

ESMA_QA_1895

Status: Answer Published

Additional Information

Level 1 Regulation

Short Selling Regulation (SSR) Regulation (EU) No 236/2012

Topic

Scope

Subject Matter

Shares pledged as collateral

Question

How should shares pledged as collateral be considered in terms of ownership and how should given collateral be treated for the uncovered short sale prohibition and position reporting?

ESMA Answer

[ESMA70-145-408 SSR Q&A, Q&A 4.8]

In line with Article 3(1) of the DR, the ultimate beneficial owner of a share is deemed to be the investor who assumes the economic risks of acquiring the shares in question and the beneficial owner is defined by reference to the applicable national laws. In the case of shares pledged as collateral or given as collateral, the rules relating to collateral vary across the EU. Beneficial ownership should then be considered on a case by case basis taking into account the national rules and laws as well as the specific terms of the collateral contracts to determine whether such shares pledged as collateral or any given collateral amounts to ownership for the purpose of the short sale prohibition and consequently for the purpose of position reporting through the connection between owning and holding set out in Article 4 of the above mentioned DR.