ESMA_QA_727

Submission Date
29/03/2023

Status: Answer Published

Additional Information

Level 1 Regulation
Benchmarks Regulation (BMR) - Regulation 2016/1011

Topic
Benchmarks Regulation

Subject Matter
Use of a benchmark (ESMA70-145-114 Q&A_5.2)

Question

In Article 3(1)(7), “use of a benchmark”, is defined, in paragraph (b), as meaning “determination of the amount payable under a financial instrument . . . by referencing an index or a combination of indices”. In which circumstances would one or more supervised entities be viewed as using a benchmark under paragraph (b) in relation to a derivative, i.e. a financial instrument in Section C of Annex I to Directive 2014/65/EU, paragraphs (4) – (10)?

ESMA Answer

29-09-2017

Original language

The following supervised entities would be viewed as using a benchmark under paragraph (b) in relation to the determination of an amount which is payable by reference to an index or a combination of indices under a derivative in the scope of the BMR (see definition for relevant financial instruments in Article 3(1)(16)):

a) a trading venue, where the derivative is the subject of a request for admission to trading on such trading venue or is traded on such trading venue (each as defined in point (24) of Article 4(1) of Directive 2014/65/EU), to the extent the applicable trading venue has set the relevant terms of the derivative and thus chosen the specific benchmark to be referenced;

b) the investment firm acting in the capacity of a systematic internaliser, where the derivative is traded via a systematic internaliser (as defined in point (20) of Article 4(1) of Directive 2014/65/EU), to the extent such systematic internaliser has set the relevant terms of the derivative and thus chosen the specific benchmark to be referenced;

c) a CCP, where the derivative is cleared by such CCP, to the extent that the CCP has set the relevant terms of the derivative and thus chosen the specific benchmark to be referenced; or

d) each party to a transaction of a derivative, where none of points (a) to (c) applies, particularly if the parties trade on an OTF that has not set the terms of the contract.