

Answer of the Commission services

to a question raised in the context of the implementation/interpretation of the MiFID

Link to the Commission's website page dedicated to the MiFID:

http://ec.europa.eu/internal_market/securities/docs/isd/questions/questions_en.pdf.

Annex I, Section B(4) and Annex I, Section C(4) of Directive 2004/39/EC

Question

Whether MiFID is applicable to OTC foreign exchange agreements only under Annex I, Section B, paragraph 4 (foreign exchange services where these are connected to the provision of investment services), or OTC foreign exchange agreements are considered to be financial instruments under Annex I, Section C, paragraph 4?

Comment or Answer

Derivatives on currencies listed in Section C(4) of Annex I of MiFID are financial instruments. An entity providing investment services to its clients in relation to these instruments will therefore have to comply with MiFID's authorisation and operational requirements. Spot market foreign exchange agreements are not considered to be financial instruments for the purposes of MiFID. Section B(4) of Annex I lists the provision of foreign exchange services as an ancillary service which applies only to those cases where those services are connected to the provision of investment services. The scope of the ancillary service is therefore restricted only to operations which are related to transactions which form part of an investment service. For example, when an investment firm is given an order to purchase foreign shares and those shares can only be purchased in a currency the client does not own, the firm may engage in foreign exchange operations in order to be able to execute the order.