

AMENDED AND RESTATED AGENCY AGREEMENT

24 January 2023

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 AMENDED AND RESTATED AGENCY AGREEMENT (the “**Agreement**”) is made on 24 January 2023 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, *inter alia*, Bitcoin, Bitcoin Cash, Aave, Algorand, Avalanche, Binance Coin, Cardano, Chainlink, Cosmos, EOS, Ether, Ethereum Classic, Filecoin, Internet Computer, Litecoin, MakerDAO, Polkadot, Polygon, Solana, Stellar, Tezos, Uniswap, XRP or other cryptocurrencies (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 do 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 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 to this Agreement were parties to an agency agreement dated 28 January 2022 in respect of the Programme (the “**Original Agency Agreement**”) and have agreed to make certain modifications to the Original Agency Agreement in an amended and restated agency Agreement. This Agreement supersedes and replaces the Original Agency Agreement. Any issues of Bonds under the Programme on or after the date hereof shall have the benefit of this Agreement. This Agreement does not affect any issues of Bonds under the Programme prior to the date of this Agreement.

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 on or around 25 January 2023 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 depository 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

- 4.1 In the case of a redemption of a Series of Bonds following the exercise of the Issuer's Call Right in accordance with § 4(2) of the Terms and Conditions and in case that any Bonds of such Series are to be redeemed in EUR, payment of the Call Redemption Price in respect of such Bonds that are being redeemed in EUR shall be made by the Issuer to the Paying Agent (as set out in §5(1) of the Terms and Conditions) no later than 10.00 a.m. CET on the Business Day prior to the Business Day on which any payment in EUR (plus, if applicable, any additional amounts) in respect of such Bonds becomes due and shall be transferred to the Paying Agent in same day funds in such amount and to the payment account held by the Paying Agent as the Paying Agent shall specify in a written notice to the Issuer to be received no later than 5 Business Days prior to the relevant due date) (the "**Payment Account**").

For the avoidance of doubt: Failure by the Paying Agent to specify a new Payment Account will not in any way relieve the Issuer from any of its obligations to pay on the relevant due date. The Issuer shall inform the Paying Agent of any additional amounts to be paid no later than 7 (seven) Business Days prior to any payment date.

- 4.2 The Issuer shall ensure that no later than 12:00 a.m. (Frankfurt am Main time) on the second (2nd) Business Day immediately preceding the date on which any payment is to be made to the Paying Agent pursuant to sub-clause 4.1 above, the Paying Agent shall receive an irrevocable payment confirmation from the paying bank of the Issuer by authenticated Swift Message or other means for the time being in common usage in case the paying bank is not the Paying Agent.
- 4.3 If the Issuer is, in respect of any payment under the Bonds, required to withhold or deduct any amount for or on account of taxes or duties of whatever nature as specifically contemplated under § 9 of the Terms and Conditions, the Issuer shall give notice thereof to the Paying Agent as soon as it becomes aware of the requirement to make such withholding or deduction and shall give to the Paying Agent such information as it shall require to enable it to comply with such requirement.
- 4.4 The Paying Agent shall not be obliged to repay any money paid to it by the Issuer in respect of any Bond unless or until claims against the Issuer in respect of the Bonds are prescribed or the obligation to make the relevant payment ceases in accordance with the Terms and Conditions. In such event it shall, upon the request of the Issuer, and only to the extent the Paying Agent is still in possession of such funds, repay promptly (*unverzüglich*) to the Issuer such portion of such amount as relates to such claim or payment by paying the same by credit transfer to such account with such bank as the Issuer will by notice to the Paying Agent have specified for this purpose.
- 4.5 The Paying Agent may deal with money paid to it under the Agreement in the same manner as other money paid to it as a banker by its customers except that (i) it may not exercise any lien, right of set-off or similar claim in respect of them and (ii) it shall not be liable to anyone for interest on any sums held by it under the Agreement.
- 4.6 All payments made and received in relation to the Bonds by the Paying Agent will be in EUR.

