

CYS FOUNDATION

CYS TOKEN

1. OUR VIEW

- 1.1 The purpose of this document is to provide an explanation of why the crypto-asset described in the crypto-asset white paper accompanying this document – “CYS” (the “**Token**”) – should not be considered to be: (a) a crypto-asset excluded from the scope of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets (“**MiCAR**”) pursuant to Article 2(4) thereof; (b) an e-money token (as defined in MiCAR); or (c) an asset-referenced token (as defined in MiCAR).
- 1.2 Our assessment is that the Token is a “crypto-asset” as defined under MiCAR which is not an “e-money token” or “an asset-referenced token”, each as defined under MiCAR, as explained below.

2. FINANCIAL INSTRUMENTS UNDER MIFID II

- 2.1 Markets in Financial Instruments Directive 2014/65/EU (“**MiFID II**”) defines ‘financial instruments’ as those instruments specified in Section C of Annex I of MiFID II. These include: (i) transferable securities, (ii) money-market instruments, (iii) units of collective investment undertakings, (iv) various types of derivative contracts and (v) emission allowances.
- 2.2 On 17 December 2024, the European Securities and Markets Authority (“**ESMA**”) published final Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments (“**ESMA Guidance**”). It follows from the ESMA Guidance that the classification of tokens as financial instruments depends on the specific characteristics and nature of such crypto-assets. In order to assess whether a crypto-asset qualifies as a transferable security, or another type of MiFID II financial instrument, the specific features, design and rights attached to the crypto-asset should be considered. ESMA is of the opinion that the circumstances must be considered on a case-by-case basis in order to legally qualify crypto-assets. For this purpose, a “substance over form” approach in determining what constitutes a financial instrument should be followed.
- 2.3 Our assessment is that the Token is not a ‘financial instrument’ as defined under MiFID II, as explained in the table below.

Financial instrument	Definition	Assessment
Transferable securities	<p>Article 4 (i) (44) of MiFID II provides that ‘transferable securities’ mean those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as: (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares; (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.</p> <p>For a crypto-asset to be recognised as a transferable security under MiFID II, it must be negotiable, transferable, and encapsulate rights attached to securities. To the extent that the crypto-asset is subject to inherent restrictions on transfer, preventing it from being negotiated, it will not be considered a transferable security.</p> <p>Furthermore, the ESMA Guidance provides that certain types of securities that primarily serve an investment function, representing participation in the performance of an underlying asset (e.g. commodities, transferable securities, financial indices, other crypto-assets) without constituting a direct investment in that asset by the investor, should be treated as transferable securities as per the MiFID II framework.</p>	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of financial instrument.

Financial instrument	Definition	Assessment
Money-market instruments	<p>Article 4(1)(17) of MiFID II provides that ‘money-market instruments’ mean those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.</p> <p>According to Article 2(1)(o) of UCITS ‘money market instruments’ means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time.</p> <p>Article 3 of Commission Directive 2007/16/EC provides that (1) the reference in Article 1(9) of Directive 85/611/EEC to money market instruments as instruments shall be understood as a reference to the following: (a) financial instruments which are admitted to trading or dealt in on a regulated market in accordance with points (a), (b) and (c) of Article 19(1) of Directive 85/611/EEC; (b) financial instruments which are not admitted to trading and (2) the reference in Article 1(9) of Directive 85/611/EEC to money market instruments as instruments normally dealt in on the money market shall be understood as a reference to financial instruments which fulfil one of the following criteria: (a) they have a maturity at issuance of up to and including 397 days; (b) they have a residual maturity of up to and including 397 days; (c) they undergo regular yield adjustments in line with money market conditions at least every 397 days; (d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in points</p>	<p>The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of financial instrument.</p>

