

EXPLANATION FOR THE PURPOSES OF ARTICLE 8(4) REGULATION (EU) 2023/1114

All details provided in this Explanation at Schedule 1 are subject to:

- Section 2 Basis of Explanation outlined above;
- Schedule 2 Our Understanding;
- Schedule 3 Assumptions; and
- Schedule 4 Qualifications

Information about explanation	Date on which this explanation is issued	19 December 2025
	Name of the person(s) (legal or natural) issuing this explanation	AGROTES BVI LTD (" Agrotes ") Company limited by shares. Registration number: 2179135 Aegis Chambers, 1st Floor, Ellen Skelton Building, 3076 Sir Francis Drake's Highway, Road Town, Tortola, VG1110, British Virgin Islands info@agrotes.farm
	Point of contact of the person(s) (legal or natural) issuing this explanation (if different to above)	As above.
	Confirmation that this explanation is issued	This legal memorandum is issued for the purposes of providing the explanation required by Article 8(4) of MiCAR (" Explanation ").
	for the purposes of Article 8(4) of MiCAR	
Information about offeror(s), person(s) seeking admission to trading, and/or operators of trading	Name of the offeror(s), person(s) seeking admission to trading, or operator(s) of trading platforms, on whose behalf this explanation is issued	Noemon Tech Limited (" NTL "). Please see the " <i>Annex</i> " below for further information in relation to Noemon Tech Limited.

	<p>White paper to which this explanation refers <i>(this should be the 'final version' of the white paper submitted for the purpose of Article 8(1) of MiCAR))</i></p>	<p>The date of the white paper notified for the purposes of Article 8(1) of MiCAR, and assessed for the purposes of this Explanation and to which this Explanation refers is 19 December 2025 ("White Paper"). Please see a copy of the White Paper attached to this Explanation.</p>
	<p>Member State(s) in which the offer to the public or admission to trading will take place</p>	<p>NTL proposes to offer RARE and that its "home Member State" for the purposes of Article 3(1)(33)(c) of the Markets in Crypto-Assets Regulation (Regulation 2023/1114/EU) ("MiCAR") is Ireland.</p>
<p>Crypto-asset</p>	<p>Applicable law</p>	<p>On the basis of the White Paper, the product is governed by the laws of the Republic of Cyprus.</p>
	<p>Executive summary of the regulatory classification of the crypto-asset</p>	<p>1. Based on Our Understanding, RARE falls within the definition of a "crypto-asset" as defined in Article 3(1)(5) of MiCAR. We understand RARE does not purport to maintain a stable value by referencing another value or right (and is therefore not an asset-referenced token or electronic money token, as defined in MiCAR) and therefore is to be classified as a crypto-asset pursuant to Title II of MiCAR.</p>

		<p>2. Furthermore, RARE is not subject to any exclusions set out in Article 2(2) – (4) of MiCAR as set out further below:</p> <p>(a) <i>Article 2(2): is the issuer or offeror a person referred to in that paragraph?</i></p> <p>MiCAR does not apply to:</p> <ul style="list-style-type: none"> (i) persons who provide crypto-asset services exclusively for their parent companies, for their own subsidiaries or for other subsidiaries of their parent companies; (ii) a liquidator or an administrator acting in the course of an insolvency procedure, except for the purposes of Article 47; (iii) the ECB, central banks of the Member States when acting in their capacity as monetary authorities, or other public authorities of the Member States; (iv) the European Investment Bank and its subsidiaries; (v) the European Financial Stability Facility and the European Stability Mechanism; (vi) public international organisations. <p>We understand that AGROTES does not qualify as any of the persons outlined above.</p> <p>(b) <i>Article 2(3): is the crypto-asset unique and not fungible with other crypto-assets (non-fungible tokens ("NFTs"))?</i></p> <p>Recital 11 of MiCAR states the mere attribution of a unique identifier to a crypto-asset is not, in and of itself, sufficient to classify it as unique and non-fungible. The assets or rights represented should also be unique and non-fungible in order for the crypto-asset to be considered unique and non-fungible.</p> <p>Furthermore, the Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments (19 March 2025 ESMA75453128700-1323) ("ESMA MiCAR Guidelines") states that to be unique, NFTs should be considered non-substitutable. They should have clear distinct characteristics and/or rights compared to the other crypto-assets issued by the same (or any other) issuer. The classification of a crypto-asset as unique and non-fungible should not be solely on its technical</p>
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		<p>specificities, such as the attribution of a unique identifier or the use of specific technical features and standards.</p> <p>We understand that RARE does not qualify as an NFT, as it is fungible in nature.</p> <p>(c) <i>Article 2(4): does the crypto-asset qualify as a relevant product enlisted in that paragraph?</i></p> <p>This is considered below. In summary, we understand that RARE does not qualify as any of the relevant products enlisted at Article 2(4) of MiCAR.</p>
	<p>Detailed explanation that the digital representation to which the white paper relates is a crypto-asset within the meaning of Article 3(1), point (5), of MiCAR</p>	<p>3. Article 3(1), point 5, of MiCAR defines a 'crypto-asset' as 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>4. Therefore, there are three key elements that must be present. Crypto-assets must be:</p> <ul style="list-style-type: none"> (a) a digital representation of a value or of a right; (b) able to be transferred and stored electronically; (c) using distributed ledger technology or similar technology. <p>5. Guidance in relation to the above concepts is found in: the Recitals to MiCAR; the European Supervisory Authorities ("ESAs") Guidelines on templates for explanations and opinions, and the standardised test for crypto-assets, under Article 97(1) of Regulation (EU) 2023/1114 ("ESAs Explanation Guidelines"); and the ESMA MiCAR Guidelines.</p> <p>(A) <i>Digital representation of a value or of a right</i></p> <p>6. Recital 2 of MiCAR provides that: "<i>Representations of value include external, non-intrinsic value attributed to a crypto-asset by the parties concerned or by market participants, meaning the value is subjective and based only on the interest of the purchaser of the crypto-asset.</i>"</p> <p>7. The ESAs Explanation Guidelines provides that: "<i>18. ... The terms 'value' and 'right' should be interpreted broadly in accordance with recital (2) of that Regulation. Crypto-assets with no-intrinsic value, but having a value attributed to them by the seller / buyer or by market</i></p>

