ESMA_QA_736

Submission Date
30/03/2023

Status: Answer Published

Additional Information

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

Topic
Benchmarks Regulation

Subject Matter
Use of benchmarks: bilateral agreement on exchanged collateral (ESMA70-145-114_Q&A 5.11)

Question
Does the reference to an index in a bilateral agreement on the interest to be paid on exchanged collateral under various OTC derivatives amount to “use of a benchmark”?

ESMA Answer

07-11-2018

Original language

No. According to Article 3(1)(7)(b) BMR “*use of a benchmark*” can be the determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices. Counterparties often exchange collateral under a bilateral agreement for a variety of OTC derivatives (some of which may be “*financial instruments*” as specified by Article 3(1)(16) BMR). ESMA considers that the calculation of interest to be paid on these exchanged collateral is not equal to the determination of the amount payable under a financial instrument and therefore does not amount to “*use of a benchmark*”.