



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

June 29, 2017

Nicholas A. Kronfeld  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017

**Re: Banco Santander, S.A.**  
**File No. TP 17-09**

Dear Mr. Kronfeld:

In your letter dated June 29, 2017 (“Letter”), you request on behalf of Banco Santander, S.A., a bank organized under the laws of the Kingdom of Spain (“Santander Spain”), an exemption from Rules 101 and 102 of Regulation M under the Securities Exchange Act of 1934 (“Exchange Act”), in order for Santander Spain and its affiliates to conduct specified “ordinary course” activities in the ordinary shares of Santander Spain (the “Santander Spain Shares”), including in the form of American Depositary Shares (the “Santander Spain ADSs”), in connection with a proposed rights offering by Santander Spain (the “Rights Offering”).<sup>1</sup>

You seek exemptive relief to permit Santander Spain and its affiliates to conduct activities in the ordinary course of business outside the United States in Santander Spain Shares and Santander Spain ADSs during the Restricted Period. Specifically, you request that: (i) the Market Making Subsidiary be permitted to continue to engage in market making activities as described in the Letter; (ii) the Treasury Departments be permitted to continue to engage in derivatives market-making and hedging activities as described in the Letter; (iii) the Asset Managers be permitted to continue to engage in asset management activities as described in the Letter; (iv) the Insurance Companies be permitted to continue to engage in insurance activities as described in the Letter; and (v) the Non-U.S. Brokerage Units be permitted to continue to engage in unsolicited brokerage activities as described in the Letter.

You also seek exemptive relief to permit certain Santander Spain affiliates to conduct activities in the ordinary course of business in the United States in Santander Spain Shares and Santander Spain ADSs during the Restricted Period. Specifically, you request that: (i) the Puerto Rico Asset Manager be permitted to continue to conduct asset management activities in Puerto Rico as described in the Letter; (ii) Banco Santander

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<sup>1</sup> We have attached a copy of the Letter. Each defined term in our response has the same meaning as defined, directly or by reference, in the Letter, unless we note otherwise.

International be permitted to continue to conduct asset management activities from the Continental United States for non-U.S. clients as described in the Letter; and (iii) the U.S. Brokerage Units (Santander Investment Securities and Santander Securities LLC) be permitted to continue to engage in unsolicited brokerage activities as described in the Letter.<sup>2</sup>

*Response:*

Based on the facts and representations that you have made in the Letter, but without necessarily concurring in your analysis, the Securities and Exchange Commission (“Commission”) finds that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to grant, and hereby grants, Santander Spain and the Companies an exemption from Rules 101 and 102<sup>3</sup> to permit them to continue to engage in the activities described in the Letter during the Restricted Period.

This exemption is subject to the following conditions:

1. None of the transactions for which relief is being granted shall occur in the United States, except transactions in connection with the unsolicited brokerage activities by Santander Investment Securities and Santander Securities LLC, Puerto Rican client asset management activities of the Puerto Rico Asset Manager, and non-U.S. client asset management activities of Banco Santander International, as each is described in the Letter;
2. All of the transactions for which relief is being granted shall be effected in the ordinary course of business, as described in the Letter, and not for the purpose of facilitating the Rights Offering;
3. Santander Spain shall include disclosure in the prospectus supplement that will be distributed to United States investors that participate in the Rights Offering regarding the possibility of, or the intention to make, the transactions described in the Letter;
4. Santander Spain shall keep records for each purchase or sale of Santander Spain Shares or Santander Spain ADSs that Santander Spain or any of the Companies

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<sup>2</sup> For purposes of this letter, the Market Making Subsidiary, the Treasury Departments, the Asset Managers (including the Puerto Rico Asset Manager and Banco Santander International), the Insurance Companies, the Non-U.S. Brokerage Units, and the U.S. Brokerage Units (Santander Investment Securities and Santander Securities LLC) are collectively referred to as the “Companies.”

<sup>3</sup> As described in the Letter, the Companies may be deemed to be “affiliated purchasers” of Santander Spain, and thus subject to Rule 102 of Regulation M. As also described in your Letter, Santander Spain, the Non-U.S. Brokerage Units, and the U.S. Brokerage Units also may be deemed to be “distribution participants” in connection with their participation in the Rights Offering, and thus subject to Rule 101 of Regulation M.

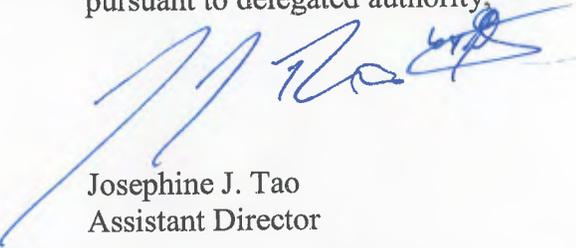
effects in the United States during the Restricted Period (“Records”). Such Records shall include:

- (a) the date and time of execution, the broker (if any), and the amount and price of the transaction;
  - (b) the market or other manner in which the transaction is effected, and
  - (c) whether the transaction was made for a customer account or a principal or proprietary account (but such Records will not include any client-specific data, the disclosure of which is restricted under applicable law);
5. Upon written request of the staff of the Division of Trading and Markets (“Division”), Santander Spain shall make the Records (arranged in a time-sequenced manner) available to the Division at its offices in Washington, D.C., within 30 days of its request;
6. Santander Spain and each of the Companies shall retain the Records for a period of two years following the completion of the Rights Offering;
7. Representatives of Santander Spain and each of the Companies shall be made available by telephone to respond to inquiries of the Division relating to the Records; and
8. Except as otherwise exempted by this letter, Santander Spain and each of the Companies shall comply with Regulation M in connection with the Rights Offering.

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The foregoing exemption is based solely on the facts presented and the representations made in the Letter. Any different facts or circumstances may require a different response. This exemption is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws rests with the persons relying on the exemption. We express no view with respect to any other question that the Letter, or any activities undertaken pursuant to this exemption, may raise, including, but not limited to, the applicability of other federal or state securities laws or rules, or other laws and rules, to the proposed activities.

For the Commission,  
by the Division of Trading and Markets,  
pursuant to delegated authority.<sup>4</sup>



Josephine J. Tao  
Assistant Director

Attachment

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<sup>4</sup> 17 CFR 200.30-3(a)(6).

New York  
Northern California  
Washington DC  
São Paulo  
London

Paris  
Madrid  
Tokyo  
Beijing  
Hong Kong

# Davis Polk

Nicholas A. Kronfeld

Davis Polk & Wardwell LLP 212 450 4950 tel  
450 Lexington Avenue 212 701 5950 fax  
New York, NY 10017

June 29, 2017

Re: Banco Santander, S.A. Request for Exemptive Relief from Rules 101 and 102 of Regulation M

**Josephine J. Tao**  
Assistant Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Dear Ms. Tao:

We are writing as counsel to Banco Santander, S.A. ("**Santander Spain**"), a bank organized under the laws of the Kingdom of Spain, with respect to the application of Regulation M to transactions by Santander Spain and its affiliates in the ordinary shares of Santander Spain (the "**Santander Spain Shares**") during the distribution of Santander Spain Shares, including in the form of American Depositary Shares (the "**Santander Spain ADSs**"), to be made by Santander Spain in connection with a proposed rights offering by Santander Spain (the "**Rights Offering**"). Specifically, on behalf of Santander Spain, we ask the members of the staff (the "**Staff**") of the Securities and Exchange Commission (the "**SEC**") to grant Santander Spain exemptive relief from Rules 101 and 102 of Regulation M to permit Santander Spain and its affiliates to continue, in the ordinary course of their respective businesses as described below and in accordance with applicable local law, to engage in the activities described below during the Rights Offering. In connection with the relief requested by Santander Spain in this letter, please note that substantially similar exemptive relief from Rules 101 and 102 of Regulation M was granted to Santander Spain under each of your exemptive letters dated September 10, 2004, August 18, 2008, November 7, 2008, December 22, 2008, September, 18, 2014 and January 6, 2015<sup>1</sup>.