Financial instrument	Definition	Assessment
	<p>(a) or (b), or are subject to a yield adjustment as referred to in point (c).</p> <p>It can be derived from the ESMA Guidance that for a crypto-asset to be classified as a money-market instrument, it must exhibit characteristics akin to traditional money-market tools. This involves (i) having a legal and residual maturity as required under the Money Market Funds Regulation (EU) 2017/1131, (ii) exhibiting stable value and minimal volatility and (iii) aligning returns with short-term interest rates.</p> <p>Therefore, a crypto-asset should operate within the money market and embody characteristics akin to treasury bills, certificates of deposit, and commercial paper.</p> <p>A crypto-asset that represents a short-term negotiable debt obligation issued by either a bank or a corporation within the international money market to garner funds should also be classified as a money market instrument.</p>	
Units in collective investment undertakings	<p>It can be derived from the ESMA Guidance that for a crypto-asset to qualify as a unit in a collective investment undertaking, the crypto-asset itself should qualify as a unit, while the issuer of the crypto-asset should qualify as a collective investment undertaking. In order to qualify as a unit issued by a collective investment undertaking, a crypto-asset should represent the rights of investors in such undertaking. The term "units" typically refers to shares, interests, or participation rights issued by these undertakings to investors,</p>	<p>The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of financial instrument.</p>

Financial instrument	Definition	Assessment
	<p>representing their proportionate rights in the collective investment undertaking.</p> <p>The concept of a collective investment undertaking is not defined in MiFID II. Further guidance can be found in the ESMA Guidelines on key concepts of the Alternative Investment Fund Managers Directive 2011/61/EU (“AIFMD”)¹ (the “ESMA AIFMD Guidance”), which provide a list of characteristics that, if met, should lead to the entity being qualified as a collective investment undertaking. These characteristics relate to the absence of a general commercial or industrial purpose of the entity, the pooling together of capital raised from investors for the purpose of investment with a view to generating a pooled return for those investors, and the absence of day-to-day control of the unitholders or shareholders over operational matters relating to the daily management of the undertakings’ assets.</p> <p>An Alternative Investment Fund (“AIF”) is defined in the AIFMD to mean a collective investment undertaking which raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not require authorisation pursuant to Article 5 of Directive 2009/65/EC.</p> <p>The ESMA Guidance states that national competent authorities and financial market participants should consider that for a crypto-asset to be qualified as a unit in a collective investment undertaking the</p>	

¹ ESMA/2013/611, Guidelines on key concepts of the AIFMD, 13 August 2013.

Financial instrument	Definition	Assessment
	<p>project attached to the crypto-asset should involve collectively: (i) the pooling of capital from a number of investors; (ii) for the purpose of investing this capital in accordance with a defined investment policy; and (iii) with a view to generating a pooled return for the benefit of those investors.</p> <p>In relation to staking, the ESMA Guidance notes that a token received as part of a liquid staking service (i.e. where users delegate their tokens/governance rights attached to those tokens to a staking service provider) could be regarded as representing a share in the staking rewards generated by the pooled staked assets/governance rights. However, if there is no collective management by a third party following a predefined investment policy – such as users retaining day-to-day control over their staking tokens and can trade them freely² – such crypto-asset should not typically be considered by national competent authorities and financial market participants as a unit of a collective investment undertaking.</p>	
Derivative contracts	<p>According to Article 4(1)(49) of MiFID II ‘derivatives’ means derivatives as defined in Article 2(1)(29) of Regulation (EU) No 600/2014 (“MiFIR”). Article 2(1)(29) of MIFIR provides that ‘derivatives’ means those financial instruments defined in point (44)(c) of Article 4(1) of MiFID II and referred to in Annex I, Section C (4) to (10) thereto, which includes the following:</p>	<p>The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of financial instrument.</p>

² “Freely” here refers to the ability to transfer or trade tokens without significant restrictions, excluding necessary operational requirements due to the use of distributed ledger technology (DLT), such as 24 to 48-hour locking period, which are common in liquid staking services.

