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21Shares' Response to the FCA Consultation Paper (CP25/16): Proposal to Lift the Retail Ban on cETNs Admitted to Trading on UK Recognised Investment Exchanges

I. Executive Summary

We respond on behalf of 21Shares AG, one of the leading issuers of cryptoasset exchange-traded products in Europe, to the questions raised in Chapter 4 of Consultation Paper CP25/16 ("the **Consultation**"). We welcome the Financial Conduct Authority's ("**FCA**") proposal to lift the existing restriction on the sale, marketing and distribution of cryptoasset exchange-traded notes ("**cETNs**") to retail clients. However, we note that even under the proposed framework, the approach remains highly protectionist, which raises ongoing concerns regarding the UK's competitiveness in the global cryptoasset market.

In response to the questions set out in Chapter 4 of the Consultation, we submit the following comments:

II. Regarding Question 4.1:

While we **do support** the FCA's proposal to remove the current prohibition on the sale, marketing, and distribution of cETNs to retail clients,we also have serious concerns that we set out in detail below.

Our positions are based on the following considerations:

- Indeed, the regulated and exchange-traded structure of cETNs provides retail investors with a materially safer and more transparent method of gaining cryptoasset exposure, particularly when compared to direct, unregulated access channels. Key safeguards include regulated custody, reliable pricing mechanisms, secondary market liquidity, and issuer accountability.
- However, retail access to comparable cETNs is permitted under regulatory frameworks in other major jurisdictions, including Germany (XETRA), Switzerland (SIX), and France/Netherlands (Euronext). Maintaining the current restriction in the UK would risk **regulatory fragmentation and arbitrage**, and will discourage product development and capital flows into UK markets.

- We therefore recommend that the FCA extend the regime to include cETNs listed on overseas venues deemed equivalent or recognised under FSMA ("**ROIEs**"). Limiting the regime to UK Recognised Investment Exchanges ("**UK RIEs**") disregards FSMA-recognised ROIEs, creating a distortion whereby equivalent overseas-listed cETNs can be accessed via exemptions.

- In the alternative, should the FCA decide not to extend recognition to ROIEs, we strongly recommend that it require UK RIEs — and in practice, the London Stock Exchange ("**LSE**") — to adopt a dynamic and transparent forward-looking eligibility framework for cryptoassets. Such a framework should incorporate objective, risk-sensitive criteria including market capitalisation, liquidity and trading volumes, volatility characteristics, institutional adoption, and the availability of robust, regulated reference pricing.

- In light of the anticipated retail market opening, we respectfully submit that the current framework which effectively restricts access to cryptoasset ETNs to those admitted by UK RIEs — and in practice, to those listed on the LSE — will significantly limit investor choice and impede innovation in the UK market.

  While the FCA has not explicitly restricted eligible underlying cryptoassets to Bitcoin (BTC) and Ethereum (ETH), it has instead left the determination of eligible assets to the exchanges themselves. Given the monopolistic structure of UK capital markets today, this delegation effectively concentrates such decisions in the hands of a single exchange — the LSE — which currently admits only a narrow range of cryptoassets.

  This structure gives rise to two principal concerns:

  1. Consumer protection paradox — By confining access to products listed solely on UK RIEs, retail investors seeking broader cryptoasset exposure may be driven toward unregulated or offshore trading platforms. This outcome is directly at odds with the FCA's stated objectives of safeguarding consumers and ensuring market integrity, as it may inadvertently expose investors to higher operational and counterparty risks outside the regulated perimeter.

  2. Regulatory concentration and innovation risk — By allowing the LSE, acting as a de facto gatekeeper, to determine which assets are appropriate for retail consumers, the framework effectively delegates regulatory policy-making power to a single market infrastructure operator. Historically, the LSE has not made such asset eligibility decisions independently but has acted under significant regulatory and policy influence, reflecting a risk-averse stance rather than a comprehensive assessment of market demand or institutional maturity. This structure risks stifling innovation, reducing competitive dynamics, and limiting investor choice in the UK.