5 PAYMENTS BY THE PAYING AGENT

- 5.1 Subject to the receipt by it in full of the relevant funds pursuant to and in accordance with sub-clause 4.1, the Paying Agent shall forward the relevant funds to the Clearing System or to its order for credit to the accounts of the relevant account holders of the Clearing System.
- 5.2 All payments in respect of the Bonds shall be made in accordance with the provisions of the Conditions.

- 5.3 If the Paying Agent has reason to believe that the amounts to be received by it pursuant to sub-clause 4.1 will be, or the amounts actually received by it pursuant thereto are, insufficient to satisfy all claims in respect of all payments then falling due in respect of the Bonds, the Paying Agent:
- (a) shall forthwith notify the Issuer by e-mail or any other agreed form; and
 - (b) shall not be bound to make any payment or arrears of the Call Redemption Price in respect of the Bonds to the Clearing System until the Paying Agent has received to its order the full amount of the money then due and payable in respect of all outstanding Bonds.
- 5.4 If the Paying Agent pays any amounts due to the Clearing System at a time when it has not received payment in full in respect of the Bonds in accordance with sub-clause 4.1 (the excess of the amounts so paid over the amounts so received being the “**Shortfall**”) the Issuer shall, in addition to paying the amounts due under sub-clause 4.1 pay to the Paying Agent on demand the Call Redemption Price (at a rate which represents the Paying Agent’s reasonable cost of funding the Shortfall) on the Shortfall (or the unreimbursed portion thereof) to but excluding the date on which the Paying Agent receives the Shortfall in full. The Paying Agent shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its services as set forth hereunder.
- 5.5 The Issuer represents and warrants to the Paying Agent (aa) that neither the Issuer nor any of its subsidiaries nor, to the knowledge of the Issuer, directors or officers, or any of its employees or affiliates (x) has taken any action resulting in a violation by such persons of sanction laws and regulations applicable to it administered by the U.S. Office of Foreign Assets Control of the U.S. Department of the Treasury (the “**OFAC**”) or any equivalent sanctions or measures imposed by Germany, the European Union, His Majesty’s Treasury or the United Nations or any other relevant sanctions authority (together “**Sanctions**”), or (y) is a person or entity currently the subject of Sanctions, (bb) the Issuer has no business operations or dealings prohibited to it by applicable Sanctions in any sanctioned country (including the Crimea region, Cuba, the so-called Donetsk People’s Republic, Iran, the so-called Luhansk People’s Republic, North Korea, Sevastopol, South-Sudan, Sudan and Syria) or with persons subject of asset freeze transactions administered by OFAC, Germany, the European Union, His Majesty’s Treasury or the United Nations and (cc) the Issuer has instituted and maintains policies and procedures designed to achieve compliance with sanctions administered by OFAC, the European Union, His Majesty’s Treasury or the United Nations, in each case unless disclosed in the Base Prospectus as supplemented from time to time.

In addition, the Issuer covenants and represents that neither it nor any of its affiliates, subsidiaries, directors or officers will use any payments made pursuant to this Agreement, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person and as if those Sanctions applied to the Issuer.

Representations and warranties given in this sub-clause 5.5 are not given insofar as this would lead to and/or result in a breach of, or conflict with regulation 1996/2271/EC, as amended from time to time (the “**EU Blocking Regulation**”), including as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 (the UK Blocking Regulation, and together with the EU Blocking Regulation, the “**Blocking Regulations**”) (or any law or regulation implementing the EU Blocking Regulation in any member state of the European Union) or Section 7 of German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) or any similar anti-boycott law or regulation.

Unless specified otherwise in the Final Terms of a specific issue, the Issuer will use the proceeds from the issues under the Programme for general funding purposes within its normal business or for purposes of taking advantage of current market opportunities (arbitrage), all in conformity with Applicable Law.

