy
Financial Conduct Authority
25 The North Colonnade
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London E14 5HS

16 February 2016

Re: CP 15/42 (Quarterly Consultation No. 11 December 2015)

This response to the Financial Conduct Authority's Quarterly Consultation Paper No. 11 (CP 15/42) is made by the Regulatory Committee of the British Private Equity and Venture Capital Association (the "BVCA").

The BVCA is the industry body for the UK private equity and venture capital ("PE/VC") industry. With a membership of over 500 firms, the BVCA represents the vast majority of all UK-based PE/VC firms and their advisers. Its members have invested around £30 billion into nearly 3,900 companies based in the UK over the last five years. Companies backed by private equity and venture capital in the UK employ around 490,000 people and almost 90% of UK investments in 2014 were directed at small and medium-sized businesses.

Q6.3: Do you have any comments on REP-CRIM (the new Financial Crime Report)?

We are very concerned about the proposed REP-CRIM (Financial Crime Report). The Financial Crime Report as currently drafted is clearly intended for credit institutions and large firms and will create significant additional burdens for our members in order to respond to the questions set out in CP 15/42. Given the number of issues we identify in this response, we strongly urge the FCA not to implement the Financial Crime Report or to make significant amendments in order to make completing the report a more meaningful and proportionate exercise for the PE/VC industry.

In particular

- Some of the questions are not directly relevant to a firm's business
- To complete this questionnaire, firms will need to record and retain new data relating to their AML work
- That data will need to be recorded in advance of the filing; firms will need due warning about this in order to prepare

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- Some firms would need to answer a number of the questions from public sources, undermining the usefulness of the questionnaire
- The utility of a number of the questions is unclear
- Some of the questions effectively impose additional rules and requirements on firms which would be more appropriately made through Handbook changes
- It is not clear to us that the additional burden and cost of completing the returns is outweighed by their benefit to the FCA
- Small and medium sized firms are likely to be disproportionately impacted

As the FCA considers that Quarterly Consultation Papers are designed for miscellaneous and minor changes to the FCA Rules, the BVCA feels this is not the most appropriate place for the consultation given the impact this could have.

We were surprised to see this measure published without any prior consultation with affected industry bodies.

We expand on our key concerns below.

Relevance to a firm's business

Question 1B asks firms to list the jurisdictions they consider "high-risk". The guidance note states this should be regardless of whether the firm operates in those jurisdictions. This means the question is unrelated to a firm's business. Are firms really expected to analyse every single jurisdiction in the world and determine whether they consider each jurisdiction to be high-risk? What would be the point of such an exercise? This is not a requirement of the MLRs or the FCA Handbook. Such a question appears to amount to imposing additional rules without the FCA having gone through the necessary legal process. It is also unclear what "high-risk" means. For instance is this just the risk from a money-laundering and corruption perspective? Or would high-risk also include security and political risk? It is not clear whether firms answer this in relation to their own perception and experiences (where available) or should firms be relying on other sources such as the Transparency International Corruption Perceptions Index?

If the FCA wishes to proceed with the Financial Crime Report we suggest limiting this question to listing jurisdictions where the firm operates that they consider to be high-risk. This will create much more meaningful data than firms compiling lists of jurisdictions they have no experience of.

The guidance to **question 2** discusses account holders. This is not a relevant concept in our industry. What is the intended application?

Question 3 relates to relationships with non-EEA correspondent banks. If this question is limited

to banks, building societies etc, it should be inserted in a separate section with an appropriate heading.

Question 28 requires details of introducers. We understand that in the retail advisory space, many firms have formal arrangements in place to introduce new clients. We assume this is what the question is intended to capture but the guidance indicates it is much wider. How should this be applied to private equity or corporate finance firms, where deals may be introduced by a wide range of sources? It would be very difficult and time consuming to capture this sort of information and determine which arrangements mean a person is an "introducer". We assume this is intended to capture only introductions where the introducer is paid a fee specifically for introducing a transaction. If so, this should be stated. If this is the case, it remains unclear to us which relationships should be detailed for a particular reporting period. The relationship with potential introducers can also vary significantly. An introducer may notionally be engaged by a firm but not actually introduce any business to the PE/VC firm in a particular reporting period.

It also remains unclear how this question assists the FCA's assessment of financial crime as PE/VC firms would still be required to undertake appropriate checks on business opportunities generated by introducers.

New record keeping requirements

Many aspects of the Financial Crime Report will require firms to build new systems to collect the required data as they will not have collected data in the format that the FCA is requesting in order to comply with the current anti-money laundering and counter terrorist financing obligations.

We expect this to be the case for **questions 1, 2, 4, 5 – 12, 28, 33 and 35**. For instance, in relation to questions 5-12 we note that the concept of a "customer" in the MLRs does not correspond to "customer" as normally conceived by a private equity or venture capital firm, so it is unlikely firms would maintain ongoing records of the number of MLR "customers" by jurisdiction.

