

# **AGENCY AGREEMENT**

**26 January 2022**

**FIDELITY EXCHANGE TRADED PRODUCTS GMBH**

as Issuer

and

**THE BANK OF NEW YORK MELLON, LONDON BRANCH**

as Paying Agent

and

**THE BANK OF NEW YORK MELLON, FRANKFURT BRANCH**

as German Paying Agent

**PROGRAMME FOR THE ISSUANCE OF BONDS SECURED BY  
CRYPTOCURRENCIES**

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**THIS AGENCY AGREEMENT** (the “**Agreement**”) is made on 26 January 2022 BETWEEN

- (1) **FIDELITY EXCHANGE TRADED PRODUCTS GMBH** as issuer (the “**Issuer**”);
- (2) **THE BANK OF NEW YORK MELLON, LONDON BRANCH** as paying agent (the “**Paying Agent**”); and
- (3) **THE BANK OF NEW YORK MELLON, FRANKFURT BRANCH** as German paying agent (together with the Paying Agent, the “**Paying Agents**”).

The Issuer and the Paying Agents are hereinafter also referred to as the “**Parties**” and each of them as a “**Party**”.

#### PREAMBLE

- (A) The Issuer has established a programme (the “**Programme**”) for the issuance of Bonds secured by Bitcoin and Ether (each a “**Cryptocurrency**” and together, the “**Cryptocurrencies**”) or by a basket (each a “**Basket**”) consisting of various Cryptocurrencies (the “**Bonds**” and, each a “**Bond**”). The Bonds will not bear interest. The obligations under the Bonds constitute direct, unsubordinated and secured obligations of the Issuer ranking *pari passu* among themselves and Secured Exercise Obligations (as defined in the Terms and Conditions) and Secured Settlement Obligations (as defined in the Terms and Conditions). The Bonds are freely transferable. The Bonds do not have a fixed maturity date. However, each holder of a Bond (the “**Bondholder**”) may terminate its Bonds against payment of the Cryptocurrency Entitlement (as defined below) or against payment of Euro, if a Bondholder is prevented to receive the relevant underlying Cryptocurrency or any or all of the underlying Cryptocurrencies comprising the Basket due to legal or regulatory reasons. If the Bonds are redeemed in Euro, the redemption amount will be equal to the proceeds of sale of the Cryptocurrency Entitlement using the Cryptocurrency Divestment Procedure as set out in the conditions applicable to each issue of Bonds (each a “**Series of Bonds**”) as set out in the Base Prospectus and as completed by the relevant Final Terms (as defined below).
- (B) Each Series of Bonds will be offered by authorised participants to institutional and retail investors in compliance with applicable selling restrictions (the “**Offering**”). The Bonds issued under the Programme have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended, (the “**Securities Act**”). The Bonds are being offered outside the United States of America (the “**United States**”) in accordance with Regulation S under the Securities Act (“**Regulation S**”), and may not be offered, sold or delivered within the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. The Bonds will be deposited with the Clearing System (as defined below). The Paying Agent will neither be responsible for the placement nor be obliged to subscribe for the Bonds.
- (C) In relation to each Series of Bonds, application may be made to the Frankfurt Stock Exchange (the “**FSE**”) for the Bonds to be admitted to trading on the regulated market (*regulierter Markt*) of the FSE as well as to any further stock exchange in the European Economic Area and Switzerland, in each case as specified in the relevant Final Terms (the “**Listing**”).
- (D) The Base Prospectus has been approved by the *Bundesanstalt für Finanzdienstleistungsaufsicht* (the “**BaFin**”) in its capacity as competent authority under the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 (the “**Prospectus Regulation**”). The Issuer has requested BaFin to provide the competent authority in Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden with a certificate of approval (notification) attesting that the Base Prospectus has been drawn up in accordance with the Prospectus Regulation.

- (E) The Parties wish to enter into the Agreement according to the terms set out herein.

