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- **BaFin sets deadline for completing migration to SCA for card-based payments via internet**
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Brexit: EU and UK publish revised Withdrawal Agreement and Political Declaration

The EU Commission and UK Government have reached and published a revised draft Withdrawal Agreement and Political Declaration.

The changes to the Withdrawal Agreement, which sets out the terms of the UK's exit from the EU, include:

- a [revised Protocol on Ireland/Northern Ireland](#), which seeks to avoid a customs border on the island of Ireland by applying to Northern Ireland certain EU laws relating to the Single Market; and
- the opportunity for democratic consent in Northern Ireland to the continued application of those EU laws, which is supported by a [unilateral declaration](#) by the UK Government on the modalities for determining that consent.

All other elements of the Agreement initially reached on 14 November 2018, including on citizens' rights, transitional arrangements and institutional provisions, remain unchanged in substance.

The [revised Political Declaration](#) on the framework of the future EU-UK relationship sets out the parameters for negotiating a free trade agreement and other areas of cooperation between the parties.

The EU Commission has [recommended](#) that the EU Council endorse and give its consent to the Agreement, as well as approve the revised Political Declaration.

To enter into force, the Agreement must be ratified by both the EU and UK.

Securitisation Regulation: EU Commission adopts RTS on disclosure requirements

The EU Commission has adopted a [Delegated Regulation](#) setting out disclosure-related technical standards under the Securitisation Regulation (EU) 2017/2402.

The Delegated Regulation is based on draft regulatory technical standards (RTS) submitted by the European Securities and Markets Authority (ESMA)

specifying the information and the details of a securitisation to be made available by the originator, sponsor and securitisation special purpose entity (SSPE) to various parties.

The Regulation will enter into force on the twentieth day following its publication in the Official Journal.

Joint statement published on inaugural meeting of EU-Japan financial regulatory forum

The EU Commission and Financial Services Agency of Japan (JFSA) have published a [joint statement](#) on the inaugural meeting of the EU-Japan financial regulatory forum held in Tokyo on 11 October 2019.

Among other things, participants discussed:

- the regulatory cooperation framework under the 2019 Japan-EU economic partnership agreement (EPA), including possible coordination in international fora and enhancements in information exchange;
- recent developments in the banking sector and capital markets in the EU and in Japan, including the implementation of the Basel III reforms and fintech issues, such as cybersecurity and stablecoins; and
- their commitment to strengthen cooperation, share experiences and promote ways to support deployment of private capital towards sustainable investments.

The JFSA and the Single Resolution Board (SRA) also exchanged letters on cooperation in cross-border banking resolution planning and implementation, and agreed to co-host a resolution workshop within the coming year.

The next forum meeting is expected to take place in Brussels in 2020.

EU Council adopts EMIR 2.2

The EU Council has adopted the [proposed regulation](#) amending the European Market Infrastructure Regulation (EMIR) as regards the procedures and authorities involved for the authorisation of central counterparties (CCPs) and requirements for the recognition of third-country CCPs (EMIR 2.2).

The Regulation is expected to be published in the Official Journal on 24 October 2019 and enter into force on 13 November 2019.

EBA publishes opinion on migration to strong customer authentication for e-commerce card-based payment transactions

The European Banking Authority (EBA) has [published an opinion](#) on the deadline for the migration to strong customer authentication (SCA) under the revised Payment Services Directive (PSD2) for e-commerce card-based payment transactions.

The opinion sets the deadline to 31 December 2020 and prescribes the expected actions to be taken during the migration period.

The opinion recommends national competent authorities (NCAs) take a consistent approach toward the SCA migration period across the EU and require their respective payment service providers (PSPs) to carry out the actions set out in the opinion. The opinion also recommends that, where required, NCAs communicate to PSPs in their jurisdiction that the supervisory

flexibility they have exercised does not represent a delay in the application date of the SCA requirements in PSD2 and the EBA's technical standards, but means that NCAs will focus on monitoring migration plans instead of pursuing immediate enforcement actions.

Furthermore, the EBA notes that consumers will be protected against fraud as required by the law and NCAs should communicate to their PSPs that the liability regime under Article 74 of the PSD2 applies and that issuing and acquiring PSPs are still liable for unauthorised payment transactions.