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. The Issuer shall provide such notices in final form to the Paying Agent at least two (2) Business Days prior to the intended publication. The Issuer shall inform the Paying Agent without undue delay (*unverzüglich*) if it has published any notice itself (with a copy of such notice to be sent to the Paying Agent).
- 6.2 The Issuer will reimburse the Paying Agent for all reasonable costs incurred by it in connection with publications made by the Paying Agent pursuant to this Agreement and the terms and conditions of any Bonds.
- 6.3 Upon the full redemption of any Bonds which are represented by a Global Note deposited with Clearstream, Frankfurt, the Paying Agent shall collect the Global Note(s) representing such Bonds and cancel it/them. Unless otherwise instructed by the Issuer, the Paying Agent shall destroy such cancelled Global Note and shall furnish the Issuer with a destruction certificate upon request.

7 CUSTODY, CANCELLATION AND DESTRUCTION OF GLOBAL NOTES

- 7.1 The Paying Agent shall maintain in safe custody all blank Global Notes executed by the Issuer pursuant to sub-clause 3.3 and delivered to, and held by, the Paying Agent in accordance with this Agreement.
- 7.2 The Paying Agent shall keep, and make available at all reasonable times to the Issuer, a full and complete record specifying all Global Notes which were issued or not issued yet, all payments made in respect of such Global Notes and the cancellation of such Global Notes.

8 COMMISSIONS, FEES AND EXPENSES

- 8.1 The Paying Agent shall receive for its services and activities pursuant to this Agreement (which shall, for the avoidance of doubt, include any calculation agency services to be performed by the Paying Agent) a commission to be separately agreed between the Parties.
- 8.2 The Issuer shall pay to the Paying Agent all reasonable expenses (including publication, legal fees and any applicable value added tax) properly incurred and documented by the Paying Agent in connection with its services hereunder (which shall, for the avoidance of doubt, include any calculation agency services to be performed by the Paying Agent).
- 8.3 At the request of any of the Paying Agent, the parties hereto may from time to time review the commissions and fees initially agreed pursuant to sub-clause 8.1 with a view to determine whether the parties can mutually agree upon any changes to such commissions and fees.

9 LIABILITY OF THE PAYING AGENT

- 9.1 The Paying Agent shall only be liable for any failure to comply with its obligations under this Agreement if and to the extent that it fails to exercise the due care of a prudent merchant (*Sorgfalt eines ordentlichen Kaufmanns*), provided that the Paying Agent shall only be liable for gross negligence (*grobe Fahrlässigkeit*) and wilful misconduct (*Vorsatz*).

9.2 Notwithstanding anything in this Agreement to the contrary, the Paying Agent shall not be responsible or liable

- (a) in respect of anything done or omitted to be done or suffered by it in reliance on a Bond, notice, direction, consent, certificate, affidavit, statement or other document (including any information from any electronic or other source) believed by it to be genuine and to have been signed or otherwise given or disseminated by the proper parties;
- (b) for the legality, validity or enforceability of any Bond or this Agreement;
- (c) for any delay or failure to perform under this Agreement or for any losses resulting, in whole or in part, from or caused by any event beyond the reasonable control of the Paying Agent or an affiliate of the Paying Agent including without limitation: strikes, work stoppages, acts of war, epidemic, terrorism, acts of God, governmental actions, exchange or currency controls or restrictions, devaluations or fluctuations, interruption, loss or malfunction of utilities, communications or any computer (software or hardware) services, the application of any law or regulation in effect now or in the future, or any event in the country in which the relevant duties under this Agreement are performed, (including, but not limited to, nationalisation, expropriation or other governmental actions, regulation of the banking or securities industry, sanctions imposed at national or international level or market conditions) which may affect, limit, prohibit or prevent the performance in full or in part of such duties until such time as such law, regulation or event shall no longer affect, limit, prohibit or prevent such performance (in full or in part) and in no event shall the Paying Agent be obliged to substitute another currency for a currency whose transferability, convertibility or availability has been affected, limited, prohibited or prevented by such law, regulation or event;
- (d) for doing anything that would or might in its opinion be contrary to any law of any state or jurisdiction (including but not limited to Germany, the United States of America or any jurisdiction forming a part of it and England and Wales) or any directive or regulation of any agency of any such state or jurisdiction and may without liability do anything which is, in its opinion, necessary to comply with any such law, directive or regulation; or
- (e) for any losses arising from an unauthorised or incorrectly executed payment instruction or a non-executed or defectively executed payment instruction unless the Issuer has given written notice thereof to the Paying Agent without undue delay, and in any event no later than thirty (30) days after the Paying Agent makes available to the Issuer the relevant statement with respect to the account containing details of the funds transfer or (in the case of a non-executed or defectively executed payment instruction) after the date of the relevant payment instruction, provided always that where the Issuer has given such written notice, the Paying Agent's liability shall be subject to the other exclusions and limitations set out in and provisions of this Agreement and (in the case of a non-executed or defectively executed fund transfer) the Issuer's sole remedy shall be to request that the Paying Agent make reasonable efforts to recover the funds involved.