		<p><i>participants</i>¹⁸ [18 For example tokens such as Bitcoin and so-called ‘meme coins’ traded at exchanges with public prices.] should be treated as digital representations of value....”</p> <p>8. Based on Recital 2 and the ESAs Explanation Guidelines, we understand that the term value and right are to be interpreted broadly. Value attributed to a crypto-asset may be external and non-intrinsic, attributed subjectively by purchasers or market participants.</p> <p>9. The ESMA MiCAR Guidelines provide, at paragraph 61, that "<i>National competent authorities and financial market participants should take into account whether the crypto-asset is a digital representation of value or rights, capable of being transferred and stored using DLT, including whether these values or rights represent a right vis-à-vis the issuer and/or someone designated by the issuer.</i>". The final aspect of paragraph 61, providing that account should be taken as to whether the values or rights represent a right vis-à-vis the issuer and/or someone designated by the issuer is not clarified further.</p> <p>10. We understand that RARE evidences a holder's fractional co-ownership entitlement to a certain quantity of Rare Earth metals as defined in the Whitepaper held by the custodian. MiCAR and the ESMA MiCAR Guidelines do not specify what the term "digital representation" refers to. There is an argument that in order to be a "digital representation" of a right or value for the purposes of MiCAR, a crypto-asset must itself embody a distinct inherent value or right, rather than operate as a ledger of ownership interests. The operation of RARE creates an assignment of the equitable interest in the strategic metals including metals customary described as rare earths in custody and evidences ownership. However, there is no guidance currently limiting the broad definition of crypto-asset in MiCAR. Instead the ESAs Explanation Guidelines appear to promote a broad application of the definition. In light of the current guidance, it is our view that the wording "<i>a digital representation of a value or of a right</i>" would capture RARE Token's representation of the ownership in strategic metals including metals customary described as rare earths.</p> <p>(B) <i>Able to be transferred and stored electronically</i></p> <p>11. Recital 17 of MiCAR provides that: "<i>Digital assets that cannot be transferred to other holders do not fall within the definition of crypto-assets. Therefore, digital assets that are accepted only by the issuer or the offeror and that are technically impossible to transfer directly to other holders should be excluded from the scope of this Regulation. An example of such digital assets includes loyalty schemes where the loyalty points can be exchanged for benefits only with the issuer or offeror of those points.</i>"</p> <p>12. Paragraph 19 of the ESAs Explanation Guidelines provides that: "<i>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</i></p>
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		<p><i>transferred by a holder to persons other than the issuer or offeror (recital (17) of Regulation (EU) 2023/1114)."</i></p> <p>13. It has been confirmed in the White Paper that Purchased RARE tokens are transferred to the buyer's designated wallet address after successful completion of the acquisition process and applicable compliance verifications. Furthermore, it has been confirmed in the White Paper that to hold RARE, purchasers need a compatible digital wallet that supports ERC-20 tokens on the Etherlink protocol, a Layer 2 solution on Tezos. Secure storage and transaction capabilities are provided by the wallet, allowing users to manage their RARE holdings independently.</p> <p>14. On that basis, we understand that RARE is transferable.</p> <p>(C) <i>Using distributed ledger technology or similar technology</i></p> <p>15. Recital 16 to MiCAR provides that: "<i>The terms 'crypto-assets' and 'distributed ledger technology' should therefore be defined as widely as possible to capture all types of crypto-assets that currently fall outside the scope of Union legislative acts on financial services.</i>"</p> <p>16. Paragraph 19 of the ESAs Explanation Guidelines provides that: "<i>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).</i>"</p> <p>17. We understand from the White Paper that RARE is deployed on Etherlink, an EVM-compatible layer 2 blockchain powered by Tezos Smart Rollup technology that runs on the Tezos Blockchain (layer 1). On that basis, it is transferred and stored on DLT technology.</p> <p>18. Conclusion</p> <p>19. On this basis and provided RARE does not purport to maintain a stable value by referencing another value or right (and is therefore not an ART or EMT as per our analysis below) it is to be classified as a crypto-asset pursuant to Title II of MiCAR.</p>
	<p>Detailed explanation that the crypto-asset to which the white paper relates is not an electronic money token within the</p>	<p>20. Article 3(1), point 7, of MiCAR defines an 'electronic money token' or 'e-money token' to be a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency.</p> <p>21. Recital 18 of MiCAR states that: "<i>The first type consists of crypto-assets that aim to stabilise their value by referencing only one official currency. The function of such crypto-assets is very similar to the function of electronic money as defined in Directive 2009/110/EC. Like electronic</i></p>

	<p>meaning of Article 3(1), point (7), of MiCAR</p>	<p><i>money, such crypto-assets are electronic surrogates for coins and banknotes and are likely to be used for making payments."</i></p> <p>22. Furthermore, Recital 19 of MiCAR states any definition of e-money tokens should be as wide as possible to capture all types of crypto-assets referencing a single official currency.</p> <p>23. The flow chart in Annex C of the ESAs Explanation Guidelines indicates that in order to assess whether a crypto-asset is an e-money token under MiCAR, as a prior and separate step, one should consider whether the crypto-assets 'purports to maintain a stable value'. On the basis of Recital 18, we understand that in order for a crypto-asset to qualify as an e-money token it must have an aim to stabilise its value by reference to an official currency.</p> <p>24. We understand that RARE does not purport to maintain a stable value by referencing one official currency and therefore is not an electronic money token within the meaning of Article 3(1), point (7), of MiCAR.</p>
	<p>Detailed explanation that the crypto-asset to which the white paper relates is not an asset-referenced token within the meaning of Article 3(1), point (6), of MiCAR</p>	<p>25. Article 3(1), point 6, of MiCAR defines an 'asset-referenced token' to be 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.</p> <p>26. Recital 18 of MiCAR states: "<i>The second type of crypto-assets concerns 'asset-referenced tokens', which aim to stabilise their value by referencing another value or right, or combination thereof, including one or several official currencies. That second type covers all other crypto-assets, other than e-money tokens, whose value is backed by assets, so as to avoid circumvention and to make this Regulation future-proof.</i>"</p> <p>27. The flow chart in Annex C of the ESAs Explanation Guidelines indicates that in order to assess whether a crypto-asset is an asset-referenced token under MiCAR, as a prior and separate step, one should consider whether a crypto-asset 'purports to maintain a stable value'.</p> <p>28. On the basis of Recital 18, we understand that in order for a crypto-asset to qualify as an asset-referenced token it must have an aim to stabilise its value by reference to a reference-asset or basket of assets. The importance of asset-referenced tokens maintaining a stable value by being linked to the value of reference-assets held is evidenced in the statements regarding the maintenance of reserves (including around addressing asset volatility) and the de-pegging risks associated with asset-referenced tokens highlighted by the European Banking Authority in its "Final Report, Draft Regulatory Technical Standards to specify the highly liquid financial instruments with minimal market risk, credit risk and concentration risk under Article 38(5) of Regulation (EU) 2023/1114".</p>

		<p>29. We understand RARE does not purport to maintain a stable value by reference to another value or right (or combination thereof), including one or more official currencies, and therefore is not an asset-referenced token within the meaning of Article 3(1), point (6), of MiCAR, for the following reasons:</p> <ul style="list-style-type: none"> • RARE reflects the ownership in a certain amount of strategic metals including metals customary described as rare earths as defined in the Whitepaper held by Noemon Finance Ltd ("NFL") as custodian. • RARE is not described as purporting to maintain a stable value by reference to Rare earth metals as defined in the whitpaper generally (i.e. the prevailing OTC spot market Rare earth metals as defined in the whitpaper price). • Instead, the function of RARE is to evidence co-ownership in a segregated quantum of Rare earth metals as defined in the whitpaper held on trust by NFL as custodian and facilitate the transferring of co-ownership interests. • The aim of RARE is not to have an independent stable value on the basis of any 'underlying' Rare earth metals as defined in the whitpaper . The quantum of Rare earth metals as defined in the whitpaper held as custody is not an asset that 'backs' RARE. Users have direct ownership of the strategic metals including metals customary described as rare earths as defined in the Whitepaper custodied by NFL for their benefit. The RARE balance administered by the smart contract based ledger and allocated to a user's wallet, is evidence of their fractional ownership.
	<p>Detailed explanation that the crypto-asset is not any of the following:</p> <ul style="list-style-type: none"> • Financial instrument, as referred to in Article 2(4), point (a), of MiCAR. 	<p>Source of definition(s) (EU and/or national law as applicable):</p> <ul style="list-style-type: none"> • Markets in Financial Instruments Directive (Directive 2014/65/EU) • European Union (Markets in Financial Instruments) Regulations 2017, as amended • Commission Delegated Regulation (EU) 2017/565 • Money Market Fund Regulation (Regulation 2017/11/31/EU) • Alternative Investment Fund Managers Directive (Directive 2011/61/EU) • UCITS Directive (Directive 2009/65/EC) • Emissions Trading Scheme (Directive 2003/87/EC)

