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Additional Information

Level 1 Regulation

Benchmarks Regulation (BMR) - Regulation 2016/1011

Topic

Benchmarks Regulation

Subject Matter

Calculation agents (ESMA70-145-114 Q&A_5.3)

Question

Is a calculation agent to be considered a user of benchmarks if it is appointed by an issuer of securities?

ESMA Answer

11-07-2018

Issuers of securities frequently appoint third parties to perform the calculation of payments due under a financial instrument, e.g. under floating rate notes. These third parties, often referred to as “calculation agents”, usually do not set the terms of the financial instrument and do not decide which benchmark is referred to by the instrument. Their role is simply to calculate, on behalf of the issuer, the payment due on the basis of pre-determined terms (including the benchmark to be used), which they cannot amend.

ESMA considers that calculation agents are not users of benchmarks under Article 3(1)(7) of the BMR if the issuer of securities has set the terms of the financial instrument that references the benchmark (See also BMR Q&A ESMA_QA_727 or ESMA70-145-114 Q&A_5.2 on “*use of a benchmark*” and the relevance of setting the terms of a derivative contract).