

PUBLIC CONSULTATION ON THE DRAFT TECHNICAL GUIDE ON CURRENCY DERIVATIVES USED AS MEANS OF PAYMENT NOT CONSIDERED TO BE A FINANCIAL INSTRUMENT

27 July 2020

The Spanish National Securities Market Commission (CNMV) is submitting a proposal for a Technical Guide to the public in relation to the provisions of Article 10(1)(b) of Delegated Regulation (EU) 2017/565 of 25 April, which completes Directive 2014/65/EU of the European Parliament and of the Council (MIFID II), which establishes that derivative instruments related to foreign currencies that are means of payment and meet certain requirements are not considered to be financial instruments for the purposes of the said Directive.

This means that these derivative instruments, mainly forward foreign exchange contracts, are not subject to MiFID and CNMV supervision, and the transparency and customer protection rules of banking regulations apply.

The purpose of the Technical Guide is to transmit to credit institutions and other entities that provide investment services a series of criteria, based on the supervisory experience of the CNMV, regarding the scope and manner in which it must be verified that the aforementioned requirements are met, in particular that the derivative contract be signed in order to facilitate the payment of identifiable goods, services or direct investments.

For the CNMV, it is important that financial institutions, in order to consider that the currency forwards they market among their clients are not financial instruments under MiFID, satisfactorily ensure that the requirements set out in the standard are complied with, providing appropriate procedures for this purpose, applying them effectively and recording the evidence used to verify them.

The content of the Draft Technical Guide can be consulted at:

[Link to the document](#)

The deadline for interested parties to send their comments is **18 September 2020**.

Comments can be sent to the email address dge.supervision@cnmv.es, or to the following postal address:

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All comments received will be published after the end of the public consultation period. If anyone does not wish their comments, either in full or in part, to be made public, they should expressly state so in their own reply and properly identify, where appropriate, which part they do not wish to be made public. For this purpose, generic confidentiality warnings included in e-mails will not be considered as an express statement that the comments submitted are not intended to be made available to the public.