		<p>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</p> <ul style="list-style-type: none"> • N/A <p>Regulatory measures or guidance to which reference is made in the explanation (including the Guidelines adopted pursuant to Article 2(5) of MiCAR):</p> <ul style="list-style-type: none"> • ESMA 2018 survey on the qualification of crypto-assets as financial instruments • ESMA Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments (19 March 2025 ESMA75453128700-1323) • ESMA Guidelines on key concept of the AIFMD <p>Explanation:</p> <p>30. Article 3(49) of MiCAR defines 'financial instrument' as defined in Article 4(1), point (15), of the Markets in Financial Instruments Directive (Directive 2014/65/EU) ("MiFID"). MiFID is transposed into Irish law by the European Union (Markets in Financial Instruments) Regulations 2017, as amended (the "Irish MiFID Regulations"). The Irish MiFID Regulations define financial instruments in the same manner as set out in MiFID.</p> <p>31. The definition of financial instruments for the purposes of MiFID means those instruments specified in Section C of Annex I, including such instruments issued by means of distributed ledger technology, including:</p> <ul style="list-style-type: none"> (a) transferable securities; (b) money-market instruments; (c) units in collective investment undertakings; (d) certain derivatives; and (e) emissions allowances recognised for the purposes of the EU Emissions Trading System (EU ETS) Directive.
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		<p>1. Transferable securities</p> <p>32. "Transferable securities" under MiFID means those <u>classes of securities</u> which are <u>negotiable on the capital market</u>, with the exception of <u>instruments of payment</u>, such as:</p> <ul style="list-style-type: none"> (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>33. The EMSA MiCAR Guidelines, state that a crypto-asset qualifies as a transferable security, when it cumulatively fulfils the following three criteria: (i) not being an instrument of payment; (ii) being "classes of securities"; and (iii) being negotiable on the capital market.</p> <ul style="list-style-type: none"> (i) Exclusion of instruments of payment <p>34. MiFID does not provide for a definition of "instruments of payment". The ESMA MiCAR Guidelines provide that a crypto-asset that would be qualified as an instrument of payment should be seen as a crypto-asset which is used as a medium of exchange. ESMA notes that this notion usually includes liquid payment methods like cheques, bills of exchanges as well as non-cash payment tools including cards, bank transfers, direct debits, and electronic money.</p> <p>35. In 2018, ESMA carried out a survey on the qualification of crypto-assets as financial instruments (the "2018 Survey"), where the prevailing argument among EU national competent authorities ("NCAs") was that the crypto-assets examined as part of the survey did not serve the payment function that is characteristic of instruments of payment. To define instrument of payments, ESMA noted that NCAs referred to the Payment Services Directive 2, which defines 'payment instrument' as a personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order. As part of the 2018 Survey some NCAs reported that they interpret "instrument of payment" as securities which are used only for the purposes of payment and not for investment.</p> <p>36. In the ESMA MiCAR Guidelines it is stated that where a crypto-asset has several components, including that of an instrument of payment, one must assess the qualification of the crypto-asset</p>
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		<p>on a case-by-case basis. Additionally, ESMA notes that where a crypto-asset displays features of a financial instrument, such nature should take precedence in its classification.</p> <p>37. We understand that it is not intended that RARE be a means of exchange, its intended purpose is to represent a digital record of beneficial co-ownership in physical rare earth metals as defined in the whitepaper held in custody. RARE allows holders to invest in physical rare earth metals as defined in the whitepaper and transfer ownership on-chain. It therefore does not appear to us to resemble liquid payment methods like cheques, bills of exchanges as well as non-cash payment tools including cards, bank transfers, direct debits, and electronic money. On that basis, it is our view that RARE should not constitute an "instrument of payment" for the purposes of the definition of transferable security under MiFID.</p> <p style="padding-left: 40px;">(ii) Classes of securities</p> <p>38. The ESMA MiCAR Guidelines indicate that the following indicators should be considered to identify whether crypto-assets form a "class":</p> <p style="padding-left: 40px;">(i) the crypto-assets are issued by the same issuer; and</p> <p style="padding-left: 40px;">(ii) the crypto-assets are interchangeable, i.e. giving access to the same rights (e.g. dividend rights, voting rights on the issuer's decision-making process, right over a portion of company's assets or rights to liquidation proceeds).</p> <p>39. In this context, in the ESMA MiCAR Guidelines it is noted that if all crypto-assets of the same issuance represent or confer the same rights and obligations and are therefore interchangeable, or if the issuance comprises clearly identifiable different classes of crypto-assets, the "class requirement" criterion should be considered to be met.</p> <p>40. Once established that a crypto-asset forms part of a class, one must assess whether the crypto-asset is part of a "class of securities". The classes of securities listed at 4.8 (a)-(c) above, are examples of securities that fall within the definition transferable securities. To determine if a crypto-asset confers rights of securities, ESMA confirms in the ESMA MiCAR Guidelines that an evaluation should be made as to whether the rights granted by the crypto-assets are equivalent to those typically granted by a specific type of transferable security.</p> <p>41. The ESMA MiCAR Guidelines state that, to illustrate this, crypto-assets that would represent an ownership position in a company's capital and confer to their holders rights equivalent to the rights conferred by shares (e.g. stake in a company, right to vote with respect to certain decisions of the company, rights of dividend, rights to the company's liquidation proceeds), should be qualified as securities that have features specific to shares.</p>
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		<p>42. In the ESMA MiCAR Guidelines ESMA notes that an assessment should be made between crypto-assets giving voting rights typically associated with shares (e.g. voting rights on the company's decision-making process) and those giving governance rights that are more linked to technical and/or operational decisions and which do not provide holders with any influence over corporate governance matters.</p> <p>43. ESMA further notes that crypto-assets granting voting rights on the company's decision-making process allowing holders to participate in corporate governance decisions (such as electing board members, approving mergers and acquisitions) should be considered as granting voting rights equivalent to shares. Crypto-assets that would grant governance rights solely on technical matters and/or operational changes, such as protocol upgrades and fee adjustments, without giving holders any influence over corporate governance decisions, should not confer rights equivalent to shares and should be distinguished from securities that provide traditional shareholder powers.</p> <p>44. RARE is issued by the same issuer and are interchangeable – i.e. may be considered to form a class. However, RARE does not give holders any ownership, voting or governance rights in respect of Noemon Tech LTD or any other entity, nor does it give holders any entitlement to a share of profits or revenues or any distribution of capital upon liquidation of Noemon Tech LTD or any other entity. On this basis, we are of the view that rights provided to holders of RARE do not confer rights equivalent to shares.</p> <p>In addition, RARE does not represent a bond or securitised debt obligation (e.g. there is no regular interest payments or future repayment) and does not give a right to acquire or sell a transferable security 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>Therefore, based on the ESMA MiCAR Guidelines, we are of the view that RARE should be distinguished from securities and does not form a "class of securities" for the purpose of the definition of transferable security under MiFID.</p> <p style="text-align: center;">(iii) Negotiability on the capital market</p> <p>45. The ESMA MiCAR Guidelines provide that if inherent restrictions on transfer prevent a crypto-asset from being negotiated, it is not a transferable security. A crypto-asset should be considered to be negotiable where it is capable of being transferred or traded freely.¹ ESMA</p>
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¹ The ESMA MiCAR Guidelines provides that: "*Transferable securities should only be considered "freely negotiable" if before admission to trading no restrictions exist which prevent the transfer of crypto-assets in a way that would disturb "creating a fair, orderly and efficient market" (see recital 1 to Delegated regulation (EU) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory*