CRR2: EBA consults on financial institutions' public disclosure and supervisory reporting ITS

The EBA has launched consultations on new implementing technical standards (ITS) under the Capital Requirements Regulation for [financial institutions' public disclosure](#) and revised ITS on [supervisory reporting](#).

The proposed ITS for financial institutions' public disclosure are intended to promote market discipline. The proposal seeks to optimise the EBA Pillar 3 policy framework by moving from a silo based approach, with different disclosure policy products, to an all-inclusive ITS. It also implements regulatory changes introduced by CRR2 and aligns the disclosure framework with international standards.

The EBA also proposes revising the ITS on supervisory reporting to keep reporting requirements in line with changes in the regulatory framework and with the evolving needs for supervisory authorities' risk assessments. This consultation proposes changes to different areas of reporting, including own funds, credit risk, counterparty credit risk, large exposures, leverage ratio, net stable funding ratio and FINREP. This review of the reporting framework has also been used as an opportunity to improve consistency between the reporting and disclosure requirements.

Comments on both consultations are due 16 January 2020. The EBA expects to submit the draft ITS to the EU Commission in June 2020. The application of the requirements will be in June 2021.

EBA consults on application of structural FX provision

The EBA has [launched a consultation](#) on draft guidelines on the application of Structural FX provision.

The proposed guidelines set out a regulatory framework on Structural FX to address the observed diversity in its application across the EU. The EBA notes that the concept and specific application of the Structural FX provision, as laid down in the Capital Requirements Regulation (CRR), appears to be subject to several interpretations, across both supervisory authorities and institutions. As a result, the application of this provision can have significant impacts on capital requirements.

In particular, the guidelines set out objective criteria to assist competent authorities in their assessment of the structural nature of a foreign-exchange position and whether such position has been deliberately taken for hedging the capital ratio.

Comments are due 17 January 2020.

Working group on euro risk-free rates publishes report on risk management implications of transition to €STR and introduction of fallbacks for EURIBOR

The working group on euro risk-free rates has published a [report](#) on the risk management implications of the transition from the euro overnight index average (EONIA) to the euro short-term rate (€STR) and the inclusion of fallback rates for EURIBOR based on an €STR-based term structure methodology.

The report focuses on the risk management implications for banks, but also covers additional challenges facing the asset management and insurance sectors. The report includes:

- an outline of the general risk management implications;
- detailed analysis of implications arising from the EONIA to €STR transition and €STR-based fallback provisions and rates for EURIBOR, respectively; and
- an assessment of additional implications for the asset management and insurance sectors.

PRIPs Regulation: ESAs consult on changes to KID

The European Supervisory Authorities (ESAs) have issued a [consultation](#) on amendments to the Packaged Retail and Insurance-based Investment Products (PRIIPs) Delegated Regulation concerning the presentation and content of the key information document (KID).

The consultation:

- proposes changes to the methodology for performance scenarios;
- discusses a possible alternative to present illustrative performance scenarios;
- sets out how past performance information could be included in the KID;
- proposes options to change the methodologies used to calculate costs and how these are presented in summary tables;
- considers possible changes in view of the exemption in Article 32 of the PRIIPs Regulation being due to expire and the possible use of the PRIIPs KID by undertakings for collective investment in transferable securities (UCITS) from 1 January 2022; and
- proposals to amend the rules related to PRIIPs offering a range of options for investment.

The associated draft legislative amendments needed for each of the options are included in the consultative document.

Comments to the consultation are due by 13 January 2020. The ESAs had intended to finalise their review of the PRIIPs Delegated Regulation by the end of 2019. However, following discussions with the EU Commission they now expect the review will be finished around the end of Q1 2020 and their proposals submitted to the Commission shortly after. Subject to endorsement procedures for amending regulatory technical standards (RTS) and an adequate implementation period for market participants, the amendments

proposed in the consultation could be applied to existing PRIIPs during 2021 before the expected end of the UCITS exemption.

EMIR: ESMA publishes final report on data quality peer review

ESMA has published the [final report](#) on its peer review on supervisory actions intended to enhance the quality of data reported under the European Market Infrastructure Regulation (EMIR).