10 INDEMNITIES

10.1 Subject to Clause 10.3, the Issuer shall indemnify and hold harmless the Paying Agent against any claim, demand, action, liability, damages, charges, loss or costs and expenses (including, without limitation, reasonable legal fees and any applicable value added tax) which the Paying Agent may incur or which may be made against it in connection with its appointment or the performance of its rights and duties as agent under this Agreement, as well as the costs and expenses of defending itself against any of the foregoing, provided that this indemnity shall not

apply where such claim, demand, action, liability, charge, loss, cost or expense results from the gross negligence (*grobe Fahrlässigkeit*) or wilful misconduct (*Vorsatz*) of the Paying Agent, or of its officers or employees.

- 10.2 Subject to Clause 10.3, the Paying Agent shall indemnify and hold harmless the Issuer against any claim, demand, action, liability, damages, loss or costs and expenses (including, without limitation, reasonable legal fees and any applicable value added tax) which the Issuer may incur or which may be made against it as a direct result of the gross negligent (*grobe Fahrlässigkeit*) or wilful misconduct (*Vorsatz*) by the Paying Agent or its officers, employees or agents of the obligations of the Paying Agent under this Agreement, except such as may result from the Issuer's own negligence or wilful misconduct or that of its officers, employees or agents and subject to sub-clause 12.4.
- 10.3 Under no circumstances will either party to this Agreement be liable to the other party for any indirect or consequential loss or damage of any kind whatsoever (including, without limitation, loss of profit, loss of goodwill or reputation or loss of opportunity), whether or not foreseeable, even if advised of the possibility of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, breach of contract, duty or otherwise.
- 10.4 The indemnities mentioned in sub-clauses 10.1 and 10.2 shall survive the termination and expiry of this Agreement.

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

- 12.1 Unless expressly stated otherwise herein, all notices and communications under this Agreement shall be (i) in the German or English language and (ii) by fax or letter, posted or delivered by hand, email or (but only where specifically provided) by telephone. Each notice or communication shall be given to the relevant party at the address, fax number, email or telephone number and, in the case of a communication by letter, fax or email marked for the attention of, or (in the case of a communication by telephone) made to, the person(s) or department from time to time specified in writing by that party to the other for that purpose. The initial address, telephone number, fax number, email address and person(s) or department so specified by each party are set out in sub-clause 12.3.
- 12.2 Every notice or communication sent in accordance with sub-clause 12.1 shall be effective as follows:

- (a) **Letter, fax or email:** upon receipt by the addressee; and
- (b) **Telephone:** upon being made.