## **1 DEFINITIONS AND INTERPRETATION**

- 1.1 Unless otherwise defined herein or the context requires otherwise, capitalised terms used in this Agreement (including its recitals) have the meanings ascribed to them in the Terms and Conditions (as defined below).

- 1.2 In this Agreement:

**“Applicable Law”** means any law or regulation.

**“Authority”** means any competent regulatory, prosecuting, Tax or governmental authority in any jurisdiction.

**“Base Prospectus”** means the base prospectus dated 27 January 2022 prepared and published in connection with the Programme as revised, supplemented, amended or updated from time to time, including, in relation to each Series of Bonds, the Terms and Conditions and the Final Terms relating to such Series of Bonds, and such other documents as from time to time incorporated therein by reference.

**“Business Day”** means a day (other than a Saturday, a Sunday or a public holiday) on which (i) the Clearing System, (ii) the banks in Frankfurt am Main and London and (iii) the Trans-European Automated Real-time Gross settlement Express Transfer system 2 (TARGET2), or any successor system thereto settle payments.

**“Call Redemption Price”** means for the purpose of this Agreement an amount in EUR to be calculated by the Issuer in accordance with § 4(2) of the Terms and Conditions (as defined below); for the avoidance of doubt, the Paying Agent will not forward any cryptocurrencies as Mandatory Redemption Price.

**“Clearing System”** means Clearstream Frankfurt, Clearstream, Luxembourg and Euroclear.

**“Clearstream, Frankfurt”** means Clearstream Banking AG, Frankfurt am Main.

**“Clearstream, Luxembourg”** or **“CBL”** means Clearstream Banking S.A., 42 Avenue JF Kennedy, 1855 Luxembourg, Grand Duchy of Luxembourg.

**“Code”** means the U.S. Internal Revenue Code of 1986, as amended.

**“Conditions”** means in relation to any Series of Bonds, the terms and conditions applicable to such Series of Bonds as set out in the Base Prospectus and as completed in the relevant Final Terms. The Conditions may be determined by replicating the relevant provisions set forth in the Base Prospectus as option I or option II and completing the relevant placeholders, in which case the replicated and completed provisions of option I or option II alone shall constitute the Conditions applicable to any Series of Bonds.

**“Cryptocurrency Entitlement”** means, as at any Business Day, the Bondholder’s claim against the Issuer in respect of each Bond, expressed as the number of the units of the Cryptocurrency or Cryptocurrencies comprising the Basket, as the case may be, per Bond, and calculated by the Issuer in its sole discretion in accordance with the formula pursuant to § 1(8) of the Terms and Conditions (as defined below).

**“Electronic Means”** shall mean the following communications methods: (i) non-secure methods of transmission or communication such as e-mail and facsimile transmission and (ii) secure electronic transmission containing applicable authorisation codes, passwords and/or authentication keys issued by the Paying Agent, or another method or system specified by the Paying Agent as available for use in connection with its services hereunder.

“**Euroclear**” means Euroclear Bank SA/NV, Boulevard du Roi Albert II, 1210 Brussels, Belgium.

“**FATCA Withholding**” means any withholding or deduction required pursuant to an agreement described in section 1471(b) of the Code, or otherwise imposed pursuant to sections 1471 through 1474 of the Code, any regulations or agreements thereunder, and official interpretations thereof, or any law implementing an intergovernmental approach thereto.

“**Final Terms**” means the final terms issued in relation to each Series of Bonds (substantially in the form set out in the Base Prospectus) and giving details of that Series of Bonds.

“**Payment Date**” means each date on which any payment in respect of any Series of Bonds falls due.

“**Sanctions**” shall have the meaning given to such term in Clause 5.5.

“**Tax**” means any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of any Authority having power to tax.

“**Terms and Conditions**” means the terms and conditions of the Bonds substantially in the form set out in the Base Prospectus as option I or option II and any reference to a particular Section (§) of the Terms and Conditions will be to that Section (§) of the Terms and Conditions.

“**Tranche**” means Bonds of the same Series to be issued under the Programme which are identical in all respects.