		<p>further notes that the abstract possibility of being transferred or traded should be deemed sufficient, even if there is no specific market for the product. Additionally, ESMA notes that the fact that investors must be for instance, whitelisted, should not on its own prevent a crypto-asset to be qualified as a transferable security and should be assessed on a case-by-case basis. ESMA also noted that the negotiability requirement set out in Article 4(1), point (44), of MiFID seems to be met by most crypto-assets, since the DLT makes the transfer of ownership from the seller to the buyer possible.</p> <p>46. With regards to the definition of "capital markets", the ESMA MiCAR Final Report notes that the reference to "capital markets" is not defined but as a concept is intentionally broad to include all contexts where buying and selling interests in securities meet. The ESMA MiCAR Guidelines state that, generally, capital markets are understood as trading venues where savings and investments are channelled between buyers which want to invest in an asset, and sellers which need capital against their assets. If crypto-assets are capable of being traded on a trading platform equivalent to a MiFID trading platform, this should be a conclusive indication that they are negotiable on a capital market. The fact that a crypto-asset is traded on online trading platforms may serve as an indicator of their negotiability but does not necessarily coincide with the notion of capital market.</p> <p>47. We understand that RARE is transferable in a general sense and may be admitted to trading on an EU crypto-asset trading platform authorised under MiCAR.</p> <p>48. However, the ESMA MiCAR Guidelines are not fully clear on how a marketplace specific to crypto-assets is to be treated in the context of the "capital market" criterion. Despite the guidance to interpret the term broadly, ESMA has placed some emphasis on the market relating to investments.</p> <p><i>Conclusion</i></p> <p>49. In summary, based on our assessment above, we are of the view that:</p> <ul style="list-style-type: none"> (a) RARE is unlikely to be classified as an "instrument of payment"; (b) RARE is fungible with one another, however, does not confer rights equivalent to shares and should be distinguished from securities and therefore does not represent a "class of securities";
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technical standards for the admission of financial instruments to trading on regulated markets). Therefore, the fact that investors must be for instance whitelisted should not on its own prevent a crypto-asset to be qualified as a transferable security, to be assessed on a case-by-case basis... "