If, in the case of (a) or (b) above, any such notice or communication is sent or made

- (i) on a day which is not a business day in the place of the addressee; or
- (ii) on a day which is a business day in the place of the addressee and such notice would otherwise take effect after 5.00 p.m. in the place of the addressee

such notice shall not take effect until 10.00 a.m. on the immediately succeeding business day in the place of the addressee.

- 12.3 All notices and communications for the Issuer shall be sent (if by letter, fax or email) or made (if by telephone) to:

Fidelity Exchange Traded Products GmbH
Hohe Bleichen 18
20354 Hamburg
Federal Republic of Germany
Telephone: +49 69 643 508 900
Email: DE-Fidelity@intertrustgroup.com

All notices and communications for the Paying Agent shall be sent (if by letter, fax or email) or made (if by telephone) to:

The Bank of New York Mellon, London Branch
One Canada Square
London E14 5AL
United Kingdom

Fax: +44 207 964 2532
Attention: Conventional Debt EMEA - Team 2 corpsov2@bnymellon.com
Copy to fax: +44 1202 689660

All notices and communications for the German Paying Agent shall be sent (if by letter, fax or email) or made (if by telephone) to:

The Bank of New York Mellon, Frankfurt Branch
MesseTurm
Friedrich-Ebert- Anlage 49
60327 Frankfurt am Main
Germany

Email: LUXMBT-CT_Frankfurt@bnymellon.com

- 12.4 In no event shall the Paying Agent be liable for any losses arising from the Paying Agent receiving or transmitting any data to the Issuer (or any authorised person) or acting upon any notice, instruction or other communications via any Electronic Means by the Issuer or any authorised person other than losses deriving from the Paying Agent's gross negligence (*grobe Fahrlässigkeit*) or wilful misconduct (*Vorsatz*). If the Paying Agent is requested to act on instructions or directions delivered by fax, email or any other unsecured method of communication or any instructions or directions delivered through BNY Mellon Connect, CIDD, Nexen or any Electronic Means used to submit instructions, the Paying Agent shall have: (i) no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorised to give instructions or directions on behalf of the Issuer, and (ii) no liability for any losses, liabilities, costs or expenses incurred or sustained by the Issuer as a result of the Paying Agent's reliance upon or compliance with such instructions or directions. The Issuer agrees that the security procedures, if any, to be followed in connection with a transmission of any such notice, instructions or other communications, provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

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 (10th) 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

- 14.1 Each Party shall, within ten (10) Business Days of a written request by another Party, supply to that other Party such forms, documentation and other information relating to it, its operations, or any Bonds as that other Party reasonably requests for the purposes of that other Party's compliance with Applicable Law and shall notify the relevant other Party promptly in the event that it becomes aware that any of the forms, documentation or other information provided by such Party is (or becomes) inaccurate in any material respect; provided, however, that no Party shall be required to provide any forms, documentation or other information pursuant to this sub-clause 14.1 to the extent that: (i) any such form, documentation or other information (or the information required to be provided on such form or documentation) is not reasonably available to such Party and cannot be obtained by such Party using reasonable efforts; or (ii) doing so would or might in the reasonable opinion of such Party constitute a breach of any: (a) Applicable Law; (b) fiduciary duty; or (c) duty of confidentiality. For purposes of this sub-clause 14.1, "**Applicable Law**" shall be deemed to include (i) any rule or practice of any Authority by which any Party is bound or with which it is accustomed to comply; (ii) any agreement between any Authorities; and (iii) any agreement between any Authority and any Party that is customarily entered into by institutions of a similar nature.
- 14.2 The Issuer shall notify the Paying Agent and any Additional Paying Agent (for the purposes of this clause together, the "**Paying Agents**") in the event that it determines that any payment to be made by a Paying Agent under any Bonds is a payment which could be subject to FATCA Withholding if such payment were made to a recipient that is generally unable to receive payments free from FATCA Withholding, and the extent to which the relevant payment is so treated, provided, however, that the Issuer's obligation under this sub-clause 14.2 shall apply only to the extent that such payments are so treated by virtue of characteristics of the Issuer, such Bonds, or both.
- 14.3 Notwithstanding any other provision of this Agreement, each Paying Agent shall be entitled to make a deduction or withholding from any payment which it makes under any Bonds for or on account of any Tax, if and only to the extent so required by Applicable Law, in which event the Paying Agent shall make such payment after such deduction or withholding has been made and shall account to the relevant Authority within the time allowed for the amount so deducted or withheld or, at its option, shall reasonably promptly after making such payment return to the