## **2 APPOINTMENT, ADDITIONAL PAYING AGENT**

- 2.1 The Issuer hereby appoints The Bank of New York Mellon, London Branch as Paying Agent in relation to any Bonds to be issued under the Programme and The Bank of New York Mellon, London Branch accepts such appointment. Further, the Issuer hereby appoints The Bank of New York Mellon, Frankfurt Branch as German Paying Agent in relation to any Bonds to be issued under the Programme and The Bank of New York Mellon, Frankfurt Branch accepts such appointment.
- 2.2 The Issuer is authorised to name an additional paying agent (the “**Additional Paying Agent**”) for single issues of Bonds. The appointment of any such Additional Paying Agent shall not affect the appointment of the Paying Agent.

## **3 FORM AND DELIVERY OF BONDS**

- 3.1 In connection with each Tranche of Bonds a global note (a “**Global Note**”) shall be issued. Such Global Note shall be in substantially the form set out in Appendix B and shall be executed by or on behalf of the Issuer, authenticated by the Paying Agent.
- 3.2 Bonds belonging to the same Series shall have identical Conditions. The wording of the Conditions will be attached to the relevant Global Note.
- 3.3 The Issuer shall procure that a sufficient quantity of duly executed but unauthenticated Global Notes shall at all times be available to the Paying Agent for the purpose of issuing Bonds hereunder. With respect to the issue of Bonds to be cleared via Clearstream, Frankfurt, the Issuer shall procure that the Paying Agent receives a duly executed but unauthenticated Global Note by 2.00 p.m. CET on the third Business Day before the Issue Date for onwards delivery to Clearstream, Frankfurt.
- 3.4 Except as provided below, the Issuer shall notify the Paying Agent of the details of any Bonds to be issued by it pursuant to this Agreement as follows:

- (a) not later than 4.00 p.m. CET on the fifth Business Day before the Issue Date if the Global Note shall be deposited with Clearstream, Frankfurt; or
- (b) not later than 3.00 p.m. CET on the second Business Day before the Issuer date if the Global Note shall be deposited with a common depository for CBL and Euroclear; or
- (c) provided that settlement is practicable in view of the deadlines of the relevant Clearing System applicable in respect of the relevant currency and the relevant Global Note has been delivered to the relevant Clearing System, not later than 10.00 a.m. CET on the Issue Date if same day settlement is agreed.

The settlement procedures which apply to issues of Global Notes to be deposited with a common depository for CBL and Euroclear are set forth in the timetable set out in Appendix A to this Agreement. In the case of Bonds denominated in a currency other than in Euros, Pounds Sterling, U.S. Dollars or Swiss Francs, settlement procedures have to be agreed with the Paying Agent prior to the issuance of such Bonds.

- 3.5 The Issuer will notify the Paying Agent at the latest at the times and dates set out in sub-clause 3.4 by delivering by fax or electronic or any other means to the Paying Agent a confirmation duly executed on behalf of the Issuer and setting forth the details of the relevant Bonds (the “**Confirmation**”). Such Confirmation shall be in any other form mutually agreed between the Issuer and the Paying Agent and shall include an instruction to the Paying Agent to execute the Global Notes on behalf of the Issuer (if applicable). If applicable, the Paying Agent shall thereupon complete the Global Note by inserting on the Global Note the details notified to it by the Issuer, attaching to the Global Note the Conditions of the relevant Series of Bonds, executing (if so agreed between the Issuer and the Paying Agent) the Global Note and authenticating the Global Note. Otherwise, the Paying Agent shall, upon receipt of the completed Global Note by the Issuer, authenticate the Global Note and cause it to be delivered to the relevant Clearing System. The Paying Agent shall send a copy of the completed Global Note to the Issuer by fax or electronic means not later than one Business Day before the Issue Date or, in case of an issuance in accordance with sub-clause 3.4(b), on the Issue Date. The Issuer shall inform the Paying Agent if the Global Note shall be deposited with Clearstream, Frankfurt or with a common safekeeper for CBL and Euroclear.
- 3.6 Upon instruction of the Issuer, the Paying Agent shall instruct the relevant Clearing System to deliver the Bonds on the Issue Date to the account specified by the Issuer.
- 3.7 If the Issuer has to replace a Global Note, the Paying Agent shall take care of this replacement at the expense of the Issuer, unless the replacement was necessary due to gross negligent or wilful misconduct of the Paying Agent. In this case, the Paying Agent shall carry the cost of replacement itself.
- 3.8 Upon request of the Issuer, the Paying Agent shall inform the Issuer about the current total outstanding amount under the Programme.
- 3.9 The Paying Agent shall only be obliged to perform the duties expressly set out in this Agreement and the terms and conditions of the relevant Bonds and shall not have any implied duties.