		<p>(c) RARE is transferable.</p> <p>50. Therefore, we are of the view that RARE is not a transferable security.</p> <p>2. Money-market instruments</p> <p>51. "Money-market instruments" are defined under MiFID to be 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>52. Our analysis in relation to "instruments of payment" is set out above at paragraphs 34 – 37. We have considered the balance of the definition, i.e. that the instruments must be "<i>those classes of instruments which are normally dealt in on the money market...</i>", below.</p> <p>53. Article 11 of Commission Delegated Regulation (EU) 2017/565 ("MiFID Organisational Regulation") provides that money-market instruments under MiFID shall include treasury bills, certificates of deposits, commercial papers and other instruments with substantively equivalent features where they have the following characteristics:</p> <ul style="list-style-type: none"> (a) they have a value that can be determined at any time; (b) they are not derivatives; (c) they have a maturity at issuance of 397 days or less. <p>54. Article 11 of the MiFID Organisational Regulation is not referenced in the ESMA MiCAR Guidelines. However, it is the legal provision which is directly applicable to the definition of a money-market instrument for the purposes of MiFID in the EU.</p> <p>55. The ESMA MiCAR Guidelines provides that national competent authorities and financial market participants should assess whether the crypto-assets possess characteristics similar to treasury bills, certificates of deposit, and commercial papers (e.g. represent a certificate of a credit balance). It is stated that these instruments typically represent short-term negotiable debt obligations, issued by governments, credit institutions, or corporations to raise funds in the money market. Therefore, crypto-assets should embody similar features, including obligations to repay a credit balance, without confusing them with standard banking deposits.</p> <p>56. The ESMA MiCAR Guidelines provide that money-market instruments are known for their short maturity periods and that in order to qualify as a money-market instrument under MiFID, a crypto-asset should thus, among other things, exhibit a predefined or residual maturity or</p>
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		<p>redemption date maturity as required for in the Money Market Fund Regulation (Regulation 2017/11/31/EU) ("MMFR"). We note that under the MMFR, the definition of "residual maturity" is the length of time remaining until the legal maturity of a security, and "legal maturity" means the date when the principal of a security is to be repaid in full and which is not subject to any optionality.</p> <p><i>Conclusion</i></p> <p>57. We note RARE does not represent short-term negotiable debt obligations or exhibit a predefined or residual maturity or redemption date maturity. Therefore, RARE will not satisfy the characteristics of a money market instrument for the purposes of MiFID.</p> <p>3. Units in collective investment undertakings</p> <p>58. One of the types of financial instruments regulated under MiFID is units in collective investment undertakings ("CIU"). In this regard, based on guidance it is important to assess whether the crypto-asset qualifies as a unit in a CIU and whether the issuer qualifies as a CIU.</p> <p>59. <i>ESMA MiCAR Guidelines:</i> The ESMA MiCAR Guidelines provide that for a crypto-asset to be qualified as a unit in a CIU the project attached to the crypto-asset should involve collectively: (i) the pooling of capital from a number of investors; (ii) 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>60. ESMA notes that:</p> <ul style="list-style-type: none"> (a) For example, a crypto-asset that would enable holders to (i) invest in digital investment funds, where holders are entitled to a proportional share of the returns generated by the managed portfolio, without any participation in the governance regarding investment strategies (e.g. no voting rights) and (ii) redeem their tokens for a share of the portfolio's value, should be considered as a unit in a CIU. (b) National competent authorities and financial market participants should also consider whether token holders – as a collective group – have day-to-day discretion or control over operational matters relating to the daily management of the assets included in the pool. Where this is the case, the crypto-asset would likely not qualify as a CIU. (c) For a crypto-asset to be classified as a unit in a CIU, it should aim at providing investors with a pooled return, which is generated by the pooled risk arising from acquiring,
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		<p>holding or selling of the underlying investment assets. These criteria ensure that investors are entitled to a share of profits or losses as a result of their participation.</p> <p>(d) For a crypto-asset to be qualified as a unit or share of an alternative investment fund, it should be used to raise capital from a number of investors with a view to investing in accordance with a defined investment policy for the benefit of those investors. National competent authorities and financial market participants should carefully assess in particular whether the crypto-asset has a defined investment policy, taking into account the criteria set out in the ESMA Guidelines on key concept of the AIFMD (the "ESMA AIF Guidelines").</p> <p>(e) Another key aspect to take into account is the general commercial or industrial purpose of the crypto-assets project. For the issuer of a crypto-asset to be classified as a CIU, the purpose of the crypto-asset project should not be a general commercial or industrial purpose.</p> <p>61. <i>AIFMD and ESMA AIF Guidelines:</i> An "alternative investment fund", or "AIF", is defined under the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) ("AIFMD") as:</p> <p>(a) a CIU, including investment compartments thereof,</p> <p>(b) which raises capital from a number of investors, with a view to investing it in accordance with,</p> <p>(c) a defined investment policy for the benefit of those investors; and</p> <p>(d) does not require authorisation as a "UCITS" pursuant to Article 5 of Directive 2009/65/EC (the "UCITS Directive").</p> <p>62. In examining whether a crypto-asset could be considered a unit in a CIU (one of the constituent elements of the AIF definition, above) the ESMA MiCAR Guidelines refer to the ESMA's Final Report on Guidelines on key concepts of the AIFMD (ESMA/2013/600) and provide additional guidance.</p> <p>63. In relation to the assessment of whether NOEMON or AGROTES is a "collective investment undertaking", the term "undertaking" should be construed broadly to include any legal form including those constituted under the law of contract, under trust law or under statute or any other legal form.</p>
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		<p>64. In the ESMA AIF Guidelines, ESMA provided that if an undertaking exhibits all of the following characteristics then it is a 'collective investment undertaking' within the meaning of AIFMD:</p> <ul style="list-style-type: none"> (i) the undertaking does not have a general commercial or industrial purpose; (ii) the undertaking pools together capital raised from its investors for the purpose of investment with a view to generating a pooled return for those investors; and (iii) the investors or shareholders of the undertaking - as a collective group - have no day-to-day discretion or control. The fact that one or more but not all of the aforementioned investors or shareholders are granted day-to-day discretion or control should not be taken to show that the undertaking is not a collective investment undertaking. <p><i>General commercial or industrial purpose</i></p> <p>65. ESMA defines "general commercial or industrial purpose" as pursuing a business strategy that includes characteristics such as running predominantly (i) a commercial activity, involving the purchase, sale and/or exchange of goods or commodities and/or the supply of non-financial services or (ii) an industrial activity, involving the production of goods or construction of properties, or (iii) a combination thereof.</p> <p><i>Pooling of Capital to generate a Pooled return</i></p> <p>66. In considering the AIF definition under AIFMD and the ESMA AIF Guidelines on a broader level, a fundamental distinction between an AIF and a product or financial instrument not subject to AIFMD turns on the concept of whether pooling occurs. In that regard, we must consider the concept of "pooling" both in terms of pooling of investments and generation of a "pooled return" which is inherent to constituting a CIU. In order to be an AIF the structure requires the pooling of investors' capital with the intention of generating returns from the pooling of risk.</p> <p>67. ESMA has clarified that a "pooled return" means:</p> <p><i>the return generated by the pooled risk arising from acquiring, holding or selling investment assets - including the activities to optimise or increase the value of these assets - irrespective of whether different returns to investors, such as under a tailored dividend policy, are generated.</i></p> <p>68. In an AIF, investors contribute their capital into a collective pool. This pooled capital is then managed by a fund manager to buy a portfolio of assets, and the return is based on the overall</p>
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		<p>performance of the investments within that pool. This return is then distributed proportionally among all investors in the AIF, based on the size of their investment, or the number of shares/units they own, and the increase or decrease in the net asset value of the AIF over time which reflects the combined performance of the pool of assets within the AIF.</p> <p>69. In the ESMA MiCAR Guidelines, which are more recent than the ESMA AIF Guidelines, it is noted that a crypto-asset which would enable holders to:</p> <ul style="list-style-type: none"> (a) invest in digital investment funds, where holders are entitled to a proportional share of the returns generated by the managed portfolio, without any participation in the governance regarding investment strategies (e.g. no voting rights); and (b) redeem their tokens for a share of the portfolio's value <p>should be considered as a unit in a CIU.</p> <p>Additionally, in order for a crypto-asset to be qualified as a unit in a CIU, it should aim at providing investors with a pooled return, generated by the pooled risk arising from acquiring, holding or selling of the underlying investment assets. These criteria ensure that investors are entitled to a share of profits or losses as a result of their participation.</p> <p><i>No day-to-day discretion or control</i></p> <p>70. ESMA elaborates on the concept of "day-to-day discretion or control" in the ESMA AIF Guidelines, providing that it is a form of direct and on-going power of decision - whether exercised or not - over operational matters relating to the daily management of the undertakings' assets and which extends substantially further than the ordinary exercise of decision or control through voting powers, ability to elect management representatives or auditors or the approval of annual accounts.</p> <p>71. The ESMA MiCAR Guidelines provide that the crypto-asset should not provide day-to-day discretion or control over operational matters relating to the daily management of the assets included in the pool.</p> <p><i>Analysis and Conclusion</i></p> <p>72. We understand that:</p> <ul style="list-style-type: none"> (a) Noemon Tech LTD operates a smart contract that contains the strategic metals including metals customary described as rare earths beneficial ownership ledger. The creation of RARE that reflect beneficial ownership interests in the balance of strategic metals including metals customary described as rare earths
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		<p>held by NFL as bare custodian at Metalock (the owner and operator of a German strategic metals including metals customary described as rare earths processing and storage facility) (the “strategic metals including metals customary described as rare earths Balance”);</p> <p>(b) any capital gains relating to an increase in the price of the strategic metals including metals customary described as rare earths that is comprised in the strategic metals including metals customary described as rare earths Balance held by NFL on behalf of the investors collectively can be crystallised by an investor by selling their share of the strategic metals including metals customary described as rare earths held by NFL to another investor by way of a RARE transaction, or by instructing NFL to deliver the strategic metals including metals customary described as rare earths to a Metlock account of that investor;</p> <p>(c) holders of RARE do not have day-to-day discretion or control over NOEMON or AGROTES. RARE does not provide holders any influence over corporate governance decisions of NOEMON or AGROTES.</p> <p>73. In relation to the pool of assets related to the RARE we understand that:</p> <p>(a) NFL as bare custodian has no discretionary powers to manage the strategic metals including metals customary described as rare earths Balance nor make any strategic management decisions in relation to it;</p> <p>(b) NFL can only act in respect of the strategic metals including metals customary described as rare earths Balance or any portion thereof on express instructions from a holder of Tokens; and</p> <p>(c) a holder of RARE is able at any time able to request to NFL to transfer the legal title to the holder’s portion of the strategic metals including metals customary described as rare earths to them by way of a book-entry transfer at Metlock.</p> <p>74. As stated above, the ESMA MiCAR Guidelines provide that for a crypto-asset to be qualified as a unit in a CIU the project attached to the crypto-asset should involve collectively: (i) the pooling of capital from a number of investors; (ii) 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>75. Having considered the relevant facts in light of the regulatory guidance set out above, we have concluded that:</p>
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		<p>(a) The question of whether the scenario as outlined involves the pooling of capital from a number of investors is open to interpretation, however, there is a reasonable argument is that the investors here do not contribute their capital into a pool to be invested for their collective gain (or loss), but rather a collection of investors wish to invest in the same specific asset (strategic metals including metals customary described as rare earths) and the custodian of the asset (NFL) holds the asset subject to the co-ownership interests of the investors as beneficiaries.</p> <p>(b) The capital of the investors is not invested in accordance with a defined investment policy, but rather the investors purchase a share in a specific asset (strategic metals including metals customary described as rare earths), which is custodied by NFL and NOEMON or AGROTES operates a smart contract ledger which functions as the ownership register. Neither NFL or NOEMON or AGROTES has the authority to manage the asset or make any strategic management decisions in relation to it without instructions from the investors. Accordingly, we consider there is a strong argument that neither NFL nor NOEMON or AGROTES invests capital on behalf of investors in accordance with a defined investment policy.</p> <p>ESMA confirms in the MiCAR Guidance (in the context of a liquid staking service) that if there is no collective management by a third party following a predefined investment policy, such crypto-asset should not typically be considered by national competent authorities and financial market participants as a unit of a CIU.</p> <p>(c) We consider that there is a strong argument that a pooled return is not generated for the benefit of investors. Individual investors can sell their beneficial interest in the underlying asset and may make a profit or a loss in so doing. Alternatively, investors may receive an in specie transfer of the amount of the underlying asset which they beneficially own, subject to certain conditions. Investors are not entitled to receive any payments (dividends, etc.) based on the performance of the underlying assets and have no entitlement to redeem their RARE for a share in the portfolio's value.</p> <p>76. Other relevant points which we have considered are as follows:</p> <p>(a) The RARE project and associated pool does not itself have a commercial or industrial purpose (albeit NOEMON or AGROTES as issuer does). Based on paragraph 60(e), above, therefore, the project could meet this test to be a CIU.</p> <p>(b) We consider that there is a strong argument that the holders of RARE have day-to-day control over the management of the strategic metals including metals customary described as rare earths that they beneficially own.</p>
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		<p>77. Accordingly, we consider that there is a strong argument that the arrangements as outlined do not meet the criteria to qualify RARE as units in a CIU.</p> <p>4. Derivatives</p> <p>78. The relevant categories of derivatives for the purposes of the definition of financial instruments under MiFID include:</p> <p>(a) C4 – 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>(b) C5 – 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>(c) C6 – 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>(d) C7 – 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>(e) C8 – Derivative instruments for the transfer of credit risk.</p> <p>(f) C9 – Financial contracts for differences.</p> <p>(g) C10 – 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 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>
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		<p>79. The ESMA MiCAR Guidelines distinguish between two situations in relation to derivatives and crypto-assets. The first situation, not envisaged by MiCAR, is when crypto-assets serve as an underlying asset for derivatives. The second situation is when crypto-assets themselves can be qualified as derivatives.</p> <p>80. In relation to the first situation as outlined by ESMA the possibility for crypto-assets to be eligible underlying assets in derivative contracts should be considered. For the purposes of RARE, we understand there is no element of a prearranged sale agreement with a contract establishing a future commitment and deriving its value from the underlying cryptocurrency's (i.e. RARE's) price.</p> <p>81. In relation to the second situation as outlined in the ESMA MiCAR Guidelines, consideration should be given as to whether:</p> <ul style="list-style-type: none"> (a) the rights of the cryptoasset holders are contingent upon a contract based on a future commitment (which can be either a forward, an option, a swap or a future), creating a time-lag between the conclusion and performance of the obligations under such contract; (b) the crypto-asset's value is derived from that of an underlying asset; and (c) follows the settlement modalities as referred to in Annex I Section C, points (4)-(10) of MiFID. <p><i>Conclusion</i></p> <p>82. We understand RARE is not a derivative contract, rather they merely represent a holder's beneficial interest in strategic metals including metals customary described as rare earths. As a result, we are of the view that RARE is not comparable to a derivative for the purposes of MiFID and have not examined the categories outlined above further.</p> <p>5. Emissions Allowances</p> <p>83. Emissions allowances under MiFID are defined as emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).</p> <p>84. The ESMA MiCAR Guidelines state that for a crypto-asset to be classified as an emission allowance, it should represent a right to emit a certain quantity of greenhouse gases and be recognised for compliance with the EU Emissions Trading Scheme. The crypto-asset's</p>
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		<p>capability to be exchanged, managed and used like conventional emission allowances within existing carbon trading frameworks should also be assessed. In order to be considered as an emission allowance, the crypto-asset should confer a clear right regarding emissions, such as the right to emit a set quantity of greenhouse gases or serve as a recognised offset for such emissions.</p> <p><i>Conclusion</i></p> <p>85. We understand that RARE does not fall within the definition of an emissions allowance for the purposes of MiFID as it does not represent a right to emit emissions.</p>
	<ul style="list-style-type: none"> • Deposits, including structured deposits, as referred to in Article 2(4), point (b), of MiCAR 	<p>Source of definition(s) (EU and/or national law as applicable):</p> <ul style="list-style-type: none"> • Deposit Guarantee Schemes Directive (Directive 2014/49/EU) • European Union (Deposit Guarantee Schemes) Regulations 2015, as amended • Markets in Financial Instruments Directive (Directive 2014/65/EU) • Capital Requirements Directive and Regulation (Directive 2013/36/EU and Regulation (EU) No 575/2013) • Central Bank Act, 1971 <p>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</p> <ul style="list-style-type: none"> • Case C-366/97 of 11 February 1999 • Case C-427/22 of 16 November 2023 • Case C-661/22 of 22 February 2024 <p>Regulatory measures or guidance to which reference is made in the explanation (including the Guidelines adopted pursuant to Article 2(5) of MiCAR):</p> <ul style="list-style-type: none"> • EBA Report on Tokenised Deposits (December 2024 EBA/REP/2024/24)