Santander Spain acquired the entire share capital of Banco Popular Español, S.A. ("**Banco Popular**," and such acquisition, the "**Acquisition**") on June 7, 2017, in an emergency auction

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<sup>1</sup> See Banco Santander Central Hispano, S.A., SEC No-Action Letter, File No. TP 04-70 (Sep. 10, 2004), Banco Santander, S.A., SEC No-Action Letter, File No. TP 08-77 (Aug. 18, 2008), Banco Santander, S.A., SEC No-Action Letter, File No. TP 09-16 (Nov. 7, 2008), Banco Santander, S.A., SEC No-Action Letter, File No. TP 09-29 (Dec. 22, 2008), Banco Santander, S.A., SEC No-Action Letter, File No. TP 14-15 (Sep. 18, 2014) and Banco Santander, S.A., SEC No-Action Letter, File No. TP 15-07 (Jan. 6, 2015).

conducted by the European Single Resolution Board (“**SRB**”) and the FROB, the Spanish banking resolution authority, pursuant to their resolution powers, after the European Central Bank determined that Banco Popular was failing or likely to fail. This transaction represents the first time the SRB has exercised its resolution power with respect to a failing bank, including its sale of business and bail-in tools. As part of the resolution action, (i) all of the ordinary shares (Common Equity Tier 1) of Banco Popular outstanding at the close of the market on June 6, 2017 were cancelled, (ii) all of Banco Popular’s Additional Tier 1 capital instruments were converted into newly issued ordinary shares, which were immediately cancelled, and (iii) all of Banco Popular’s Tier 2 regulatory capital instruments were converted into newly issued ordinary shares of Banco Popular, all of which were acquired by Santander Spain for one euro (€1).

In connection with the Acquisition, Santander Spain has committed to ensure full compliance with the regulations on supervision and discipline of credit institutions applicable to Banco Popular and, specifically, to implement such liquidity measures as may be necessary to ensure the continuity of Banco Popular’s services and operations, the interruption of which, caused by a lack of liquidity, could disrupt Banco Popular’s ability to provide essential services, affect creditors or depositors or jeopardize the financial stability of Banco Popular. To this end, and to compensate for the effect of the Acquisition on Santander Spain’s consolidated capital levels, Santander Spain has committed to conduct a share capital increase of approximately €7 billion in order to cover the capital and provisions required to strengthen Banco Popular’s balance sheet and to reinforce its own capital, which was negatively affected as a result of the Acquisition. Under Spanish corporate law, Santander Spain must carry out this capital increase by way of the Rights Offering, granting its existing shareholders preferential subscription rights to the new Santander Spain Shares to be issued at a total price of approximately €7 billion. As noted above, this letter requests substantially similar exemptive relief as past Santander Spain requests, but includes Banco Popular entities that were not owned by Santander Spain prior to the Acquisition.

This letter sets forth data concerning the trading activity of Santander Spain and its affiliates for periods ending May 31, 2017. Santander Spain has represented to us that it is not aware of any material changes in the nature or volume of these activities since May 31, 2017.

*Market Making Activities.* As is customary in Spain for financial institutions, Santander Spain engages in market making activities with respect to Santander Spain Shares through a subsidiary dedicated to that function (the “**Market Making Subsidiary**”)<sup>2</sup>. The Market Making Subsidiary makes bids and offers for Santander Spain Shares on the Automated Quotation System (Sistema de Interconexión Bursátil Español) of the Spanish stock exchanges (the “**AQS**”), the centralized national market that integrates by computer quotation the Spanish stock exchanges in Madrid, Barcelona, Bilbao and Valencia (collectively, the “**Spanish Exchanges**”) and purchases and sells Santander Spain Shares on the AQS. The Market Making Subsidiary effects these transactions for its own account in order to provide liquidity to the market.

*Derivatives Market Making and Hedging.* As part of its business, the Treasury department of Santander Spain and the Treasury department of Banco Popular Spain (collectively, the “**Treasury Departments**”) issue, buy and sell derivatives on Santander Spain Shares or on baskets or indices including Santander Spain Shares (the “**Santander Spain Share Derivatives**”) for each of their own

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<sup>2</sup> Santander Spain’s market making activities are carried out by Pereda Gestión, S.A., a corporation organized under the laws of Spain.

accounts and for the accounts of each of their customers. All of these trades are executed outside of the United States and the majority of these trades are for the accounts of customers outside the United States. The derivatives traded include listed and over-the-counter options, warrants, futures, convertible securities and other structured products relating to Santander Spain Shares. The Treasury Departments engage in derivatives market making activities, on both solicited and unsolicited bases, in order to provide liquidity to the derivatives market and to facilitate customers' derivatives transactions. These transactions are effected primarily on the MEFF Renta Variable, S.A. (the "**MEFF Renta Variable**") with the balance occurring on other exchanges outside the United States and, in some cases, in the over-the-counter market outside the United States. In addition, the Treasury Departments solicit and effect trades in Santander Spain Shares or in Santander Spain Share Derivatives for their own accounts and for the accounts of customers of the Treasury Departments for the purpose of hedging positions (or adjusting or liquidating existing hedge positions) belonging to them and the customers of the Treasury Departments that are established in connection with these derivatives market activities. The hedging transactions in Santander Spain Shares are effected outside the United States through the AQS and the hedging transactions in derivatives on Santander Spain Shares are effected outside the United States on the MEFF Renta Variable, on other exchanges outside the United States and in the over-the-counter market outside the United States. During the twelve months ended December 31, 2016 and the five months ended May 31, 2017 these market making and hedging transactions in Santander Spain Shares and derivatives on Santander Spain Shares amounted to approximately 1.55% and 2.26%, respectively, of the value of average daily trading volume (the "**ADTV**") in Santander Spain Shares on the Spanish Exchanges.

*Trading in Santander Spain Shares by the Asset Managers.* Certain affiliates of Santander Spain manage the assets of mutual funds, pension funds and discretionary investor portfolios (such affiliates, the "**Asset Managers**"; such funds and discretionary investor portfolios, the "**Managed Funds**")<sup>3</sup>. As part of their ordinary investment management activities on behalf of the Managed Funds, the Asset Managers buy and sell Santander Spain Shares and derivatives, including listed and over-the-counter options, warrants, convertible securities and other structured products relating to Santander Spain Shares or baskets or indices including Santander Spain Shares, as well as index futures on the foregoing, for the Managed Funds' accounts.

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<sup>3</sup> The Asset Managers consist of Banco Santander, S.A., Santander Private Banking Gestión, S.A., S.G.I.I.C., Santander Asset Management, S.A., S.G.I.I.C., Santander Pensiones, S.A., E.G.F.P., and Popular Gestion Privada, SGIC, S.A, each a corporation organized under the laws of Spain (collectively, the "**Spanish Asset Managers**"); Santander Rio Asset Management Gerente de Fondos Comunes de Inversión, S.A., a corporation organized under the laws of Argentina; Banco Santander Bahamas International Limited, a corporation organized under the laws of Bahamas; Santander Brasil Asset Management Distribuidora de Títulos e Valores Mobiliários S.A., and Santander Brasil Gestao de Recursos Ltda., each a corporation organized under the laws of Brazil; Santander Asset Management, S.A., Administradora General de Fondos, a corporation organized under the laws of Chile; SAM SGIC S.A. (German branch), a corporation organized under the laws of Germany; Santander Asset Management Luxembourg, S.A., a corporation organized under the laws of Luxembourg; SAM Asset Management, S.A. de C.V., Sociedad Operadora de Fondos de Inversión, a corporation organized under the laws of Mexico; BZ WBK Towarzystwo Funduszy Inwestycyjnych S.A., a corporation organized under the laws of Poland; Santander Asset Management - Sociedade Gestora de Fundos de Investimento Mobiliário, S.A., Santander Pensões - Sociedade Gestora de Fundos de Pensões, S.A., and Popular Gestão De Activos, each a corporation organized under the laws of Portugal; Santander Asset Management LLC, a corporation organized under the laws of Puerto Rico (the "Puerto Rico Asset Manager"); Banco Santander (Suisse), S.A., a corporation organized under the laws of Switzerland; Santander Asset Management UK Limited, a corporation organized under the laws of the United Kingdom; and Banco Santander International, a banking corporation organized under U.S. laws ("**Banco Santander International**").