#### **4 PAYMENTS TO THE PAYING AGENT**

[redacted]

#### **5 PAYMENTS BY THE PAYING AGENT**

[redacted]

## **6 PUBLICATIONS**

6.1 Upon request by the Issuer, the Paying Agent shall publish all notices to be made pursuant to this Agreement and the terms and conditions of any Bonds. *[redacted]*

6.2 *Subsq. [redacted]*

## **7 CUSTODY, CANCELLATION AND DESTRUCTION OF GLOBAL NOTES**

*[redacted]*

## **8 COMMISSIONS, FEES AND EXPENSES**

*[redacted]*

## **9 LIABILITY OF THE PAYING AGENT**

*[redacted]*

## **10 INDEMNITIES**

*[redacted]*

## **11 SEVERABILITY AND PARTIAL INVALIDITY**

Should any provision of this Agreement be or become invalid, in whole or in part, the other provisions of this Agreement shall remain in force. Any invalid provision shall be deemed substituted by a valid provision which accomplishes as far as legally possible the economic purposes of the invalid provision. The same applies to any gaps requiring to be filled.

## **12 NOTICES AND COMMUNICATIONS**

*[redacted]*

## **13 RESIGNATION AND TERMINATION**

13.1 The Paying Agent may resign its appointment hereunder and in relation to any Series of Bonds at any time by giving to the Issuer, and the Issuer may terminate the appointment of the Paying Agent hereunder and in relation to any Series of Bonds at any time by giving to the Paying Agent, at least 45 Business Days' notice to that effect, provided that no such resignation or termination shall take effect until a successor paying agent has been appointed. Following such resignation or termination, as the case may be, the Issuer shall appoint another reputable financial institution as successor paying agent, whereupon the Issuer and the successor paying agent shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form *mutatis mutandis* of this Agreement.

13.2 If the Paying Agent gives notice of its resignation in accordance with sub-clause 13.1 and by the tenth (10<sup>th</sup>) Business Day before the expiration of such notice such successor paying agent has not been appointed by the Issuer, the Paying Agent may itself appoint as its successor any reputable financial institution in the name and for the account of the Issuer. Immediately following the appointment, the Paying Agent shall give notice of such appointment to the Issuer, whereupon the Issuer and the successor paying agent shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form *mutatis mutandis* of this Agreement. The appointment of any Paying Agent with

regard to Bonds which are still outstanding at the time of resignation or termination, as the case may be, is not affected.

- 13.3 The Issuer shall notify the holders of the Bonds of any such resignation or termination, as the case may be, in accordance with the terms and conditions applicable to the relevant Bonds. The Parties agree that the Paying Agent shall bear no costs as a result of or in connection with a resignation by or replacement of the Paying Agent or a termination of this Agreement.