		<ul style="list-style-type: none"> • EBA Opinion on matters relating to the perimeter of credit institutions, November 2014 (EBA/Op/2014/12) • EBA Opinion on elements of the definition of credit institution under Article 4(1), point 1, letter (a) of Regulation (EU) No 575/2013 and on aspects of the scope of the authorisation, September 2020 (EBA/Op/2014/12) <p>Explanation:</p> <p>86. Deposits under MiCAR are defined by reference to Article 2(1), point (3) of the Deposit Guarantee Schemes Directive (Directive 2014/49/EU) ("DGSD"). DGSD is transposed into Irish law by the European Union (Deposit Guarantee Schemes) Regulations 2015, as amended (the "Irish DGSD Regulations"). The Irish DGSD Regulations define deposits in the same manner as set out in DGSD:</p> <p style="padding-left: 40px;"><i>"deposit" means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:</i></p> <p style="padding-left: 80px;"><i>(a) its existence can only be proven by a financial instrument as defined in Article 4(17) of Directive 2004/39/EC of the European Parliament and of the Council, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014;</i></p> <p style="padding-left: 80px;"><i>(b) its principal is not repayable at par;</i></p> <p style="padding-left: 80px;"><i>(c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party."</i></p> <p>87. Furthermore, MiCAR defines structured deposits² by reference to Article 4(1), point (43) of MiFID as follows:</p> <p style="padding-left: 40px;"><i>"a deposit as defined in point (3) of Article 2(1) of Directive 2014/49/EU of the European Parliament and of the Council, which is fully repayable at maturity on terms under which</i></p>
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² Noting the EBA's Report on Structured Deposits – EBA/REP/2024/17 from July 2024.