The peer review assessed how six national competent authorities (NCAs) that supervise important EU derivative markets supervise data quality in the following areas:

- NCAs' supervisory approach to EMIR data quality;
- integration of EMIR data within the NCA's overall supervisory approach; and
- NCA's access, assessment and analysis of EMIR data quality.

The review found that most NCAs had a supervisory approach to EMIR data quality in place, although two NCAs have made significantly less progress in integrating EMIR data quality controls into their overall supervisory approach.

The peer review complements ESMA's data quality action plan (DQAP) which aims to further improve the quality and usability of derivatives data.

FSB reports to G20 ministers on reforms and market fragmentation

The Financial Stability Board (FSB) has published materials relating to a meeting of G20 finance ministers and central bank governors held in Washington D.C. on 17-18 October, including its [fifth annual report](#) on the implementation and effects of the G20 financial regulatory reforms; a [letter](#) from its chair on the implementation of post-crisis reform policies; and an [update](#) on its market fragmentation work.

The financial regulatory reform report finds that implementation of the G20 reforms is progressing with the main financial reforms now in place, although rapid structural and technological change is required to maintain a sound and efficient financial system. It sets out a dashboard summarising the implementation of reforms in the areas of building resilient financial institutions, ending too-big-too-fail, making derivatives markets safer, and enhancing the resilience of non-bank financial intermediation.

The post-crisis reform letter notes that, while the development of reforms is almost complete, the implementation progress of the agreed G20 reforms remains uneven. It highlights three areas of the FSB's work:

- ensuring resilience in the face of new risks;
- potential financial stability issues from global stablecoins; and
- promoting a financial system that supports strong and sustainable global growth.

The market fragmentation report sets out updates on the current plan to implement work in four areas identified in the FSB's June 2019 report on the same subject, as well as some steps already taken.

FSB reports on implementation of OTC derivative reforms

The FSB has published its 14th annual [progress report](#) on the implementation of OTC derivatives reforms across FSB member jurisdictions which covers the period end-November 2018 to end-September 2019.

The report found limited additional implementation of the reforms during the reporting period but notes the following progress in the following areas:

- trade reporting - most member jurisdictions have comprehensive requirements in force and authorities are increasing aggregating data from multiple trade repositories (TRs);
- central clearing - eighteen jurisdictions have comprehensive standards/criteria in force for determining when standardised OTC derivatives should be centrally cleared;
- margin requirements - sixteen jurisdictions have comprehensive margin requirements for non-centrally cleared derivatives, with estimates of collateralisation rates available in ten of these jurisdictions;
- higher capital requirements for non-centrally cleared derivatives - interim higher capital requirements are in force in 23 of the 234 FSB member jurisdictions while only seven jurisdictions have implemented the final capital requirements, both due to have been implemented by January 2017; and
- cross-border coordination and issues - one jurisdiction started exercising deference during the reporting period with regard to foreign jurisdictions' regimes while several other jurisdictions extended deference to foreign jurisdictions.

FSB sets out plans to consider regulatory issues posed by stablecoins

The FSB has published a [note](#) on regulatory issues posed by stablecoins. The note is in response to the G20 Leaders' Osaka declaration which stressed the importance of monitoring developments in cryptoassets and protecting against the existing and emerging risks they pose.

In its note the FSB focuses specifically on global stablecoins and sets out the work it plans to do to implement the G20 mandate. It acknowledges that the launch of stablecoin-type arrangements for domestic and cross-border retail payments could both benefit the financial system and pose a material risk to its stability. It calls for adequate and comprehensive regulatory and oversight arrangements to ensure that benefits are harnessed while associated risks are appropriately contained. To help realise this aim it intends to do the following:

- assess existing supervisory and regulatory approaches, focusing in particular on cross-border issues;
- from this assessment, consider whether the existing framework is sufficient for addressing the financial stability and systemic risk concerns posed by the individual components of a stablecoin arrangement or its interaction with the wider financial ecosystem; and
- advise on future multilateral approaches, if required, such as the development of a supervisory and regulatory framework to address risks at the global level.

The FSB intends to submit a consultative report to the G20 Finance Ministers and Central Bank Governors in April 2020 and its final report in July 2020.