- The final regime should expressly accommodate cETNs referencing regulated crypto indices and hybrid baskets (e.g., crypto/gold or multi-token products), where such products are:

- Physically backed (non-synthetic);
  Held with regulated custodians applying institutional-grade security;
  Priced via BMR-compliant index providers;
- Non-leveraged and supported by daily liquidity.

We would welcome the opportunity to engage further with the FCA to contribute international benchmarks, market data, and regulatory insights in support of a coherent, proportionate, and innovation-aligned cETN regime.

III. Regarding Question 4.2:

We do **not support** the classification of RIE-listed cETNs as *Restricted Mass Market Investments* ("**RMMIs"**). This designation is disproportionate, legally inconsistent with their classification as listed debt instruments, and likely to reduce market efficiency, innovation, and consumer choice. Especially:

- cETNs admitted to trading on a UK Recognised Investment Exchange (RIE) are listed debt instruments subject to the UK Listing Rules, the Prospectus Regulation regime, and DTRs. Therefore, they meet the criteria of *Readily Realisable Securities* ("**RRS**") within the meaning of COBS 4.12A and should be treated accordingly.

- FCA-approved base prospectuses create enforceable obligations under FSMA s.90.

- Equating cETNs with unregulated, unlisted products under the RMMI regime creates a disproportionate burden. This treatment diverges from international norms (e.g., MiCAR in the EU, FinSA in Switzerland). RMMI status would:

  - Impair inclusion in retail funds;
  - Limit the use of cETNs in index tracking and asset allocation strategies, undermining portfolio diversification;
  - Deter issuer participation due to Section 21 compliance burdens.

- In practice, compliance functions of FCA-regulated funds are likely to take a conservative approach to cETN exposure under RMMI rules. This will limit inclusion of such instruments in multi-asset or thematic strategies and restrict promotional activity, reducing product diversity for retail investors.

- cETNs admitted to trading on regulated exchanges - whether UK RIEs or ROIEs - and offered and offered under appropriate regulatory disclosure regimes should be treated as Readily Realisable Securities (RRS), consistent with the treatment of structurally similar exchange-traded products (e.g., gold or FX ETCs). The nature of the underlying asset (crypto versus commodity) does not justify differential treatment.

- Hybrid or index-based cETNs (e.g., crypto/gold) that meet equivalent listing and disclosure standards should likewise fall within the RRS classification. FCA guidance should confirm this to avoid regulatory inconsistency and discourage market innovation.

- While Section 21 FSMA applies broadly to financial promotions relating to "controlled investments" — including regulated listed securities — the exemption framework under the Financial Promotion Order 2005 (notably Article 59) reflects a policy judgment that **listed instruments subject to public disclosure and trading venue oversight carry reduced promotional risk**. Applying the full Section 21 regime to listed cETNs, which are traded on regulated markets and subject to MAR and Prospectus Regulation requirements, **disregards this regulatory distinction**. It imposes compliance burdens intended primarily to protect investors from opaque, private offers — not from **publicly traded, regulated securities**.

- In addition, these requirements **delay** product rollouts, raise barriers to entry, and deter smaller or specialist issuers. We consider that an **appropriateness test**, as already applied under COBS for certain complex instruments, would be a more proportionate and effective safeguard for retail access—without triggering the procedural burdens of third-party Section 21 approvals.

- RMMI classification will impair competition, reduce primary and secondary market liquidity, and may result in **pricing inefficiencies and wider spreads**. By contrast, markets where cETNs are treated as standard ETPs have seen narrowing fees, growing volumes, and more efficient price discovery.

- Classifying cETNs as RMMIs introduces regulatory barriers absent in other leading jurisdictions (e.g., EU MiCAR, Swiss FinSA), creating a risk of capital and issuer flight. This would undermine the UK's stated ambition to be a global centre for digital finance and erode its competitive positioning relative to more innovation-oriented regimes.

IV. Closing Statement

We thank the FCA for the opportunity to engage in this consultation and support the development of a competitive, consumer-protective, and innovation-aligned regulatory framework for cryptoasset investment products in the UK. We remain at your disposal to contribute data, international benchmarks, and implementation insights as this policy evolves.

Kind regards,

Duncan Moir

President

Eleni Katopodi

Legal Counsel