*Trading by the Insurance Company.* As part of its ordinary business, certain affiliates of Santander Spain (the “**Insurance Companies**”)<sup>4</sup>, sell certain insurance products requiring the insurer to invest the premiums paid by the purchaser of the policies within certain asset classes determined by that purchaser (such as shares represented in the IBEX 35 Index, which includes Santander Spain Shares) (such products, the “**Asset Class Policies**”). The Insurance Companies do not provide any investment advice to purchasers with respect to the asset classes that may be selected by the customer as part of the Asset Class Policies.

*Unsolicited Brokerage.* The non-U.S. brokerage units set forth in note 5 below (the “**Non-U.S. Brokerage Units**”)<sup>5</sup> effect unsolicited brokerage transactions in Santander Spain Shares by placing orders on the AQS and other overseas exchanges or effecting trades in the over-the counter markets in Spain and elsewhere outside the United States. These transactions arise from unsolicited buy or sell orders received by the Non-U.S. Brokerage Units from their customers, although the Non-U.S. Brokerage Units may solicit the other side of these transactions. Additionally, Santander Spain conducts a securities business through its affiliated U.S. (including Puerto Rico) broker-dealers, Santander Securities LLC, a corporation incorporated under the laws of Puerto Rico (“**Santander Securities LLC**”), and Santander Investment Securities, Inc., a corporation incorporated under the laws of the state of Delaware (“**Santander Investment Securities**” and, together with Santander Securities LLC, the “**U.S. Brokerage Units**”; the U.S. Brokerage Units, together with the Non-U.S. Brokerage Units, the “**Brokerage Units**”), each of which may engage in unsolicited brokerage transactions in the Santander Spain Shares and Santander Spain ADSs with its customers in the United States. These transactions would be effected in the United States markets or in the non-U.S. markets described above. During the twelve months ended December 31, 2016 and the five months ended May 31, 2017, the unsolicited brokerage activities of the Brokerage Units (excluding trades executed by the Non-U.S. Brokerage Units on behalf of the Market Making Subsidiary) as a percentage of the worldwide value of ADTV in Santander Spain Shares was 12.09% and 19.29%,

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<sup>4</sup> Santander Seguros y Reaseguros S.A. Compañía Aseguradora, Pastor Vida, S.A. Cía de Seguros y Reaseguros, Santander Aegon Generales, Santander Aegon Vida, and Allianz Popular Vida, S.A.U., each a corporation organized under the laws of Spain (collectively, the “**Spanish Insurance Companies**”); Zurich Santander Seguros Argentina S.A., a corporation organized under the laws of Argentina; Zurich Santander Brasil Seguros e Previdencia S.A., and Zurich Santander Brasil Seguros S.A., each a corporation organized under the laws of Brasil; Zurich Santander Seguros Generales Chile S.A., and Zurich Santander Seguros Vida Chile S.A., each a corporation organized under the laws of Chile; Santander Insurance Europe Limited, and Santander Insurance Life Limited, each a corporation organized under the laws of Ireland; Zurich Santander Seguros México S.A., a corporation organized under the laws of Mexico; Bank Zachodni WBK AVIVA Towarzystwo Ubezpieczen Naycie S.A., and Bank Zachodni WBK AVIVA Towarzystwo Ubezpieczen Ogolnych S.A., each a corporation organized under the laws of Poland; Santander Totta Seguros Portugal, Aegon Santander Portugal Não Vida S.A., Aegon Santander Portugal Vida S.A., Eurovida, S.A., and Popular Seguros, S.A., each a corporation organized under the laws of Portugal; and Zurich Santander Seguros Uruguay S.A., a corporation organized under the laws of Uruguay,

<sup>5</sup> The Non-U.S. Brokerage Units consist of Santander Investment Bolsa, S.V., S.A., and Popular Bolsa SV, each a corporation organized under the laws of Spain (the “**Spanish Brokerage Units**”); Santander Rio Sociedad de Bolsa, S.A.; a corporation organized under the laws of Argentina; Banco Santander Bahamas International Ltd., a corporation organized under the laws of Bahamas; Santander Corretora de Cambio e Valores Mobiliarios, S.A., a corporation organized under the laws of Brazil; Santander S.A. Corredores de Bolsa Limitada and Santander Agente de Valores Limitada, each a corporation organized under the laws of Chile; Casa de Bolsa Santander, S.A. de C.V. Grupo Financiero Santander México, a corporation organized under the laws of Mexico; Bank Zachodni WBK S.A., a corporation organized under the laws of Poland; Banco Santander Totta and Banco Popular Portugal, each a corporation organized under the laws of Portugal; Banco Santander (Suisse), S.A., a corporation organized under the laws of Switzerland; and Abbey Stockbrokers Limited, Abbey National Treasury Services Plc, Santander ISA Managers Ltd., and Santander UK Plc, each a corporation organized under the laws of the United Kingdom.

respectively. During the twelve months ended December 31, 2016 and the five months ended May 31, 2017, the unsolicited brokerage activities of the U.S. Brokerage Units collectively as a percentage of the worldwide value of ADTV in Santander Spain Shares was 0.20% and 0.16%, respectively.

The Market Making Subsidiary, the Treasury Departments, the Spanish Asset Managers, the Spanish Insurance Companies and the Spanish Brokerage Unit are collectively referred to herein as the “**Spanish Companies**”. The Spanish Companies, together with the other Asset Managers, the other Insurance Companies and the other Brokerage Units are collectively referred to herein as the “**Companies**”.

The availability of the exemptions Santander Spain is requesting would be conditioned on the disclosure and record-keeping undertakings outlined below.

The descriptions of factual matters in this letter, including the market for Santander Spain Shares and the Companies’ business and market activities, as well as the descriptions of certain matters under Spanish law and the laws of other jurisdictions outside the United States included in this letter, have been provided to us by Santander Spain.

## I. The Market for Santander Spain Shares

The principal trading market for Santander Spain Shares is on the Spanish Exchanges through the AQS in Spain. The Santander Spain Shares also are listed on the New York (in the form of the Santander Spain ADSs), Milan, Lisbon, Buenos Aires, London (in the form of Santander Spain Crest Depositary Interests (“**Santander Spain CDIs**”)), Sao Paulo (in the form of Santander Spain Brazilian Depositary Receipts (“**Santander Spain BDRs**”)), Warsaw and Mexico Stock Exchanges. Each Santander Spain ADS represents one Santander Spain Share and is evidenced by an American Depositary Receipt issued by Bank of New York Mellon, as Depositary. Santander Spain is a foreign private issuer as defined in Rule 3b-4(c) under the U.S. Securities Exchange Act of 1934.

As of December 31, 2016, 14,582,340,701 Santander Spain Shares were outstanding, held by 3,928,950 record holders. Approximately 58.36% of the outstanding Santander Spain Shares were held of record by non-residents of Spain and 19.00% of the outstanding Santander Spain Shares were held by 1,150 record holders with registered addresses in the United States (including Puerto Rico).

As of May 31, 2017, 14,582,340,701 Santander Spain Shares were outstanding, held by 4,026,563 record holders. Approximately 60.53% of the outstanding Santander Spain Shares were held of record by non-residents of Spain and 20.78% of the outstanding Santander Spain Shares were held by 1,157 record holders with registered addresses in the United States (including Puerto Rico).