Firms are also unlikely to have broken down their customer relationships using the nomenclature used by the FCA in the Financial Crime Report in Section 2. As firms have not had to collect this information in order to identify or address financial crime risk the Financial Crime Report will introduce a significant cost and time burden without actually improving the firm's ability to identify and prevent potential financial crime. We also do not think that the FCA obtaining information on the number of PEPs or the geographical breakdown of relationships will aid the FCA in identifying financial crime risks and trends. As an example the number of PEPs could indicate a whole range of things. A firm that reports a small number could mean that either the firm has poor policies or procedures in place and isn't identifying PEPs, that the firm rarely comes across PEPs (but has good policies and procedures) or that the firm chooses not to engage with PEPs. It would therefore be extremely difficult to extrapolate information about firms from a low number.

Deadline

The rules as drafted come into force on 31 December 2016 with no transitional relief. Some firms will therefore find themselves having to submit forms very soon after the rules come into force. If, for example, a firm's year end is 31 December 2016, it seems likely that the first report would be due by 13 February 2017. This requires firms to start capturing and collating data very soon and potentially prior to the end of the consultation. This will add to the burden on firms. If the FCA determines that the Financial Crime Report is required we would suggest delaying implementation. Giving firms time to build appropriate systems is crucial to ensure that the data collected and reported is accurate.

Need to rely on external sources

Many smaller firms are likely to have little or no experience of many of the issues set out in the form. For instance:

Question 1B as noted above appears to require a firm to engage in research beyond its normal business.

Question 35 requires 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. It is unlikely that any private equity or venture capital firms will have an historical database of instances of fraud. They may have come across one or two cases over many years. For this reason it is doubtful in our view that firms will have previously considered this question in the format presented. In order to formulate an answer our members would most likely need to rely on public sources that are also available to the FCA rather than their own experience of fraud. Without firms informing the FCA of what directly affects them, there is a danger that firms will report what they perceive to be the most prevalent frauds rather than what actually affects the industry.

The guidance states that the identified fraud typologies do not necessarily need to be those that have specifically impacted the firm. However, the FCA regulates a diverse range of firms with different clients and different strategies. The types of fraud that, for instance, a bank with millions of retail customers faces is very different to those faced by firms in the private equity and venture capital industry. It would be difficult for our members to provide the FCA with useful information on the most prevalent frauds across the entire financial services industry and whether these activities are increasing, decreasing or unchanged.

Even within the PE/VC industry the potential fraud issues can vary significantly depending on the investment strategies and geographical focus of a firm. We therefore do not believe that the FCA will derive any benefit from firms opining on questions that they have no direct experience of. We would suggest removing this question completely or at least limiting the question to firms identifying types or actual incidents of fraud that have or may potentially affect the firm and its

customers. The National Crime Agency, who will have details of all the SARs and other reports submitted by the FS industry, are in a much better position to provide detailed information on the prevalence of fraud to the FCA.

More generally we do not consider that the Financial Crime Report is the best way of engaging with firms on these questions. We suggest that it would be much more helpful if the FCA, instead of asking individual firms these questionnaire style questions continues to engage with industry bodies and professional advisors on financial crime. As currently drafted we are very concerned that the FCA will obtain unhelpful data through this approach.

The FCA's focus should instead continue to be to ensure that firms have appropriate and proportionate risk-based policies and procedures in place to identify and prevent potential financial crime.

SARs

In **Section** 3, our strong preference would be for the FCA to obtain information on SARs from the National Crime Agency rather than imposing additional reporting obligations on firms to collate this information.

Impact on small and medium sized firms

Small and medium sized firms in particular are significantly impacted by new measures such as this in terms of the resources which they must commit to ensuring compliance. Many of our members fall into this category. We welcome the FCA's decision to exempt firms with a turnover of less than £5 million from the need to complete the form on the basis that it would be disproportionate for them to do so. However this still leaves many small and medium sized firms within scope. The proposed cut-off results in a "cliff edge" effect; all firms who are within scope must complete the same level of detail. This makes it particularly important that questions are designed to be easily responded to by the entire affected population. Unfortunately that is not the case with the questions as currently drafted.

Cost – benefit analysis

It is not clear to us that the costs involved in completing this survey will be justified by the benefits to the FCA of receiving it. Shortly prior to the FCA publishing the proposed Financial Crime Report, the Department of Business Innovations and Skills (BIS) consulted on the impact on business of the current anti-money laundering and counter terrorism financing regime. The BVCA noted in its response to BIS that all firms should be given a clear message and mandate that allows them to ensure a risk-sensitive approach to anti-money laundering. We are concerned that, at the same time BIS is consulting on reducing red tape and burden on firms the FCA is proposing a survey where the benefits are unclear and where there is likely to be a material (and

disproportionate) cost burden on smaller firms. Our view is that there should be a consistent approach from government and regulators on this.

Conclusion

Financial crime has the potential to have a significant impact on our members. We are very happy to work with the FCA to ensure firms have appropriate guidance in place to minimise this risk. We, however, respectfully suggest that the Financial Crime Survey would not assist the FCA or firms in this aim.

The BVCA would of course be willing to discuss this submission with you further, and, if you so wish, please free to contact Gurpreet Manku (Director of Technical and Regulatory Affairs, BVCA (gmanku@bvca.co.uk) in the first instance.

Yours faithfully,

Sheenagh Egan

Chair - BVCA Regulatory Committee