

**THE CNMV IS TO ADOPT THE GUIDELINES ON THE APPLICATION OF THE DEFINITIONS LAID DOWN IN ANNEX 1(C)(6) AND (7) OF DIRECTIVE 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (MIFID II)**

18 June 2019

On 5 June 2019, the European Securities and Markets Authority published on its website the translation into the official languages of the European Union of the “Guidelines on the application of the definitions laid down in Annex 1(C)(6) and (7) of Directive 2014/65/EU of the European Parliament and of the Council (MiFID II) on markets in financial instruments”.

In this regard, the Spanish National Securities Market Commission has notified ESMA of its intention to comply with the guidelines. Therefore, the CNMV shall take into account these guidelines in its investor protection and supervisory tasks.

The aim of the guidelines is to establish a common interpretation of the scope of the concept of financial instrument applicable to physically settled commodity derivatives contracts, referred to in Annex 1(C)(6) and (7) of Directive 2014/65/EU (MiFID II), to prevent regulatory arbitration.

The guidelines include a reference to new types of trading venues (OTFs) under MiFID II and stipulate that physically settled forward contracts are included under sections (C6) and (C7) MiFID. These sections are different categories, and each commodity financial instrument must be subject to an independent analysis for its classification.

Likewise, a broad interpretation is given in relation to the physical settlement of the contracts, accepting different delivery methods other than the physical delivery of the commodities, such as the delivery of documents providing evidence of the transfer of ownership, and the nomination or notification of delivery of the underlying commodity to the operator of an energy supply network.

These ESMA guidelines are updating other guidelines with similar content which referred to the application of the definitions laid down in Annex 1(C)(6) and (7) of Directive 2004/39/EC (MiFID), thus facilitating the transition process of both regulations.

The guidelines have been issued under Article 16 of Regulation (EU) 1095/2010, of the European Parliament and of the Council, of 24 November, regulating the creation of ESMA, which in Section Three stipulates that the competent authorities shall make every effort to comply with the guidelines. Additionally, the ESMA Regulation also lays down the obligation incumbent upon competent authorities to confirm whether they intend to comply with the guidelines issued by ESMA, within two months of their issuance.