Santander Spain’s market capitalization at December 31, 2016 was approximately €72.3 billion (\$76.1 billion)<sup>6</sup>, the largest of any Spanish bank and the second largest of any Spanish company,

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<sup>6</sup> Throughout this letter, euros have been translated to dollars at the rate of €1.00 = \$1.1072, the average rate of exchange in 2016 published by the Federal Reserve System on December 31, 2016, with regard to data as of or for periods ended December 31, 2016; and at the rate of €1.00 = \$1.0748, the average rate of exchange in 2017 (up to

representing 14.9% of the IBEX 35 Index. The values of ADTV in the Santander Spain Shares on the Spanish Exchanges during the twelve months ended December 31, 2016 and the five months ended May 31, 2017 were approximately €406 million (\$449 million) and €536 million (\$577 million), or 90.1% and 77.9%, respectively, of the global value of ADTV. The ADTV in number of shares in the Santander Spain Shares on the Spanish Exchanges during the twelve months ended December 31, 2016 and the five months ended May 31, 2017 were approximately 101 million shares and 97 million shares, respectively. The values of ADTV of the Santander Spain ADSs on the New York Stock Exchange (the "NYSE") during the twelve months ended December 31, 2016 and the five months ended May 31, 2017 were approximately \$28.6 million and \$39.2 million, respectively. The values of ADTV of the Santander Spain Shares on the Milan, Lisbon, Buenos Aires, London, Sao Paulo, Warsaw and Mexico Stock Exchanges during the twelve months ended December 31, 2016 and the five months ended May 31, 2017, in the aggregate, approximately €17.7 million (\$19.5 million) and €116.4 million (\$125.7 million), respectively.

The AQS links the Spanish Exchanges, providing securities listed on it with a uniform continuous market that eliminates the differences among the Spanish Exchanges. The principal feature of the system is the computerized matching of buy and sell orders at the time of entry of the order. Each order is executed as soon as a matching order is entered, but can be modified or canceled until executed. The activity of the market can be continuously monitored by investors and brokers. All trades on the AQS must be placed through a bank, a brokerage firm, an official stock broker or a dealer firm member of a Spanish Exchange directly. The AQS operates separate order-matching systems for block trades (which exceed certain minimum amounts) and all other trades.

## II. Santander Spain's Market Activities

Santander Spain is one of the world's largest banking and financial services groups, and its headquarters are in Madrid, Spain. In addition, Santander Spain has subsidiary, branch, representative and similar offices. Santander Spain is regulated and directly supervised by the European Central Bank under the Single Supervisory Mechanism ("SSM"), and its branches and affiliates in the United States are subject to applicable U.S. bank regulations, among other laws and regulations. Santander Spain has confirmed that the activities described below, for which it is requesting relief, are permitted under and would be conducted in accordance with applicable Spanish law and other non-U.S. laws. Assuming the requested relief is granted, Santander Spain has confirmed that the activities described below also would be conducted in accordance with applicable U.S. law.

In the continental United States, Santander Spain conducts a securities business through Santander Securities LLC and Santander Investment Securities; and an asset management business for non-U.S. clients through Banco Santander International. During the period from January 1, 2016 through May 31, 2017, purchases and sales by Banco Santander International of Santander Spain Shares and Santander Spain ADSs totaled approximately \$134.14 million. Santander Investment Securities is registered with the SEC as a broker-dealer and is a member of the Financial Industry Regulatory Association ("FINRA") and the NYSE. In Puerto Rico, Santander Spain conducts a securities business through Santander Securities LLC and an asset management business through the Puerto Rico Asset Manager. During the period from January 1, 2016 through May 31, 2017 there have been

no purchases or sales by the Puerto Rico Asset Manager of Santander Spain Shares and Santander Spain ADSs and \$4.42 million of purchases and sales by Santander Securities LLC of Santander Spain Shares and Santander Spain ADSs. Santander Securities LLC is registered with the SEC as a broker-dealer and is a member of FINRA. With respect to those activities for which Santander Spain is seeking relief, Santander Investment Securities will only engage in unsolicited brokerage activities in the United States, Santander Securities LLC will only engage in unsolicited brokerage activities in Puerto Rico and the United States, the Puerto Rico Asset Manager will only engage in asset management activities in Puerto Rico and Banco Santander International will only engage in asset management activities from the continental United States for non-U.S. clients. The rest of the activities for which Santander Spain is seeking relief (including unsolicited brokerage and asset management), with the possible exception of trades made by the Spanish Asset Managers, which, due to their fiduciary obligations as asset managers, cannot follow instructions from Santander Spain, or by the Asset Managers not based in Spain, which may not be able to follow the instructions to be provided by Santander Spain due to the same fiduciary duties, will be conducted by the Spanish Companies and the other Companies outside the United States and Puerto Rico as described below.

*Market Making Activities.* As is customary in Spain for financial institutions, Santander Spain engages in market making activities with respect to Santander Spain Shares through its Market Making Subsidiary. The Market Making Subsidiary makes bids and offers for Santander Spain Shares and purchases and sells Santander Spain Shares on the AQS. The Market Making Subsidiary effects these transactions for its own account in order to provide liquidity to the market. The Market Making Subsidiary conducts its market making activities outside the United States and manages these activities from Madrid.

As noted above, the AQS is an order-matching system, not an inter-dealer market with formal, officially designated market makers. The Market Making Subsidiary engages in its market making activities by placing bids and offers on the AQS, primarily through one of the Non-U.S. Brokerage Units. However, the Market Making Subsidiary is not required to and does not maintain independently established bid and ask prices. The Market Making Subsidiary is not required to make a market in the Santander Spain Shares. Accordingly, the Market Making Subsidiary does not act as a “**market maker**” as that term is understood in the U.S. securities markets.

Santander Spain believes that the Market Making Subsidiary is the only market maker for Santander Spain Shares on the Spanish Exchanges and, for the twelve months ended December 31, 2016 and the five months ended May 31, 2017, the Market Making Subsidiary’s market making activities accounted for approximately 0.60% and 0.38% of the value of ADTV in Santander Spain Shares on the Spanish Exchanges. At times when supply has significantly exceeded demand, its share of such value of ADTV has increased materially, but the Market Making Subsidiary’s market making activities generally do not comprise in excess of 15% of the value of ADTV in Santander Spain Shares as measured on a daily basis, on the Spanish Exchanges. The monthly average percentage of outstanding Santander Spain Shares held by the Market Making Subsidiary as a result of market making activities ranged from 0.18% to 2.17% during the twelve months ended December 31, 2016 and ranged from 0.15% to 1.21% during the five months ended May 31, 2017.

During the restricted period for the Rights Offering (the “**Restricted Period**”), the Market Making Subsidiary intends to continue its market making activities in the ordinary course of business, although the Rights Offering distribution may result in increased selling pressure and thus volumes

of transactions by the Market Making Subsidiary may be higher than average and represent a greater than average percentage of trading volume, including in excess of 15% of such daily trading volume.

*Derivatives Market Making and Hedging.* The Treasury Departments conduct their derivatives market making and hedging activities outside the United States and manage these activities principally from Spain. In Spain, the Treasury Departments are admitted under the MEFF Renta Variable rules as a market maker and are significant market makers in derivatives of Santander Spain Shares.

The Treasury department of Santander Spain is also the only market maker on the Spanish Exchanges of securitized derivatives issued by it and based, in whole or in part, on the Santander Spain Shares and the Treasury Department of Santander Spain is required by applicable stock exchange rules to provide quotes for such derivatives it issues. This activity involves the issuance, purchase and sale of derivative products for its own account and for the accounts of its customers on both solicited and unsolicited bases, on the Spanish Exchanges, certain other non- U.S. exchanges and in the over-the-counter market in Spain and elsewhere outside the United States. These derivatives products include listed and over-the-counter options, warrants, futures and other securities that are exercisable or convertible into, or the value of which is determined by reference to, Santander Spain Shares or proprietary or third-party baskets or indices including Santander Spain Shares. These derivatives may also include index futures on the foregoing. The Treasury Department of Santander Spain's derivatives market making involves issuing, purchasing and selling derivatives on Santander Spain Shares in order to facilitate customer orders and to provide liquidity to the market.