Financial instrument	Definition	Assessment
	<p>(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash.</p> <p>(5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;</p> <p>(6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;</p> <p>(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;</p> <p>(8) Derivative instruments for the transfer of credit risk;</p> <p>(9) Financial contracts for differences; and</p> <p>(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be</p>	

Financial instrument	Definition	Assessment
	<p>settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF.</p> <p>MiFID II categorises derivative contracts broadly, encompassing financial derivatives linked to securities, currencies, and indices, which can include various crypto-assets like investment, payment or hybrid crypto-assets.</p> <p>According to the ESMA Guidance, in order to assess whether a crypto-asset qualifies as a derivative contract, it should be considered whether: (i) the rights of the crypto-asset holders are contingent upon a contract based on a future commitment, creating a time-lag between the conclusion and execution of such contract; (ii) the crypto-asset's value is derived from that of an underlying asset; and (iii) follows the settlement modalities as referred to in Annex I Section C, points (4)-(10) of MiFID II.</p> <p>The following criteria can be derived from the ESMA Guidance for a crypto-asset to potentially qualify as a financial derivative under MiFID II: (i) it should be a "digital representation" of a contract, (ii) it should have an underlying reference, which determines its value, e.g. an asset, a rate, an index, an instrument or a commodity and (iii)</p>	

Financial instrument	Definition	Assessment
	<p>the value of the crypto-asset should fluctuate based on changes in this reference asset.</p> <p>A crypto-asset lacking an underlying asset and a contractual relationship entailing a forward commitment should generally not be considered a derivative contract. If a crypto-asset does not derive its value from specified underlying assets as defined in MiFID II, but exists as a standalone crypto-asset, it should be distinguished from a derivative contract.</p>	
Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme)	For a crypto-asset to be recognised as an emission allowance under MiFID II, it should represent a clear right to emit a certain quantity of greenhouse gases and be recognised for compliance with Directive 2003/87/EC (Emissions Trading Scheme). According to the ESMA Guidance, crypto-assets that represent a verifiable emission allowance (or a set number of allowances) and that are tradeable should fall under MiFID II's remit.	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of financial instrument.

3. NON-MICAR REGULATED INVESTMENTS

- 3.1 On 10 December 2024, the European Banking Authority (“EBA”), the European Insurance and Occupational Pensions Authority (“EIOPA”) and ESMA published joint guidance on templates for explanations and opinions, and the standardised test for the classification of crypto-assets, under

Article 97(1) of MiCAR (the “**Joint Guidelines**”).³ The Joint Guidelines set out a standardised test for the classification of crypto-assets, which acknowledges that the regulatory classification of a crypto-asset requires case-by-case assessment. Key to this as a first step is establishing whether a crypto-asset is a financial instrument, deposit, insurance or pensions product, or other relevant financial product as referred to in Article 2(4) of MiCAR, in which case it will not be in scope of MiCAR.

3.2 Our assessment is that the Token is not a non-MiFID II financial product as described above, as explained in the table below.

Product Type	Definition	Assessment
Deposit (Article 2(4)(b) MiCAR)	<p>A deposit is defined in Directive 2014/49/EU⁴ as a sum of money, received from third parties in the course of carrying out the activity by way of business, repayable on demand or at a contractually agreed point in time (but otherwise repayment of the principal is unconditional), with or without interest or a premium.</p> <p>This definition includes structured deposits, which is defined in Directive 2014/49/EU to mean a credit balance resulting from funds left in an account or from temporary situations deriving from normal banking transactions, which is fully repayable by a credit institution at par at maturity on terms under which interest or a premium will be paid or is at risk.</p>	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of regulated product.
Funds (other than e-money tokens) (Article 2(4)(c) MiCAR)	Funds are defined in Directive (EU) 2015/2366 to mean banknotes and coins, scriptural money or electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC. For	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of regulated product.

³ Final Report on Guidelines Under Article 97 of Regulation (EU) 2023/1114.

⁴ Further guidance is provided in the European Banking Authority’s 2014 Opinion and Report and 2020 Opinion on the perimeter of credit institutions and the EBA’s 2024 Report on structured deposits.