Brexit: HMT and regulators publish MoU on equivalence and exemptions

The Bank of England (BoE), HM Treasury (HMT), Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have agreed and published a [memorandum of understanding \(MoU\)](#) on coordinating their respective functions in relation to equivalence and exemption determinations, which come into effect from exit day.

The MoU, established under the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/541), covers:

- general responsibilities of HMT and the regulators;
- the process for initiating new determinations;
- regulators' advice;
- the procedure for contacting, and responding to, third countries;
- timing expectations;
- the publication of advice and determinations;
- the process for reviewing and monitoring existing equivalence and exemption determinations; and
- the interaction between the FCA and BoE in areas of joint competence (e.g. capital requirements).

Brexit: FCA sets out latest expectations for firms

The FCA has published a [press release](#) setting out updated expectations for firms relating to Brexit, covering the Temporary Permissions Regime (TPR), MiFID transaction reporting and EMIR reporting.

On the TPR, the FCA sets out the deadlines applicable to EEA passporting firms and fund managers, and provides a brief overview of the process for applying for full authorisation, including the general expectation that firms will have a physical presence in the UK to help ensure effective supervision. The FCA intends to consult on its approach and expectations shortly.

On MiFID transaction reporting, the FCA expects firms not able to comply fully with the regime at the time of the UK's exit to back-report missing, incomplete or inaccurate transactions as soon as possible after 31 October 2019.

On EMIR reporting, FCA-registered trade repositories (TRs) are expected to ensure the migration of outstanding trades and historic EMIR data, and that the details of trades newly concluded, terminated or modified by UK reporting counterparties on 1, 2 and 3 November 2019 are embedded in their systems and available to UK authorities by 4 November 2019.

UK counterparties are expected to report derivatives transactions concluded, terminated and/or modified on 30 and 31 October 2019 which cannot be reporting before the UK's exit, to an FCA-registered TR no later than 4 November 2019.

The FCA notes that firms should take reasonable steps to be prepared to comply with post-exit MiFID transaction reporting and EMIR trade reporting requirements, and that it intends to take a proportionate and pragmatic approach to supervising reporting around exit day.

FCA publishes feedback statement on climate change and green finance

The FCA has published a [feedback statement \(FS19/6\)](#) following its October 2018 [discussion paper \(DP18/8\)](#) on climate change disclosures and information to consumers on green financial products and services.

From the feedback it has received, the FCA has identified four key actions and next steps:

- to publish a consultation paper on new rules to improve climate-related disclosures;
- to finalise proposed rule changes to facilitate investment in patient capital opportunities as well as separate proposed rule changes requiring Independent Governance Committees (IGCs) to oversee and report on firms' environmental, social and governance (ESG) and stewardship policies;
- to publish a feedback statement in response to a joint discussion paper with the Financial Reporting Council (FRC) on stewardship; and
- to clarify expectations around consumers' access to green financial products and services.

The FCA aims to continue contributing to other collaborative initiatives such as the government-led cross-regulator taskforce on disclosures and the Climate Financial Risk Forum (CFRF).

FCA consults on fees for AML/CTF supervision of cryptoasset businesses

The FCA has launched a [consultation](#) on the recovery of costs of supervising cryptoasset businesses. As announced in HM Treasury's Economic Crime Plan 2019-2022, the FCA will be the anti-money laundering and counter terrorist financing (AML/CTF) supervisor of UK cryptoassets businesses from 10 January 2020, under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

In its consultation, the FCA proposes recovering the costs of this new role through the following:

- a registration fee of GBP 5,000; and
- annual periodic fees based on income.

Comments are due by 11 November 2019 for the registration fee and 10 December 2019 for the periodic fees.

PRA publishes policy statement reciprocating French measure on large exposures

The PRA has published a [policy statement \(PS24/19\)](#) setting out its final rule following its consultation paper (CP15/19) 'Large exposures: Reciprocation of French measure'. The PRA has made one change to the CP's draft rule-

making instrument, which it intends to remove possible ambiguity on the scope of application.