In addition, the Treasury Departments will maintain varying positions in these derivatives and their financial exposure to movements in the price of the Santander Spain Shares will vary from time to time. In order to manage this financial exposure, the Treasury Departments continually enter into hedging transactions that involve, in whole or in part, purchases and sales of Santander Spain Shares or derivatives based on Santander Spain Shares, for their own accounts and on behalf of customers of the Treasury Departments, as applicable, in order to assist them in hedging their own derivatives positions. The derivatives hedging transactions in Santander Spain Shares described above occur primarily on the AQS and on the MEFF Renta Variable, with the balance occurring on other exchanges outside the United States and, in some cases, in the over-the-counter market outside the United States. During the twelve months ended December 31, 2016 and the five months ended May 31, 2017, these market making and hedging transactions in Santander Spain Shares represented approximately 1.55% and 2.26%, respectively, of the value of ADTV in Santander Spain Shares on the Spanish Exchanges.

*Trading in Santander Spain Shares by the Asset Managers.* As part of their ordinary investment management activities, the Asset Managers buy and sell Santander Spain Shares and derivatives, including listed and over-the-counter options, warrants, convertible securities and other structured products related to Santander Spain Shares or baskets or indices including Santander Spain Shares, as well as index futures on the foregoing, outside the United States for the Managed Funds' accounts<sup>7</sup>. Under Spanish law, the Asset Managers have a fiduciary duty to oversee the Managed

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<sup>7</sup> The Puerto Rico Asset Manager conducts such activities in Puerto Rico and Banco Santander International conducts such activities in the continental United States for non-U.S. clients. Both entities' volume of trading in Santander Spain Shares has historically been low.

Funds in a manner that is in the best interests of the investors of those funds<sup>8</sup>. The Asset Managers are prohibited by law from taking into account any factors other than the interests of the Managed Funds' beneficiaries in making investment decisions. Accordingly, the Asset Managers would be prohibited by law from following a directive by Santander Spain to cease trading Santander Spain Shares and derivatives, including listed and over-the-counter options, warrants, convertible securities and other structured products related to Santander Spain Shares or baskets or indices including Santander Spain Shares, as well as index futures on the foregoing, during the Restricted Period, unless the Asset Managers believed that cessation of such trading was in the best interests of the Managed Fund's beneficiaries<sup>9</sup>. Similarly, the Asset Managers would be prohibited by law from following a Santander Spain directive to bid for or purchase Santander Spain Shares and derivatives, including listed and over-the-counter options, warrants, convertible securities and other structured products related to Santander Spain Shares or baskets or indices including Santander Spain Shares, as well as index futures on the foregoing, unless the Asset Managers independently concluded that such bids or purchases were in the best interests of the Managed Fund's beneficiaries.

*Trading by the Insurance Company.* The Insurance Companies purchase Santander Spain Shares in connection with investing premiums paid on Asset Class Policies, which require investments within a narrow class of assets, such as the IBEX 35 Index, that may include Santander Spain Shares. The Insurance Companies conducts these activities outside the United States.

Under Spanish law, the Insurance Companies have a fiduciary duty to the purchasers of Asset Class Policies to oversee the investments with respect to those policies in a manner that is in the best interests of those purchasers. The Insurance Companies may not take into account any factors other than the interests of its insureds in making investment decisions under those policies. Accordingly, the Insurance Companies would be prohibited by law from following, with respect to the Asset Class Policies, a directive by Santander Spain to cease trading Santander Spain Shares during the Restricted Period, unless such a halt in trading were in the best interests of the purchasers of those policies. Similarly, the Insurance Companies would be prohibited by law from following a Santander

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<sup>8</sup> Under Spanish law, Santander Spain cannot issue directives to the Spanish Asset Managers requesting them to stop trading in any specific security for a specified period. This has been confirmed orally by the Spanish National Markets Commission (the "CNMV"). As a result, prior to the commencement of the Restricted Period, Santander Spain will instead issue advisory notices to the Spanish Asset Managers informing them that any trading by them in Santander Spain Shares or derivatives during the Restricted Period could result in a violation of U.S. law. Prior to the commencement of the Restricted Period, Santander Spain will issue directives to the Asset Managers not based in Spain requesting such Asset Managers to stop trading in Santander Spain Shares or derivatives until the termination of the Restricted Period. However, in light of the fiduciary duties that the Asset Managers have to the beneficiaries of the Managed Funds, no assurances can be given that the Asset Managers will in fact refrain from trading in Santander Spain Shares or derivatives during the Restricted Period. Accordingly, we are asking that the requested relief cover the asset management activities of the Asset Managers to the extent that the Asset Managers continue to trade in Santander Spain Shares or derivatives in the ordinary course of business during the Restricted Period.

<sup>9</sup> Some of the pension funds managed by the Asset Managers have an "investment oversight committee" charged with overseeing the investments made by the Asset Managers. In certain cases, representatives and/or employees of Santander Spain or its affiliates may be members of those investment oversight committees. However, those committees (and their members) would be unable to require the pension fund Asset Manager to stop or start trading Santander Spain Shares or derivatives during the Restricted Period if the Asset Manager did not believe it was in the best interests of the fund's owners to do so. The representatives and/or employees of Santander Spain who participate on the investment oversight committees are, like the Asset Managers themselves, isolated by Information Barriers from the areas of Santander Spain where price-sensitive information relating to Santander Spain Shares or derivatives and where information relating to the Rights Offering would be discussed.

Spain directive to bid for or purchase Santander Spain Shares unless the Insurance Companies independently concluded that such bids or purchases were in the best interests of its insureds under the Asset Class Policies.

*Unsolicited Brokerage.* The Non-U.S. Brokerage Units effect unsolicited brokerage transactions in the Santander Spain Shares by placing orders on the Spanish Exchanges and other overseas exchanges or effecting trades in the over-the-counter market in Spain and elsewhere outside the United States, in each case on behalf of customers. These transactions arise from unsolicited buy and sell orders received from their customers, although the Non-U.S. Brokerage Units may solicit the other side of these transactions. The unsolicited brokerage activities of the Non-U.S. Brokerage Units (excluding trades executed by the Non-U.S. Brokerage Units on behalf of the Market Making Subsidiary) represented approximately 11.89% and 19.12% of the value of ADTV in Santander Spain Shares on the Spanish Exchanges during the twelve months ended December 31, 2016 and the five months ended May 31, 2017, respectively.

Although the Non-U.S. Brokerage Units from time to time provide advice to their customers regarding an investment in Santander Spain Shares, none of the Non-U.S. Brokerage Units, Santander Spain or any subsidiary of Santander Spain publishes research reports concerning Santander Spain.

The Non-U.S. Brokerage Units are required by Spanish law, as well as, in some cases, by the terms of their contracts with customers, to facilitate the trading activity of customers as described above<sup>10</sup>. It would place a substantial burden on the Non-U.S. Brokerage Units' customers to require them to transfer their Santander Spain Shares to a securities account with another bank, or to have the Non-U.S. Brokerage Units place orders with another bank, in order to make trades with respect to Santander Spain Shares during the Restricted Period. Moreover, the Non-U.S. Brokerage Units would likely lose a significant number of those customers if the Non-U.S. Brokerage Units were prevented from providing them with customary facilitation services during the Restricted Period.

As noted above, the U.S. Brokerage Units may also engage in unsolicited brokerage transactions in the Santander Spain Shares with their customers in the United States. These transactions would be effected on the NYSE, in the over-the-counter markets in the United States or in the non-U.S. markets described above.