#### **14 TAX AND INFORMATION REPORTING**

[redacted]

#### **15 BUSINESS RELATIONSHIPS**

[redacted]

#### **16 MISCELLANEOUS**

- 16.1 In acting hereunder and in connection with the Bonds, the Paying Agent shall act solely as agent of the Issuer. It will not thereby assume any obligations towards or relationship of agency or trust for any Bondholders.
- 16.2 No provision herein shall require the Paying Agent to do anything which may be illegal pursuant to any law applicable to the Paying Agent and the Paying Agent may assume, and shall not be under any obligation to verify or ascertain, that the Issuer is duly performing and complying with its respective obligations, duties and requirements under any Applicable Law. The Paying Agent shall be released from any obligation to take any action hereunder which it reasonably expects will result in any expense or liability to it, the payment of which is not, in its opinion, assured to it.
- 16.3 The Paying Agent assume that the terms of each Bond as issued are correct and refers any question relating to the ownership of any Global Note to the Issuer for determination by the Issuer and rely upon any determination so made.
- 16.4 *Subsq.* [redacted]

#### **17 GOVERNING LAW AND PLACE OF JURISDICTION**

- 17.1 This Agreement and any non-contractual obligations arising out of, or in connection with, this Agreement shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany without regard to its conflict of laws rules.
- 17.2 The courts in Frankfurt, Federal Republic of Germany shall have exclusive jurisdiction for any action or other legal proceedings arising out of or in connection with this Agreement.

#### **18 APPENDIX AND COUNTERPARTS**

- 18.1 This Agreement may be signed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement and any party may enter into this Agreement by executing a counterpart.

**IN WITNESS WHEREOF** the parties hereto have signed this Agreement as of the date first above written.



## APPENDIX A

[*redacted*]

## APPENDIX B

### FORM OF GLOBAL NOTE

Serien Nr. [●]

Globalurkunde Nr. [●]

ISIN [●]

[WKN [●]]

[Common Code [●]]

[Sonstige Wertpapier-Kenn-Nr. [●]]

The Bonds covered hereby have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "**Securities Act**") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons. Terms used above have the meanings given to them by Regulation S under the Securities Act.

[●]

Hamburg, Bundesrepublik Deutschland

Globalurkunde

über

Bis zu **[Gesamtanzahl der zu emittierenden Schuldverschreibungen]** mit **[zugrunde liegende Kryptowährung]** besicherte Schuldverschreibungen ohne festgelegte Laufzeit.

Diese Globalurkunde verbrieft eine ordnungsgemäß genehmigte Emission von Schuldverschreibungen (die "**Schuldverschreibungen**") der [●] (die "**Emittentin**"). Bezugnahmen in dieser Globalurkunde auf die "**Bedingungen**" verstehen sich auf die dieser Globalurkunde als Anhang A beigefügten Emissionsbedingungen. Die Bedingungen sind Teil dieser Globalurkunde. Die in den Bedingungen definierten Begriffe haben, soweit hierin verwendet, in dieser Globalurkunde die gleiche Bedeutung.

[Die Gesamtanzahl der durch diese Globalurkunde verbrieften Schuldverschreibungen entspricht der jeweils in den Registern beider ICSDs eingetragenen Gesamtanzahl.]

Die Emittentin verpflichtet sich, dem Inhaber dieser Globalurkunde die auf die durch diese Globalurkunde verbrieften Schuldverschreibungen zahlbaren Beträge gemäß den Bedingungen zu zahlen.

Da diese Globalurkunde eine NGN ist, wird insbesondere auf § 1 der Bedingungen hingewiesen.

Diese Globalurkunde unterliegt deutschem Recht und wird gemäß deutschem Recht ausgelegt.

[Diese Globalurkunde wird gemäß den Bedingungen ausgetauscht. Bei vollständigem Austausch ist diese Globalurkunde der Emissionsstelle auszuhändigen.]

Diese Globalurkunde ist nur gültig, wenn sie die Kontrollunterschrift der Emissionsstelle oder ihres Beauftragten trägt.

[Zu ihrer Gültigkeit oder Durchsetzbarkeit bedarf diese Globalurkunde des Weiteren der Bestätigung der Wirksamkeit durch die von den ICSDs bestellte Verwahrstelle (*common safekeeper*).]

**[parts redacted]**