The measure applies on a consolidated basis to firms identified by the PRA as global systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs), under the Capital Requirements Directive (2013/36/EU) (CRD) as implemented in the Capital Requirements (Capital Buffers and Macro-prudential measures) Regulations 2014. In CP15/19 the PRA proposed to tighten the large exposure limit in CRR Article 395(1) to 5% of eligible capital, in respect of the exposures of UK G-SIIs and O-SIIs to French non financial corporations meeting the definition of 'highly indebted'. This reciprocates the same measure imposed by the Haut Conseil de stabilité financière (HCSF) in France in July 2018.

The policy will take effect on 1 January 2020.

PRA consults on approach to supervising liquidity and funding risks

The PRA has published a [consultation paper \(CP27/19\)](#) setting out proposals to update its supervisory statement 'The PRA's approach to supervising liquidity and funding risk' (SS24/15) to reflect relevant updates to the Bank of England's Market Operations Guide and to reiterate relevant expectations set out in its supervisory statement 'Recovery Planning' (SS9/17).

The PRA proposes that among other things there should be no presumptive order in which firms should use the Bank of England's liquidity facilities, including the Discount Window Facility (DWF), or draw down their own liquid asset buffers to meet a liquidity need. The proposals align the view of the appropriate usage of Bank facilities in SS24/15 with the Market Operations Guide.

Comments on the consultation are due by 17 November 2019. Under the proposals the draft amendments to SS24/15 would apply from the date of final publication.

BaFin sets deadline for completing migration to SCA for card-based payments via internet

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has [announced](#) that it will not take action if payment service providers (PSPs) domiciled in Germany execute e-commerce card-based payment transactions until 31 December 2020 without the strong customer authentication (SCA) required under the revised Payment Services Directive (PSD2).

This follows an opinion issued by the EBA on 16 October 2019 recommending this deadline to national competent authorities. In addition, the EBA has set milestones for the PSPs involved and set out the data to be reported so that the relevant supervisory authority can monitor progress until all relevant PSD2 requirements have been fully implemented. BaFin has also adopted these milestones in its administrative practice.

The supervisory flexibility also applies to online payments with debit cards or prepaid cards. Card-issuing PSPs who already offer their card customers a PSD2-compliant authentication procedure should not deactivate it.

National Clearing House and National Depository for Securities enter into cooperation agreement to support Polish financial innovation ecosystem through use of distributed ledger technology

The National Clearing House (KIR) and the National Depository for Securities (KDPW) have entered into an agreement for strategic cooperation to support the development of the Polish financial innovation sector, with a particular focus on fintech. The parties have [announced](#) the creation of a testing environment – a sandbox within which KIR and KDPW will implement distributed ledger technology (DLT)-based projects (blockchain).

Under the agreement, the parties declare that they will cooperate, in particular, to intensify digitisation of the payment and financial markets using distributed ledger technology and to implement state-of-the-art technology solutions in regulatory and supervisory areas.

Polish Financial Supervision Authority reviews adequacy of buffer index of other institutions of systemic importance

On the basis of the provisions of the Act on Macroprudential Supervision of the Financial System and on Crisis Management in the Financial System of 5 August 2015, the Polish Financial Supervision Authority has, having considered the opinion of the Financial Stability Committee, [confirmed](#) that nine banks have been identified as other institutions of systemic importance. On that basis, the Polish Financial Supervision Authority has also decided to change or maintain relevant capital buffers.

APRA extends annual data collection reporting periods for registered financial corporations

The Australian Prudential Regulation Authority (APRA) has issued a [letter](#) to inform registered financial corporations (RFCs) that it has granted an extension to the annual reporting periods for the economic and financial statistics (EFS) data collection reporting forms completed by RFCs.

The extension has been granted to reduce and streamline RFCs' reporting burden in direct response to feedback received through industry forums and from entities.

RFCs with total assets between AUD 50 and AUD 400 million are currently required to submit annual data as at 31 December under the following EFS reporting standards:

- Reporting Standard ARS 720.0: ABS/RBA Statement of Financial Position (ARS 720.0);
- Reporting Standard ARS 720.1: ABS/RBA Loans and Finance Leases (ARS 720.1); and
- Reporting Standard ARS 720.2: ABS/RBA Deposits (ARS 720.2).

Under the extension, RFCs will now be able to submit their relevant reporting forms by their respective financial year end. APRA has clarified that the reporting forms must be submitted within 10 business days after financial year end.