		<p><i>interest or a premium will be paid or is at risk, according to a formula involving factors such as:</i></p> <ul style="list-style-type: none"> <i>(a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;</i> <i>(b) a financial instrument or combination of financial instruments;</i> <i>(c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or</i> <i>(d) a foreign exchange rate or combination of foreign exchange rates."</i> <p>88. In the context of delineating tokenised deposits from e-money tokens issued by credit institutions, the EBA Report on Tokenised Deposits (December 2024 EBA/REP/2024/24) (the "EBA Report") identified certain characteristics of tokenised account-based (i.e. non-bearer) deposits (see Table 2 of the EBA Report), including:</p> <ul style="list-style-type: none"> (a) there is a claim against the balance-sheet of the credit institution; (b) there is a continuous contractual relationship between the credit institution and the client; (c) the value is the nominal value of the official currency; (d) the tokenised deposit is repayable/redeemable at par value; (e) there is an ability to pay interest; and (f) the tokenised deposits would not be transferable on a secondary market. <p>89. The acceptance of deposits and other repayable funds from the public characterises the activity of "credit institutions" in the EU which is regulated under the Capital Requirements Directive and Regulation (Directive 2013/36/EU and Regulation (EU) No 575/2013) ("CRD" and "CRR").</p> <p>90. In particular, Article 8 of CRD provides that EU Member States must require credit institutions to obtain authorisation before commencing their activities. 'Credit institution' is defined in point</p>
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		<p>(1)(a) of Article 4(1) of the CRR as “<i>an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account</i>”.³</p> <p>91. Article 9(1) of CRD requires EU Member States to prohibit persons or undertakings that are not credit institutions from carrying out the business of taking deposits or other repayable funds from the public.</p> <p>92. The restrictions noted above in Article 8 and 9(1) of CRD are transposed into Irish law in Section 7(1) of the Central Bank Act, 1971 which provides:</p> <p style="text-align: center;"><i>"Subject to the provisions of this Act, a person, other than the Bank, shall not, in or outside the State, carry on banking business or hold himself out or represent himself as a banker or as carrying on banking business or accept deposits or other repayable funds from the public, unless he is the holder of a licence or authorisation under section 9A."</i></p> <p>93. Subject to certain exemptions, banking business means: "<i>in relation to a person, means any business that consists of or includes -</i></p> <p style="padding-left: 40px;">(a) <i>receiving money on the person's own account from members of the public either on deposit or as repayable funds, and</i></p> <p style="padding-left: 40px;">(b) <i>the granting of credits on own account..."</i></p> <p>94. The term "deposit" for the purposes of the Central Bank Acts, including the Central Bank Act, 1971, means: "<i>a sum of money accepted on terms under which it is repayable with or without interest whether on demand or on notice or at a fixed or determinable future date</i>".</p> <p>95. The terms ‘deposit’ and ‘other repayable funds’ are not defined for the purposes of the CRD/CRR. The EBA has examined the concepts in its <i>Opinion on matters relating to the perimeter of credit institutions, November 2014</i> (EBA/Op/2014/12) ("EBA 2014 Opinion") and in its <i>Opinion on elements of the definition of credit institution under Article 4(1), point 1, letter (a) of Regulation (EU) No 575/2013 and on aspects of the scope of the authorisation, September 2020</i> (EBA/Op/2014/12) ("EBA 2020 Opinion"). In the Opinions, the EBA has noted that a degree of variation exists between Member States as to the interpretation of these terms.</p>
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³ For the purposes of this memorandum, we have not considered the extended definition of credit institution in Article 4(1)(1)(b) of CRR, as it is not relevant to the deposit-taking concept discussed here.

		<p>96. In the EBA 2014 Opinion, the EBA suggested that consideration be given to including a definition of repayable funds in the CRD/CRR, stating that such a definition:</p> <p style="padding-left: 40px;"><i>"...could include the following core components: a sum of money; repayable on demand or at a contractually agreed point in time (but otherwise repayment of the principal is unconditional) and with or without interest or a premium; received from third parties [legal or natural persons]; and received in the course of carrying on the activity by way of business..."</i></p> <p>subject to certain exemptions.</p> <p>97. In Case C-366/97 of 11 February 1999, criminal proceedings against Romanelli, the European Court of Justice ruled:</p> <p style="padding-left: 40px;"><i>"The term 'other repayable funds' in Article 3 of the Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC refers not only to financial instruments which possess the intrinsic characteristic of repayability, but also to those which, although not possessing that characteristic, are the subject of a contractual agreement to repay the funds paid."</i></p> <p>98. In Case C-427/22 of 16 November 2023, the European Court of Justice ruled:</p> <p style="padding-left: 40px;"><i>"Point 1(a) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, as amended by Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019,</i></p> <p style="padding-left: 40px;"><i>must be interpreted as meaning that an undertaking falls within the concept of 'credit institution', within the meaning of point 1 of that Article 4(1), only where its activity consists, cumulatively, of taking deposits or other repayable funds from the public and of granting credits for its own account, it being specified that those deposits or other funds taken from the public are intended for granting credits, although it cannot be ruled out that credits may also be granted from funds that come from other sources."</i></p> <p>99. In Case C-661/22 of 22 February 2024, the European Court of Justice ruled:</p> <p style="padding-left: 40px;"><i>"Article 4(3) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives</i></p>
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		<p><i>2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, and Article 2(2) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC,</i></p> <p><i>must be interpreted as meaning that the activity of a payment institution which consists in receiving funds from a user of a payment service, where such funds are not immediately accompanied by a payment order and therefore remain available on a payment account, within the meaning of Article 4(12) of Directive 2015/2366, operated by that institution, constitutes a payment service provided by that payment institution, within the meaning of Article 4(3) of Directive 2015/2366, and not a transaction consisting in the issuance of electronic money, within the meaning of Article 2(2) of Directive 2009/110."</i></p> <p>100. Earlier in the judgement it is stated that: "It follows that, in order to avoid the reclassification of acts consisting in the receipt of funds as the business of taking deposits or other repayable funds, the accounts to which such funds are credited must, in accordance with Article 4(12) of Directive 2015/2366, be used exclusively for the execution of payment transactions."</p> <p><i>Conclusion</i></p> <p>101. NOEMON or AGROTES has no obligation to repay any funds it receives for the issuance of RARE. As such, RARE does not meet any of the above definitions of deposits or repayable funds or of structured deposits.</p>
	<ul style="list-style-type: none"> • Funds as referred to in Article 2(4), point (c), of MiCAR 	<p>Source of definition(s) (EU and/or national law as applicable):</p> <ul style="list-style-type: none"> • Payment Services Directive (Directive (EU) 2015/2366) • European Union (Payment Services) Regulations 2018, as amended • Electronic Money Directive (Directive 2009/110/EC) • European Communities (Electronic Money) Regulations 2011, as amended <p>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</p>