Product Type	Definition	Assessment
	<p>the purposes of Article 2(4) MiCAR, funds do not include assets that qualify as ‘e-money tokens’.</p> <p>Electronic money is defined in Directive (EU) 2015/2366 to mean electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer.</p>	
Securitisation position (Article 2(4)(d) MiCAR)	<p>A securitisation position is defined in Regulation (EU) 2017/2402 to mean exposure to securitisation, being a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranching, having all of the following characteristics:</p> <p>(a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures;</p> <p>(b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;</p> <p>(c) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013.</p>	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of regulated product.
Non-life or life insurance product or reinsurance or	Non-life or life insurance products or reinsurance or retrocession contracts, as defined in Directive 2009/138/EC.	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of regulated product.

Product Type	Definition	Assessment
retrocession contract (Article 2(4)(e) MiCAR)	<p>(a) Non-life insurance products are defined to include most contracts that insure a risk which does not pertain to a risk insured under a life insurance policy.</p> <p>(b) Life insurance products are defined to include: (i) life insurance (including assurances on survival and death), annuities, supplementary insurance underwritten in addition to life insurance, and types of permanent health insurance; (ii) marriage insurance and birth assurance; (iii) tontines; (iv) capital redemption operations; (v) management of group pension funds and (vi) types of insurance linked to investment funds, among other certain other products contained in Directive 2009/138/EC.</p> <p>(c) (i) Reinsurance contracts, which involve transferring risk from the insurer to the reinsurer and (ii) retrocession contracts, which involve a further transfer of risk from one reinsurer to another.</p>	
Pension product (Article 2(4)(f) MiCAR)	Pension products that, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and that entitle the investor to certain benefits (per Directives (EU) 2016/2341 and 2009/138/EC).	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of regulated product.
Officially recognised occupational pension scheme (Article 2(4)(g) MiCAR)	An ‘occupational pension scheme’ is defined in Directives (EU) 2016/2341 to mean a fund set up to provide retirement benefits where there is an employment relationship, which are typically funded through contributions from employers, employees, or both. An ‘officially recognised’ occupational	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of regulated product.

Product Type	Definition	Assessment
	pension scheme will arise where the scheme is subject to national laws or regulation and within scope of Directives (EU) 2016/2341 and Directive 2009/138/EC, the latter of which focuses on insurance undertakings that provide occupational pensions.	
Individual pension product (Article 2(4)(h) MiCAR)	An individual pension product is defined under MiCAR to mean a pension product whereby the employer is required to make a financial contribution under national law and where the employer or employee has no choice as to the pension product or provider.	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of regulated product.
Pan-European Pension Product (Article 2(4)(i) MiCAR)	A pan-European pension product ('PEPP') is defined in Regulation (EU) 2019/1238 to mean a long-term savings personal pension product, which is provided by a financial undertaking eligible under a PEPP contract, and subscribed to by a PEPP saver, or by an independent PEPP savers association on behalf of its members, in view of retirement, and which has no or strictly limited possibility for early redemption and is registered in accordance with Regulation (EU) 2019/1238.	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of regulated product.
Social security scheme (Article 2(4)(j) MiCAR)	A social security scheme is defined in MiCAR to mean a scheme covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council, meaning as system established by national legislation which provides specific benefits, on a contributory or non-contributory basis, including: (i) sickness benefits, (ii) maternity and paternity benefits, (iii) invalidity benefits, (iv) old-age benefits,	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of regulated product.

Product Type	Definition	Assessment
	(v) survivors' benefits, (vi) benefits in respect of accidents at work and occupational diseases, (vii) death grants, (viii) unemployment benefits, (ix) pre-retirement benefits and (x) family benefits.	

4. CRYPTO-ASSETS UNDER MiCAR

- 4.1 The definitions of a 'crypto-asset', an 'e-money token' and an 'asset-referenced token' under MiCAR are set out in the table below, together with our assessment of their applicability to the Tokens.
- 4.2 As explained above, the Joint Guidelines set out a standardised test for the classification of crypto-assets, which acknowledges that the regulatory classification of a crypto-asset requires case-by-case assessment.
- 4.3 Our assessment is that the Token is a "crypto-asset" as defined under MiCAR which is not an "electronic money token" or "an asset-referenced token", each as defined under MiCAR, as explained in the table below.