To align with the RFC's financial year, APRA is also granting an extension to the date by which an RFC's auditor must provide reports to the RFC's Board as required by the reporting standard entitled 'RRS 710.0: ABS/RBA Audit Requirements for Registered Financial Corporations' (RRS 710.0). Under the extension, an RFC's auditor will be required to provide reports to the RFC's Board within four months after the RFC's financial year end, rather than 30 April as currently specified under the reporting standard RRS 710.0.

APRA has further clarified that the above changes to the reporting periods will not be applicable to RFCs that are required to report monthly data under the reporting standards ARS 720.0, ARS 720.1 and ARS 720.0.

APRA proposes new measures to strengthen capital protection for bank depositors

APRA has released for consultation a [discussion paper](#) on its [proposed revisions to the Prudential Standard](#) entitled 'APS 111 Capital Adequacy: Measurement of Capital' (APS 111), which establishes the criteria for authorised deposit-taking institutions' (ADIs') regulatory capital requirements. The proposed revisions are intended to ensure Australian deposit holders continue to be protected when major banks hold significant investments in their banking and insurance subsidiaries.

The consultation follows, in part, the Reserve Bank of New Zealand (RBNZ) proposal for New Zealand's banks to materially lift their regulatory capital, which would impact Australia's major banks that are the owners of New Zealand's four largest banks. Under the consultation, APRA has proposed:

- increasing the capital ADIs must hold to offset concentrated exposures to foreign or domestic banking or insurance subsidiaries;
- reducing the capital ADIs must hold to offset smaller exposures to banking or insurance subsidiaries;
- incorporating into the Prudential Standard APS 111 various rulings and technical information APRA has published since the Prudential Standard was last substantially updated in 2013; and
- aligning the Prudential Standard APS 111 with updated guidance from the Basel Committee on Banking Supervision.

APRA has indicated that it intends to finalise the changes to the Prudential Standard APS 111 in early 2020, with the requirements expected to come into force from 1 January 2021. It has also indicated that it is open to working with affected ADIs on an appropriate transition.

Comments on the consultation are due by 31 January 2020.

ASIC announces relief from financial adviser compliance scheme obligations

The Australian Securities and Investments Commission (ASIC) has [announced](#) that it will make a legislative instrument to provide relief to Australian financial services (AFS) licensees from financial adviser compliance scheme obligations. ASIC's move follows the Australian government's [announcement](#) on 11 October 2019 that it would accelerate the establishment of a single disciplinary body for financial advisers, which will displace the role of compliance schemes in monitoring and enforcing the [Financial Planners and Advisers Code of Ethics 2019](#). The move is intended to provide certainty

for AFS licensees that they will not be in breach of the law because their financial advisers were not able to register with an ASIC-approved compliance scheme by 1 January 2020, as originally required.

Under the move, ASIC will grant a three-year exemption to all AFS licensees from the obligation in the Corporations Act 2001 to ensure that their financial advisers are covered by a compliance scheme, and from the associated notification obligations. AFS licensees, however, will still be required to take reasonable steps to ensure that their financial advisers comply with the Code from 1 January 2020, and advisers will still be obliged to comply with the Code from that date onwards. Moreover, ASIC may take enforcement action where it receives breach reports.

ASIC has clarified that licensees will not be required to take any action at this stage, and it will make a public announcement when the legislative instrument providing the exemption takes effect.

RECENT CLIFFORD CHANCE BRIEFING

Defending against US trading-related investigations and litigation – do the US securities and commodities laws reach foreign conduct?

Two recent appellate court decisions shed light on the limited circumstances in which regulators and private plaintiffs can pursue claims for violations of the US securities and commodities laws for conduct occurring outside the United States.

Taken together, the Scoville and Prime International Trading decisions provide opportunities for persons defending securities and commodities actions involving overseas conduct to achieve an early and efficient favorable resolution. In order to take advantage of any such opportunities, a keen understanding of the territorial limits of the applicable laws will be critical. Persons subject to such actions would be well advised to seek experienced counsel who understand not only the applicable US laws, but also the commercial realities of the markets in question, including the ways in which non-US and US segments of those markets interact.

<https://www.cliffordchance.com/briefings/2019/10/defending-against-u-s--trading-related-investigations-and-litiga.html>

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