Issuer the amount so deducted or withheld, in which case the Issuer shall so account to the relevant Authority for such amount. For the avoidance of doubt, FATCA Withholding is a deduction or withholding which is deemed to be required by Applicable Law for the purposes of this sub-clause 14.3.

- 14.4 In the event that the Issuer determines in its sole discretion that any deduction or withholding for or on account of any Tax will be required by Applicable Law in connection with any payment due to any of the Paying Agents on any Bonds, the Issuer will be entitled to redirect or reorganise any such payment in any way that it sees fit in order that the payment may be made without such deduction or withholding, provided that any such redirected or reorganised payment is made through a recognised institution of international standing and otherwise made in accordance with this Agreement. The Issuer will promptly notify the Paying Agents of any such redirection or reorganisation. For the avoidance of doubt, FATCA Withholding is a deduction or withholding which is deemed to be required by Applicable Law for the purposes of this sub-clause 14.4.
- 14.5 The Paying Agents shall, within three (3) Business Days of a written request by the Issuer, supply to the Issuer information regarding the number of Issuer-Owned Bonds held on the Issuer Account established in connection with a Series of Bonds issued under the Programme at that point in time. *For the avoidance of doubt:* As further set out in the Issuer Account Control Agreement to be entered into in connection with such Series of Bonds, the issue of new Issuer-Owned Bonds and any related instructions to issue new Issuer-Owned Bonds (“**Mark-Ups**”) do not fall within the scope of the relevant Issuer Account Control Agreement; accordingly, the Paying Agents will not provide any information relating to Mark-Ups.

15 BUSINESS RELATIONSHIPS

The Paying Agent (and/or any of its affiliates) may purchase, hold and dispose of Bonds and may enter into any other transaction (including, among others, any depositary, trust or agency transaction) with any Bondholders or with any party hereto in the same manner as if it had not been appointed as the Paying Agent of the Issuer.

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 Except as ordered by a court of competent jurisdiction or as required by law, the Paying Agent shall be entitled to treat the bearer of any Global Note as the owner thereof for the purpose of making payments.
- 16.5 If the Paying Agent reasonably believes it being necessary, it may, at the cost of the Issuer, consult as to material legal matters with lawyers of recognised standing selected by it. If such

consultation is made, the Paying Agent shall be protected and shall incur no liability for action taken or not taken by it as Paying Agent or suffered to be taken with respect to such matters in accordance with the opinion of such lawyers.