*Significance to Market.* As noted above, the Market Making Subsidiary's market making activities accounted for 0.60% and 0.38% of the values of ADTV in Santander Spain Shares on the Spanish Exchanges during the twelve months ended December 31, 2016 and the five months ended May 31, 2017, respectively, while the derivatives market making and hedging activities of the Treasury Departments and the unsolicited brokerage activities of the Non-U.S. Brokerage Units (excluding trades executed on behalf of the Market Making Subsidiary) represented approximately 1.55% and 11.89%, respectively, of such 2016 value of ADTV and approximately 2.26% and 19.12%, respectively, of such 2017 value of ADTV. In the aggregate, these market activities represented approximately 14.05% and 21.76% of the values of ADTV in Santander Spain Shares on the Spanish Exchanges during the twelve months ended December 31, 2016 and the five months ended May 31, 2017, respectively.

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<sup>10</sup> The Brokerage Units are not required, however, to buy or sell Santander Spain Shares as principal for the benefit of their clients.

*Information Barriers.* Santander Spain maintains and enforces written “**Information Barrier**” policies and procedures to prevent material non-public information from passing between the sales/trading areas and other sensitive areas of Santander Spain (including any investment oversight committee). Accordingly, during restricted periods prior to announcements of earnings results or other material developments that have not yet become public, most market making and all other ordinary course market activities of Santander Spain are permitted to continue. Under these policies and procedures, Santander Spain’s traders and sales force who conduct these market activities will generally be able to continue doing so during and outside these restricted periods, although senior management may restrict such activities in extraordinary circumstances. Santander Spain will continue to maintain and enforce these policies and procedures during the Restricted Period.

Other affiliates of Santander Spain conduct market activities in Santander Spain Shares in the ordinary course of their business. In connection with the Rights Offering, these other affiliates will comply with Regulation M, either by suspending their market activities during the relevant period or by conducting those activities in accordance with an available exception from Regulation M. These exceptions might include those available for “**affiliated purchasers.**” Accordingly, Santander Spain is not seeking relief from the Staff for these activities.

### III. The Rights Offering

On April 7, 2017, an Ordinary General Meeting of the shareholders of Santander Spain authorized the Board of Directors of Santander Spain to increase the share capital of Santander Spain, within a maximum term of three years and through one or more capital increases, up to a maximum amount in nominal value of €3,645,585,175 by means of the issuance of new ordinary shares. On the same date, the Board of Directors of Santander Spain delegated such authorization to the Executive Committee of the Board of Directors. The Executive Committee is expected to resolve that Santander Spain carry out the Rights Offering, a proposed capital increase of approximately €7.0 billion, including the nominal value and the share issue premium of the shares to be issued, which represents approximately 8% of Santander Spain’s market capitalization based on the June 28, 2017 closing price of Santander Spain’s ordinary shares, involving the offering to Santander Spain shareholders of preemptive rights to purchase new Santander Spain Shares (the “**Rights**”).<sup>11</sup> The percentage that the Rights Offering will represent of Santander Spain’s issued shares capital will be dependent on the issue price of the new shares (nominal value plus share issue premium). In the Rights Offering, Santander Spain will issue Rights to Santander Spain shareholders of record on the second trading day after publication of the corresponding announcement in the Spanish Commercial Registry Gazette (BORME); since said BORME, publication is expected to occur on July 5, 2017, the record date is expected to be July 7, 2017 (the “**Record Date**”; the Santander Spain shareholders of record on such date, the “**Record Holders**”); as a result, investors who acquire Santander Spain Shares on the day of publication of the BORME announcement (the “**Last Trading Date**”) and that, following settlement of the transaction, appear as shareholders in the Iberclear registries on the second trading day after the publication of the BORME announcement, will also be entitled to receive the Rights. Shareholders who have sold their shares on or prior to July 5, 2017 will not receive Rights with respect to such shares

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<sup>11</sup> It is expected that the number of new Santander Spain Shares to be issued under the Rights Offering and the offer price per Santander Spain Share will be determined and announced on or about July 3, 2017.

The Rights and the new Santander Spain Shares to be issued in the Rights Offering to record holders of Santander Spain Shares with registered addresses in the United States (including Puerto Rico) will be registered under the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "**Securities Act**"), pursuant to a registration statement on Form F-3. A limited number of additional Rights and new Santander Spain Shares will be registered on Form F-3 with respect to any possible "flowback" of new Santander Spain Shares to the United States following the Rights Offer. Rights will be issued to the local custodian for the Depository on behalf of all holders of Santander Spain ADSs. The Depository will not issue rights to Santander Spain ADS holders and will instead cause the custodian to sell the Rights it receives and distribute the cash proceeds to the holders of Santander Spain ADSs. Santander Spain will prepare one or more offering documents for use in soliciting subscriptions and purchases in the Rights Offering, including a prospectus and prospectus supplement for use in the United States.

The exercise price at which the rights may be exercised is expected to be determined and announced on or about July 3, 2017. The Rights Offering subscription period is expected to last 15 calendar days, commencing on the first Spanish business day following the Record Date (the "**Subscription Period**"). During the Subscription Period, the Rights will be traded on the Spanish Exchanges and through the AQS. Rights may be exercised at any time during the Subscription Period. In addition, during the Subscription Period, the Record Holders and investors who have acquired Rights and have exercised all the rights they hold may request to subscribe for additional new Santander Spain Shares (the "**Additional Shares**") in the event that, at the expiration of the Subscription Period, there exist new Santander Spain Shares as to which Rights have not been exercised (the "**Surplus Shares**"). The allocation of Additional Shares will take place on the fourth trading day following the expiration of the Subscription Period and is expected to take place on July 26, 2017. On such date, Santander Spain, acting as Rights agent, will determine the number of Surplus Shares and will allocate such shares to the Record Holders and the investors that have requested Additional Shares according to the terms and conditions set forth in the offering. Such allocation will be done on a pro rata basis if the number of Additional Shares requested exceeds the number of Surplus Shares.

Any new Santander Spain Shares that have not been subscribed for during the Subscription Period or allocated to Record Holders or investors requesting Additional Shares will be placed with qualified institutional investors by the underwriters at the discretion of Santander Spain (the "**Discretionary Allocation Period**"). The Discretionary Allocation Period, if any, is expected to begin on July 26, 2017 and to end before the AQS opening on July 27, 2017. In the event that any new Santander Spain Shares are not subscribed for by qualified institutional investors at the expiration of the Discretionary Allocation Period, such shares shall be subscribed for by the underwriters. Santander Spain may reject or accept, in whole or in part, at its discretion, any requests to subscribe for new Santander Spain Shares received during the Discretionary Allocation Period so long as any such rejection is done on a good faith basis and would not require the underwriters to subscribe for any new Santander Spain Shares.

The closing of the Rights Offering and the approval of the corresponding corporate resolutions and execution of the public deed resolving to increase the share capital is currently expected to occur on or about July 27, 2017. The new Santander Spain Shares will be submitted for listing on the Spanish Stock Exchanges, the New York Stock Exchange (in the form of Santander Spain ADSs)

and the Milan, Lisbon, Buenos Aires, London (in the form of Santander Spain CDIs), Warsaw, Sao Paulo (in the form of Santander Spain BDRs) and Mexico Stock Exchanges.<sup>12</sup>

The joint bookrunners for the Rights Offering are expected to be Santander Spain, Citigroup Global Markets Limited and UBS Limited. Santander Spain, the Non-U.S. Brokerage Units and the U.S. Brokerage Units will participate in the Rights Offering as permitted by Rules 102(b)(5) and, to the extent applicable, 101(b)(9) of Regulation M.

#### IV. Application of Regulation M

In connection with the Rights Offering, Santander Spain and certain affiliated purchasers as such term is defined in Rule 100 of Regulation M will offer and sell Santander Spain Shares to Santander Spain's existing shareholders, some of whom reside in the United States, and may therefore be considered to be engaged in a distribution in the United States for purposes of Regulation M. Pursuant to Rule 100 under Regulation M, the Restricted Period will commence one business day prior to the determination of the offering price for the Rights and will end upon completion of the Rights Offering. Thus, the Restricted Period is likely to last approximately three and one-half weeks.