		<ul style="list-style-type: none"> • N/A <p>Regulatory measures or guidance to which reference is made in the explanation (including the Guidelines adopted pursuant to Article 2(5) of MiCAR):</p> <ul style="list-style-type: none"> • EBA Report with advice for the European Commission on crypto-assets dated 9 January 2019 <p>Explanation:</p> <p>102. Article 2(4)(c) of MiCAR provides that MiCAR does not apply to crypto-assets that qualify as "<i>funds, except if they qualify as e-money tokens</i>". Funds are defined under MiCAR by reference to Article 4, point (25), of the Payment Services Directive (Directive (EU) 2015/2366) ("PSD2"). PSD2 is transposed into Irish law by the European Union (Payment Services) Regulations 2018, as amended (the "PSR"). The PSR defines funds in the same manner as set out in PSD2.</p> <p>103. Furthermore, Article 4(25) of PSD2 defines funds as "<i>banknotes and coins, scriptural money or electronic money as defined Article 2(2) of the Electronic Money Directive (Directive 2009/110/EC) ("EMD2")</i>". EMD2 is transposed into Irish law by the European Communities (Electronic Money) Regulations 2011, as amended (the "EMR"). The EMR defines funds in the same manner as set out in EMD2.</p> <p>104. Article 2(2) of EMD2 defines "electronic money" as:</p> <p style="padding-left: 40px;"><i>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.</i></p> <p>105. The EBA's Report with advice for the European Commission on crypto-assets dated 9 January 2019 ("EBA Report on Crypto-Assets") states at paragraphs 25 and 26 that:</p> <p style="padding-left: 40px;"><i>"Crypto-assets are not banknotes, coins or scriptural money. For this reason crypto-assets do not fall within the definition of 'funds' set out in point (25) of Article 4 of the PSD2 unless they qualify as 'electronic money' for the purposes of the EMD2."</i></p> <p><i>Conclusion</i></p>
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		<p>106. Based on the above definitions and report, we understand RARE will not fall within the definition of 'funds' under PSD2 and MiCAR for the following reasons:</p> <p>(a) RARE is not a banknote, coin or scriptural money;</p> <p>(b) RARE is not e-money as it is not 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.</p>
<p>Brief explanation, unless more detailed assessment is relevant, that the cryptoasset is not any of the following:</p>	<ul style="list-style-type: none"> • Securitisation positions as referred to in Article 2(4), point (d), of MiCAR 	<p>107. Article 2(4)(d) of MiCAR provides that MiCAR does not apply to crypto-assets that qualify as securitisation positions in the context of a securitisation as defined in Article 2, point (1), of Regulation (EU) 2017/2402 ("Securitisation Regulation"). Securitisation is defined within the Securitisation Regulation as a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranced, 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> <p>108. A securitisation position is defined under Article 2(19) of the Securitisation Regulations as an exposure to a securitisation.</p> <p>109. We understand RARE will not fall into the category of securitisation positions as defined under the Securitisation Regulation for the purposes of MiCAR as it does not represent an exposure to a securitisation.</p>
	<ul style="list-style-type: none"> • Non-life or life insurance products or reinsurance or retrocession 	<p>110. Article 2(4)(e) of MiCAR provides that MiCAR does not apply to crypto-assets that qualify as non-life or life insurance products falling within the classes of insurance listed in Annexes I and II to Directive 2009/138/EC of the European Parliament and of the Council ("Solvency II Directive") or reinsurance and retrocession contracts referred to in that Directive.</p> <p>111. Annexes I and II of the Solvency II Directive set out a number of classes of non-life and life insurance. Insurance contracts are not defined under the Solvency II Directive. However,</p>

	<p>contracts as referred to in Article 2(4), point (e), of MiCAR</p>	<p>insurance is, broadly, a transfer of the economic consequences of a materialisation of risk in return for a payment of premium – with Member States having different definitions of an insurance contract as set out in the Final Report of the Commission Expert Group on European Insurance Contract Law.</p> <p>112. The Solvency II Directive defines "reinsurance" as one of the following: "<i>(a)the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking; ... (c)the provision of cover by a reinsurance undertaking to an institution that falls within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council [Directive (EU) 2016/2341 of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37);]</i>" Retrocession contracts are not defined in Solvency II Directive, but we understand to mean a contract whereby a portion of risk is transferred from one reinsurer to another.</p> <p>113. We understand RARE will not fall into the category of non-life or life insurance products as defined under the Solvency II Directive for the purposes of MiCAR as it does not involve a transfer of economic consequences of a materialisation of risk in relation to any of the relevant categories. RARE also does not amount to a reinsurance or retrocession contract.</p>
	<ul style="list-style-type: none"> • Pension product as referred to in Article 2(4), point (f), of MiCAR 	<p>114. Article 2(4)(f) of MiCAR provides that MiCAR does not apply to crypto-assets that qualify as 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.</p> <p>115. The Pensions Act 1990, as amended, is the governing legislation for pension products in Ireland.</p> <p>116. We understand RARE will not fall into the category of pension products within the scope of the Irish Pensions Act 1990 for the purposes of MiCAR and does not have the primary purpose of providing the investor with an income in retirement and that entitle the investor to certain benefits.</p>
	<ul style="list-style-type: none"> • Officially recognised occupational pension 	<p>117. Article 2(4)(g) of MiCAR provides that MiCAR does not apply to crypto-assets that qualify as officially recognised occupational pension schemes falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council ("IORP II Directive") or Solvency Directive. The IORP II Directive defines:</p>

	<p>schemes as referred to in Article 2(4), point (g), of MiCAR</p>	<p>(a) "pension scheme" as a contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted and under which conditions; and</p> <p>(b) "institution for occupational retirement provision" or "IORP" as an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:</p> <p>(i) individually or collectively between the employer(s) and the employee(s) or their respective representatives, or</p> <p>(ii) with self-employed persons, individually or collectively, in compliance with the law of the home and host Member States,</p> <p>and which carries out activities directly arising therefrom.</p> <p>118. IORP II Directive is transposed into Irish law by the European Union (Occupational Pension Schemes) Regulations 2021 (the "OPS Regulations"). The OPS Regulations defines pension schemes and IORP's in the same manner as set out in IORP II Directive.</p> <p>119. We understand RARE will not fall into the category of an officially recognised occupational pension scheme as defined under the IORP II Directive for the purposes of MiCAR.</p>
	<ul style="list-style-type: none"> • Individual pension products as referred to in Article 2(4), point (h), of MiCAR 	<p>120. Article 2(4)(h) of MiCAR provides that MiCAR does not apply to crypto-assets that qualify as individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.</p> <p>121. The Automatic Enrolment Retirement Savings System Act 2024 ("AE Act") is the governing legislation in Ireland for individual pension products where a financial contribution from the employer is required and where neither the employer nor the employee has a choice as to the pension product or provider.</p> <p>122. We understand RARE will not fall into the category of individual pension products as required by the AE Act for the purposes of MiCAR.</p>

	<ul style="list-style-type: none"> • Pan-European Pension Products as referred to in Article 2(4), point (i), of MiCAR 	<p>123. Article 2(4)(i) of MiCAR provides that MiCAR does not apply to crypto-assets that qualify as a pan-European Personal Pension Product as defined in Article 2, point (2), of Regulation (EU) 2019/1238 of the European Parliament and of the Council ("PEPP Regulation").</p> <p>124. PEPP or pan-European Personal Pension Product is defined under the PEPP Regulations as a long-term savings personal pension product, which is provided by a financial undertaking eligible according to Article 6(1) 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 this Regulation.</p> <p>125. We understand RARE will not fall into the category of a pan-European Personal Pension Product as defined under the PEPP Regulation for the purposes of MiCAR as it is not a long term savings product and it is not provided by an eligible financial undertaking.</p>
	<ul style="list-style-type: none"> • Social security schemes as referred to in Article 2(4), point (j), of MiCAR 	<p>126. Article 2(4)(j) of MiCAR provides that MiCAR does not apply to crypto-assets that qualify as social security schemes covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council ("EU Social Security Coordination Regulations").</p> <p>127. The Security Coordination Regulations provide for all the traditional branches of social security, namely: sickness, maternity and paternity, old-age pensions, pre-retirement and invalidity pensions, survivors' benefits and death grants, unemployment, family benefits, and accidents at work and occupational illness.</p> <p>128. We understand RARE will not fall into the category of a social security scheme as required by the Security Coordination Regulations for the purposes of MiCAR.</p>

**ANNEX: INFORMATION ABOUT OFFERORS, PERSONS SEEKING ADMISSION TO TRADING,
OPERATORS OF TRADING PLATFORMS**

Name of the offeror(s), person(s) seeking admission to trading, or operator(s) of trading platforms, on whose behalf this explanation is issued	Regulated status (if any) of the offeror(s), person(s) seeking admission to trading, or operator(s) (authorisation or registration to carry out financial services activity/ies)	LEI (if applicable)	EEA/Member State of establishment, branch or registered office (as applicable)
offeror: NOEMON TECH LIMITED	REGULATED	254900JFRZG8P67ZH174	Cyprus