- 16.6 The Paying Agent may reasonably believe any notices, communication, certificates and other documents received by it in connection with this Agreement to be genuine and shall not be obliged to review or check the adequacy, accuracy or completeness of any notice, communication, certificate or other document it forwards to another party or shall incur no liability for or in respect of any action properly taken, omitted or suffered in reliance upon any such notice, certificate or other document.
- 16.7 The Paying Agent may delegate the fulfilment of its duties under this Agreement and the terms and conditions of any Bonds to a third party as delegate or agent (*Erfüllungsgehilfe*) and shall only be liable for the due selection (*ordnungsgemäße Auswahl*) of such delegate or agent.
- 16.8 Where it deems necessary for the performance of its obligations hereunder the Paying Agent may request the Issuer to provide information and rely thereon.
- 16.9 In no circumstance shall the Paying Agent be under any obligation to (a) take any steps to ascertain or verify the occurrence of any relevant event under this Agreement or the terms and conditions of any Bonds and, in absence of express notice to the contrary, shall be entitled to assume that no such event has occurred or (b) verify or ascertain that any party to the transaction documents is duly performing and complying with their respective obligations, duties and requirements as established under the transaction documents and any Applicable Law or any other regulation and shall be entitled to assume compliance with the transaction documents and with the Applicable Law in the absence of express notice to the contrary.
- 16.10 The Issuer shall provide the Paying Agent with a list of the names, titles and specimen signatures of those persons authorised on behalf of the Issuer to represent the Issuer in connection with all transactions under the Programme, such list to be signed by duly authorised signatories of the Issuer. The Paying Agent will be entitled to assume that the authorised signatories of the Issuer are as set out in the list most recently provided to it and the Paying Agent shall have (i) no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorised to give instructions or directions on behalf of the Issuer, and (ii) no liability for any losses, liabilities, costs or expenses incurred or sustained by the Issuer as a result of such reliance upon or compliance with such instructions or directions. The Paying Agent may only transfer the list of the names, titles and specimen signatures for the performance of this Agreement, in particular to recipients who provide centralised or outsourced services and who adhere to an adequate level of confidentiality and data protection. The Issuer shall notify the Paying Agent immediately if any of such persons ceases to be so authorised or if any additional person becomes so authorised by notice signed by a duly authorised signatory of the Issuer. The Paying Agent shall be entitled to rely on the list provided by the Issuer until a new authorised signatory list has been provided.
- 16.11 The Issuer shall, upon the request from time to time of the Paying Agent, promptly supply or procure the supply of such documentation and other evidence as is reasonably requested by the Paying Agent in order for the Paying Agent to carry out and be satisfied that it has complied with all necessary “know your customer” or similar checks under all Applicable Laws and regulations.
- 16.12 In accordance with section 675e paragraph 4 of the German Civil Code, the Parties agree that the sections 675d (1) to (including) (5), 675f (5) sentence 2, 675g, 675h, 675j (2), 675p and 675v to (including) 676 of the German Civil Code do not apply and that instead of the periods set out in sections 676b (2) and (4) of the German Civil Code, the period set out in Clause 9.2(e) applies to this Agreement.

- 16.13 Notwithstanding any other provision of this Agreement, the Paying Agent shall be entitled to take any action or to refuse to take any action which the Paying Agent regards as necessary for it to comply with any Applicable Law, or the rules, operating procedures or market practice of any relevant stock exchange or other market or clearing system.
- 16.14 The Issuer shall inform the Paying Agent of any resolutions passed by the Bondholders with regard to the Bonds.

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

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

TIMETABLE

TIMETABLE FOR ISSUES OF GLOBAL NOTES TO BE DEPOSITED WITH CBL AND EUROCLEAR

For the purpose of this timetable:

- (1) Each day is a Business Day¹ counted backwards from the Issue Date.
- (2) Times are the approximate times for taking the action in question and (save as otherwise provided) are references to CET.

DAY	LATEST TIME	ACTION
Issue Date minus 2	3.00 p.m.	<p>The Issuer has decided to issue a Series or Tranche, respectively, of Bonds and the Issuer has sent a copy of the signed Confirmation to the Paying Agent by fax or electronic mail or any other means. Upon receipt by the Paying Agent of the signed Confirmation from the Issuer, the Paying Agent is authorised to complete, authenticate and issue a Global Note in respect of the Bonds in accordance with the Confirmation.</p> <p>The Paying Agent procures new issuance ISIN, Common Code and WKN numbers.</p> <p>The Paying Agent arranges for the completion and authentication of a Global Note in respect of the Notes.</p>

¹ Business Day means a day (other than Saturdays or Sundays) on which all relevant parts of the Trans-European Automated Real-time Gross Settlement Express Transfer System 2 (TARGET2) are operational and commercial banks and foreign exchange markets are open for business (including dealings in foreign exchange and foreign currency deposits) in Frankfurt am Main, Germany.