As business units or affiliates of Santander Spain that, from time to time, purchase Santander Spain Shares for their own accounts and the accounts of others and recommend and exercise investment discretion with respect to the purchase of Santander Spain Shares, the Companies may be deemed to be "affiliated purchasers" of Santander Spain, as defined in Rule 100 of Regulation M. As such, their market activities will be subject to Rule 102 of Regulation M throughout the Restricted Period, except to the extent that any of them acts as a "**distribution participants**" subject to Rule 101.

Under both Rule 101 and Rule 102, the Companies will not be permitted to bid for or purchase, or attempt to induce any person to bid for or purchase, Santander Spain Shares during the Restricted Period unless one of the specified exceptions under the applicable rule is available. There are no exceptions available under either rule that would permit the Companies to engage in the ordinary course market-making, derivatives hedging, asset management, insurance and unsolicited brokerage activities described in this letter. Therefore, without the requested exemptive relief, the Companies would not be permitted to engage in these activities for an extended period of time, which is likely to last approximately three and one-half weeks.

Santander Spain believes that the withdrawal of the only market maker in Santander Spain Shares in the primary market for those shares, which are among the most actively traded in Spain, for such an extended period of time would have serious harmful effects in the home market and, indirectly, in the U.S. market, for the Santander Spain Shares. These effects could include a significant imbalance of buy and sell orders, particularly given the large number of shares to be distributed in the Rights Offering, and thus greater volatility and reduced liquidity. In addition, as the Treasury Department of Santander Spain is also a significant market maker in derivatives on Santander Spain Shares, if the Treasury Department of Santander Spain is precluded from conducting market making activities in the derivatives or from effecting hedging transactions in Santander Spain Shares relating to the derivatives, the application of Regulation M could have adverse effects on the market for derivatives, as well as on the Treasury Departments' ability to manage hedge positions maintained by them and the customers of the Treasury Departments previously established in connection with

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<sup>12</sup> The commencement and subsequent events in the Rights Offering described above could be delayed.

this activity. The Asset Managers and the Brokerage Units may also be unable to execute asset-management related or unsolicited brokerage orders submitted by their customers in the normal course, thereby forcing their customers to take their orders elsewhere or to refrain from trading. Similarly, the Asset Managers and the Insurance Companies have a fiduciary duty to the investors of the Managed Funds and to the purchasers of their insurance products to oversee the investments in a manner that is in the best interests of those purchasers. Accordingly, the Asset Managers and the Insurance Company may not refrain from, or engage in, trading in Santander Spain Shares or, as the case may be, derivatives, including listed and over-the-counter options, warrants, convertible securities and other structured products related to Santander Spain Shares or baskets or indices including Santander Spain Shares, as well as index futures on the foregoing, as a result of investment instructions received from Santander Spain, unless such action is in the best interests of the purchasers of those policies. The derivatives market making and hedging, asset management, insurance and unsolicited brokerage activities described in this letter are also important aspects of Santander Spain's business as a major financial institution in Europe and, therefore, interrupting those activities for such an extended period could also have an adverse impact on Santander Spain's business, including its ability to properly manage its risks.

The Santander Spain Shares would easily qualify as actively traded securities that are exempt under Rule 101(c)(1), with a value of average daily trading volume for the twelve months ended December 31, 2016 and the five months ended May 31, 2017 of approximately €406 million and €536 million, respectively, and a public float value in excess of \$100 billion. Regulation M normally would not interfere with market-making and other market activities in actively traded securities, such as the Santander Spain Shares. However, because the Companies are affiliated purchasers of the issuer, they may not rely on the actively traded securities exception to do what market makers and brokers for large U.S. issuers are normally allowed to do during distributions by those issuers.

In addition, the Rights Offering is being conducted and trading in Santander Spain Shares by the business units and affiliates of Santander Spain identified herein during the Rights Offering is subject to and will be conducted in accordance with applicable Spanish law and other applicable non-U.S. laws. As discussed in greater detail below, applicable Spanish law provides important safeguards against the type of risk of abuse that Regulation M was designed to prevent.

Finally, Santander Spain believes that the risk of market manipulation by the Companies is limited by the "**Information Barrier**" procedures and fiduciary duties described above, the fact that the market activities that are the subject of this request for exemptive relief are the ordinary course market activities of the Companies rather than activities commenced or managed in contemplation of the Rights Offering, and the fact that the jurisdictions in which the Companies operate have laws that prohibit market manipulation (as further discussed below).

For the foregoing reasons, Santander Spain asks the Staff to provide an exemption from Regulation M that would allow the Companies to continue to engage in market making, derivatives market making and hedging, asset management, insurance and unsolicited brokerage activities with respect to Santander Spain Shares and Santander Spain ADSs in the ordinary course of their respective business as described above during the Restricted Period, as permitted under market practice and applicable law in their home jurisdictions.

## V. The Spanish Regulatory Regime

The principal regulations that apply to the Spanish Companies' market activities under Spanish law are the Regulation (EU) No 596/2014, of the European Parliament and the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC and implementing and delegated regulations (the "MAR"), the Spanish Securities Market Act (the "SSMA"), Royal Decree 1333/2005, as amended (relating to market abuse), Royal Decree 217/2008 (relating to regulations governing the activities of investment firms and conduct on the Spanish Exchanges). Pursuant to the provisions of MAR, the SSMA established an independent regulatory authority, the CNMV, to supervise the securities markets. The SSMA governs, among other things, trading practices, insider trading and disclosure. In particular, Articles 231<sup>13</sup>, and 282.5<sup>14</sup> of the SSMA prohibit market manipulation. Under the SSMA, the CNMV oversees price formation, execution and the settlement of transactions to ensure that insider trading, price manipulation and other breaches of law may be detected. The CNMV has a division which has responsibility for market supervision, monitoring compliance, investigating violations and imposing disciplinary measures. The CNMV also takes measures to ensure that information necessary to maintain a transparent market is made public. This applies, in particular, to the prices and volumes of securities traded on and off the Spanish Exchanges.

The Spanish Criminal Code provides remedies for abusing confidential information that is likely to influence the prices of securities. Market manipulation and dissemination of false rumors to affect the prices of listed securities to realize a gain are prohibited. The breach of professional secrecy, insider trading and price manipulation in Spain are criminal offenses. In particular, Article 284 of the Spanish Criminal Code establishes criminal liability for employment of any mechanism with the intent to alter prices that would otherwise result from a free market for, among other things, securities.

Under Spanish law, Santander Spain and its subsidiaries are prohibited from purchasing Santander Spain Shares unless the purchase of Santander Spain Shares is generally authorized at a meeting of shareholders of Santander Spain, and such purchase, together with the Santander Spain Shares previously held by Santander Spain and its subsidiaries, do not result in a net equity lower than the Santander Spain share capital amount plus any restricted legal or statutory reserves. In addition, the total number of Santander Spain Shares held by Santander Spain and its subsidiaries may not exceed 10% of the total capital stock of Santander Spain. Spanish law requires that the CNMV be notified each time Santander Spain and its subsidiaries acquire, on an aggregate basis, 1% of the outstanding capital stock of Santander Spain (without deducting any sales of Santander Spain Shares which may have been made during that time period). In addition, the Bank of Spain requires

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<sup>13</sup> Article 231 provides:

Any person or entity acting or otherwise related to the securities markets shall refrain from engaging in activities that may falsify the free development of prices in the securities markets.

<sup>14</sup> Article 282.5 provides:

The following acts or omissions constitute extremely serious infringements by the individuals and institutions referred to in Article 271 hereof [including brokers, market makers and their respective officers]:

(i) breach of Article 231 if such breach has a material adverse effect on the price [of the relevant security]. If the effect on the price is not material, this would still constitute a serious infringement, in accordance with Article 295.

Santander Spain to provide monthly reports of the number of Santander Spain Shares held by Santander Spain and its subsidiaries, the number of Santander Spain Shares held for hedging purposes and the number of Santander Spain Shares held by third parties whose purchase was either financed by or pledged to Santander Spain or any of its subsidiaries.