Crypto-asset	Definition	Assessment
Crypto-asset	<p>MiCAR defines a 'crypto-asset' to mean a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology.</p> <p>The Joint Guidelines explain that:</p> <ul style="list-style-type: none"> The terms 'value' and 'right' should be interpreted broadly in accordance with recital (2) of MiCAR. Crypto-assets with no-intrinsic value, but having a value attributed to them by the seller / buyer or by market participants (for example 	The Token meets this definition and should therefore be classified as a crypto-asset pursuant to Title II of MiCAR.

Crypto-asset	Definition	Assessment
	<p>tokens such as Bitcoin and so-called ‘meme coins’ traded at exchanges with public prices) should be treated as digital representations of value.</p> <ul style="list-style-type: none"> • A token may be considered ‘non-transferable’ only where at least the following conditions are satisfied: (i) the token is accepted only by the issuer or offeror; and (ii) there is no technical possibility for the token to be transferred by a holder to persons other than the issuer or offeror (recital (17) of MiCAR). • To assess if a technology is similar to DLT the functional attributes of such technology should be considered, including the basis on which the records (the ledger) are held, shared and how consensus is achieved (i.e. the functioning of any consensus mechanism). <p>The Joint Guidelines also explain that in order to determine if the crypto-asset is within the scope of MiCAR, competent authorities should assess all of the exclusions identified in Article 2, points (2) to (4) of MiCAR:</p> <ul style="list-style-type: none"> • Article 2(2): is the issuer or offeror a person referred to in that paragraph?⁵ 	

⁵ This provides that MiCAR does not apply to persons who provide crypto-asset services exclusively for their parent companies, for their own subsidiaries or for other subsidiaries of their parent companies; liquidators or administrators acting in the course of an insolvency procedure (except for the purposes of Article 47 of MiCAR); the ECB, central banks of the Member States when acting in their capacity as monetary authorities, or other public authorities of the Member States; the European Investment Bank and its subsidiaries; the European Financial Stability Facility and the European Stability Mechanism; public international organisations.

Crypto-asset	Definition	Assessment
	<ul style="list-style-type: none"> Article 2(3): is the crypto-asset unique and not fungible with other crypto-assets?⁶ In assessing if the crypto-asset is unique and not fungible, competent authorities should have regard to Article 2(3) and recital (11) of MiCAR as well as the ESMA Guidance. Article 2(4): does the crypto-asset qualify as a relevant product enlisted in that paragraph?⁷ This is considered in relation to the Token under section 3 above. <p>Finally, the Joint Guidelines explain that if none of the exclusions referred to above apply, competent authorities should assess the characteristics of the crypto-assets to determine if the crypto-asset is an e-money token, an asset-referenced token or other crypto-asset under MiCAR. This is considered in relation to the Token below.</p> <p>If the crypto-asset does not purport to maintain a stable value by referencing another value or right (and is therefore not an e-money token or an asset-referenced token) it is to be classified as a crypto-asset pursuant to Title II of MiCAR.</p>	
E-money token	MiCAR defines an ‘e-money token’ to mean a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency.	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of crypto-asset under MiCAR.

⁶ This may include, for example, a non-fungible crypto-asset evidencing an exclusive property right in a specific tangible asset in real estate, such as a house or commercial property, or intangible asset such as a patent.

⁷ This provides that MiCAR does not apply to financial instruments, deposits, structured deposits, funds (except e-money tokens), securitisation positions (per Regulation (EU) 2017/2402), insurance products and reinsurance contracts (per Directive 2009/138/EC), pension products primarily providing retirement income, officially recognised occupational pension schemes (per Directives (EU) 2016/2341 and 2009/138/EC), employer-mandated individual pension products, pan-European Personal Pension Products (per Regulation (EU) 2019/1238), and social security schemes (per Regulations (EC) No 883/2004 and (EC) No 987/2009).

Crypto-asset	Definition	Assessment
Asset-referenced token	MiCAR defines an ‘asset referenced token’ to mean a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies.	The Token does not have any of these features. Therefore, the Token should not fall within the definition of this type of crypto-asset under MiCAR.