Issue Date minus 1

3.00 p.m.

The Paying Agent gives instructions to the Clearing Systems to credit the Notes represented by the Global Note to the Paying Agent's distribution account. The Paying Agent instructs the Clearing Systems to debit the Notes from the distribution account and to credit the Bonds to the securities accounts of the relevant authorised participants specified to the Paying Agent prior to the issuance.

Issue Date

The Clearing Systems debit and credit accounts in accordance with instructions received by them.

10.00 a.m.

The Paying Agent instructs payment to the order of the Issuer of the purchase price received by it in same day funds by a transfer of funds to the account notified by the Issuer to the Paying Agent for this purpose.

APPENDIX B

FORM OF GLOBAL NOTE

Muster der verbindlichen deutschsprachigen Globalurkunde

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.

Fidelity Exchange Traded Products GmbH

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 Fidelity Exchange Traded Products GmbH (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.

Hamburg, den **[Datum]**

Fidelity Exchange Traded Products GmbH

[Unterschriftsberechtigte(r)]

[Unterschriftsberechtigte(r)]

Kontrollunterschrift (ohne Obligo, Gewährleistung oder Rückgriff) von oder im Namen von The Bank of New York Mellon, London Branch

am **[Datum]**

[Unterschriftsberechtigte(r)]

ANHANG A

[Emissionsbedingungen einfügen]

Form of non-binding English language Global Note

Series No: [●]

Global Note No. [●]

ISIN [●]

[WKN [●]]

[Common Code No. [●]]

[Other Security Identification No. [●]]

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.

Fidelity Exchange Traded Products GmbH

Hamburg, Federal Republic of Germany

Global Note

representing

Up to [**Aggregate Amount of Bonds to be issued**] perpetual Bonds secured by [**underlying Cryptocurrency**]

This Global Note represents a duly authorised issue of Bonds (the "**Bonds**") of Fidelity Exchange Traded Products GmbH (the "**Issuer**"). References in this Global Note to the "**Conditions**" shall be to the Terms and Conditions of the Bonds attached to this Global Note as Annex A. The Conditions form part of this Global Note. Expressions defined in the Conditions shall bear the same meanings when used in this Global Note.

[The Aggregate Principal Amount of Notes represented by this Global Note shall be the aggregate amount from time to time entered in the records of both ICSDs.]

The Issuer agrees to pay to the bearer of this Global Note the amounts payable in respect of the Notes represented by this Global Note in accordance with the Conditions.

As this Global Note is an NGN, specific reference is made to § 1 of the Conditions.

This Global Note is governed by, and shall be construed in accordance with, German law.

[This Global Note shall be exchanged in accordance with the Conditions. On an entire exchange of this Global Note, this Global Note shall be surrendered to the Paying Agent.]

This Global Note shall not be valid unless authenticated by or on behalf of the Paying Agent.

Hamburg, **[Date]**

Fidelity Exchange Traded Products GmbH

[Authorised Signatory]

[Authorised Signatory]

Authenticated (without recourse, warranty or liability) by or on behalf of
The Bank of New York Mellon, London Branch

on **[Date]**

[Authorised Signatory]

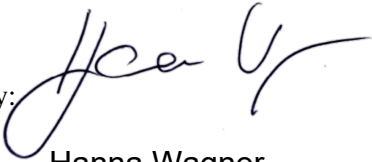
ANNEX A

[Terms and Conditions of the Notes to be inserted]

SIGNATORIES

The Issuer

FIDELITY EXCHANGE TRADED PRODUCTS GMBH

By: 

Hanna Wagner
Director

SIGNATORIES

The Paying Agent

THE BANK OF NEW YORK MELLON, LONDON BRANCH

By: 
Ricardo Da Rocha
Authorised Signatory

The German Paying Agent

THE BANK OF NEW YORK MELLON, FRANKFURT BRANCH

By: 
Ricardo Da Rocha
Authorised Signatory