Pursuant to Spanish regulations relating to conduct in the securities markets, the Spanish Brokerage Unit must keep records of orders received from any third party regarding Santander Spain Shares and any other security as well as the execution of such order. The Spanish Brokerage Unit also must keep records relating to transactions in which they are acting as principals. The information contained in such records must include identification of the client, the number, type and price of securities bought or sold and the market on which the transaction is effected. These records must be made available to the CNMV upon request. In addition, the Market Making Subsidiary, the Treasury Departments, the Spanish Asset Managers and the Insurance Company must also maintain records relating to the transactions in which they engage, including the number, type and price of securities bought or sold.

The jurisdictions in which the Companies other than the Spanish Companies operate generally have anti-market manipulation, insider trading and record-keeping laws and regulations similar to those governing market activities in Spain.

## **VI. Relief Requested**

As discussed above, Santander Spain is seeking exemptive relief from Rule 102 and, to the extent applicable, Rule 101 of Regulation M to permit the Market Making Subsidiary, the Treasury Departments, the Asset Managers, the Insurance Companies and the Non-U.S. Brokerage Units to continue to engage in the ordinary course market making, derivatives market making and hedging, asset management, insurance and unsolicited brokerage activities as described in this letter during the Restricted Period. The Market Making Subsidiary, the Treasury Departments, the Asset Managers, the Insurance Companies and the Non-U.S. Brokerage Units would conduct these activities in the ordinary course of their business, not for the purpose of facilitating the Rights Offering's distribution and in accordance with applicable law, all as described in this letter. Santander Spain also asks for relief to permit the U.S. Brokerage Units, Banco Santander International and the Puerto Rico Asset Manager to engage in their respective activities in the normal course of business, not for the purpose of facilitating the Rights Offering's distribution and in accordance with applicable local law, as described in this letter.

As a condition to the relief being requested, none of the transactions for which relief is being requested will occur in the United States, except transactions in connection with unsolicited brokerage activities by Santander Investment Securities and Santander Securities LLC and asset management activities by the Asset Managers, as each is described in this letter.

As another condition to the requested relief, all of the transactions for which relief is being requested will be effected in the ordinary course of business, as described in this letter, and not for the purpose of facilitating the Rights Offering.

As another condition to the relief being requested, Santander Spain would undertake to include disclosure in the prospectus supplement that will be distributed to United States investors that participate in the Rights Offering. The disclosure would be substantially similar to the following:

During the distribution of Santander Spain Shares in the Rights Offering, Santander Spain, through certain identifiable business units, and certain of its affiliates have engaged and intend to continue to engage in various dealing and brokerage activities involving Santander Spain Shares outside the United States. Among other things, Santander Spain, through an affiliate, has made a market, from time to time, and intends to continue to make a market, from time to time, in the Santander Spain Shares by purchasing and selling Santander Spain Shares for its own account in Spain on the Spanish Exchanges.

Certain mutual fund management companies, pension fund management companies, asset management companies and insurance companies that are affiliates of Santander Spain have purchased and sold, and intend to continue to purchase and sell, Santander Spain Shares and derivatives, including the Rights, as part of their ordinary investing activities and/or as part of the investment selections made by their clients. Santander Spain, through its derivatives business units, has also engaged, and intends to continue to engage, in dealings in Santander Spain Shares and derivatives, including the Rights, for their accounts and for the accounts of their respective customers for the purpose of market making of derivatives, short term management of balance sheet risk or of hedging their respective positions established in connection with certain derivatives activities (such as options, warrants, futures and other instruments) relating to Santander Spain Shares entered into by Santander Spain and its affiliates and their respective customers. Santander Spain, through its brokerage business units, has also engaged, and intends to continue to engage, in unsolicited brokerage transactions in Santander Spain Shares with Santander Spain's customers, as well as in such transactions in the Rights. These activities occurred and are expected to continue to occur through the AQS, on the Spanish Exchanges, the stock exchanges of Milan, Lisbon, Buenos Aires, London, Sao Paulo, Warsaw and Mexico and in the over-the-counter market in Spain or elsewhere outside the United States.

Santander Spain's affiliates in the United States also have engaged and may continue to engage in unsolicited brokerage and asset management transactions in Santander Spain Shares and Santander Spain ADSs in the United States. In addition, Santander Spain's affiliates in Puerto Rico have engaged and may continue to engage in unsolicited brokerage transactions in Santander Spain Shares and Santander Spain ADSs in Puerto Rico and may purchase Santander Spain Shares and Santander Spain ADSs in connection with asset management activities in Puerto Rico. Santander Spain is not obliged to make a market in Santander Spain Shares and any such market making may be discontinued at any time. All of these activities could have the effect of preventing or retarding a decline in the market price of the Santander Spain Shares.

Santander Spain has sought and received from the SEC certain exemptive relief from Regulation M in order to permit its identifiable business units and affiliates to engage in the foregoing activities during the Restricted Period.

As a further condition to the relief being requested, Santander Spain and each of the Companies will undertake to keep records (the "**Records**") of the date and time when any Santander Spain Shares or Santander Spain ADSs are purchased or sold, the broker (if any), the market or other manner in which the purchase or sale is effected, the amount of Santander Spain Shares or Santander Spain ADSs purchased or sold and the price of the purchase or sale, and whether the purchase or sale was made for a customer account or a principal or proprietary account, for each purchase or sale of

Santander Spain Shares or Santander Spain ADSs that Santander Spain or any of the Companies effects in the United States during the Restricted Period. This information will not include any client-specific data, the disclosure of which is restricted under local law. Santander Spain will maintain Records for a period of two years following the completion of the Rights Offering. Upon the written request of the Division of Trading and Markets of the SEC, Santander Spain will make a copy of the relevant Records (arranged in a time-sequence manner) available at the SEC's offices in Washington, D.C, within 30 days of the request, and will make representatives of Santander Spain and each of the Companies available by telephone to respond to inquiries of the Division relating to the Records.

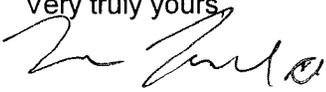
As a final condition to the relief being requested, except as otherwise permitted by the relief being requested, Santander Spain and its affiliates will comply with Regulation M in connection with the Rights Offering.

In connection with the relief requested by Santander Spain in this letter, please note that substantially similar exemptive relief from Rule 101 and Rule 102 of Regulation M was granted to Santander Spain with respect to market making, derivatives hedging, asset management, insurance and unsolicited brokerage activities under your exemptive letters dated September 10, 2004, August 18, 2008, December 22, 2008, September, 18, 2014 and January 6, 2015 and to Banco Bilbao Vizcaya Argentaria, S.A. under your exemptive letters dated June 25, 2007 and October 28, 2010, substantially similar exemptive relief from Rule 101 and Rule 102 of Regulation M was granted to Allianz AG with respect to market making, derivatives market making and hedging and unsolicited brokerage activities under your exemptive letter dated April 10, 2003 and to Deutsche Bank AG under your exemptive letter dated March 17, 2017 and similar exemptive relief from Rule 102 of Regulation M was granted to Santander Spain with respect to derivatives market making and hedging, asset management, insurance and unsolicited brokerage activities relating to shares of the Royal Bank of Scotland under your exemptive letter dated July 23, 2007, to Lloyds Banking Group plc with respect to derivatives hedging, asset management, insurance, unsolicited brokerage and other activities under your exemptive letter dated September 16, 2013 and to National Bank of Greece S.A. with respect to market making, derivatives hedging, asset management and unsolicited brokerage activities under your exemptive letter dated May 7, 2014.

\* \* \* \* \*

If you have any questions about this request, please do not hesitate to contact the undersigned at (212) 450-4950. We appreciate your assistance in this matter.

Very truly yours,



Nicholas A. Kronfeld

Copy to:

Javier Illescas  
Head of Corporate Legal  
Banco Santander, S.A.

Pedro de Mingo  
Head of Regulatory Compliance  
Banco Santander, S.A.