



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

August 26, 2019

Michael J. Willisch  
Davis Polk & Wardwell LLP  
Paseo de la Castellana, 41  
28046 Madrid  
Spain

**Re: Banco Bilbao Vizcaya Argentaria, S.A.  
File No. TP 19-05**

Dear Mr. Willisch:

In your letter dated August 26, 2019 (the “New Request Letter”), you request on behalf of Banco Bilbao Vizcaya Argentaria, S.A. (“BBVA”), a bank organized under the laws of the Kingdom of Spain, an exemption from Rules 101 and 102 of Regulation M under the Securities Exchange Act of 1934, as amended (“Exchange Act”), in order for BBVA and certain of its affiliates to conduct specified “ordinary course” activities in the ordinary shares of BBVA (“BBVA Shares”) and American Depositary Shares representing BBVA Shares (“ADSs”), during the proposed offering by BBVA (the “Offering”) of contingent convertible preferred securities structured to qualify as additional tier 1 capital for Spanish regulatory purposes (the “Contingent Convertible Preferred Securities”), as defined in your New Request Letter.<sup>1</sup>

On November 3, 2017, BBVA requested (the “Original Request Letter”), and the Securities and Exchange Commission (“Commission”) granted, BBVA an exemption from Rules 101 and 102 of Regulation M (the “Original Relief”)<sup>2</sup> to permit BBVA and certain of its affiliates (the “Global Companies”)<sup>3</sup> to continue to engage in certain ongoing market activities

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

<sup>2</sup> A copy of the Original Request Letter and the Commission’s Original Relief are available on the Commission’s website at <https://www.sec.gov/divisions/marketreg/mr-noaction/2017/bbva-110317-rules101-102.pdf>.

<sup>3</sup> The Global Companies include: the Market-Making Subsidiary, the Trading Unit, the International Trading Units, the Brokerage Units, the International Brokerage Units, the Asset Managers, the International Asset Managers, the Insurance Company, the Brokerage Units, the International Brokerage Units, and BBVA Securities, Inc.

involving BBVA Shares and ADSs (“Market Activities”)<sup>4</sup> during a distribution of the Contingent Convertible Preferred Securities, as described in the Original Request Letter and the Original Relief. In your New Request Letter, you seek the same exemptive relief from Rules 101 and 102 of Regulation M, as granted in the Original Relief, to permit BBVA and the Global Companies to continue to engage, in the ordinary course of business and in accordance with applicable Spanish anti-market abuse and other local laws, in the Market Activities during the proposed distribution of the Contingent Convertible Preferred Securities.<sup>5</sup>

In your New Request Letter, you reiterate the facts and representations contained in the Original Request Letter. You also confirm that, since the date of the Original Request Letter, there has been no material change in the matters described therein, other than the details of the Offering described in your New Request Letter.<sup>6</sup>

*Response:*

Based on the facts and representations that you have made in your New Request Letter, but without necessarily concurring in your analysis, the 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, BBVA and the Global Companies an exemption from Rules 101 and 102 of Regulation M to permit BBVA and the Global Companies to continue to engage in the Market Activities described in the Original Request letter, and reiterated in your New Request Letter, during the applicable Regulation M restricted period while in a distribution of the Contingent Convertible Preferred Securities, subject to all the conditions of the Original Relief.<sup>7</sup>

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<sup>4</sup> The Market Activities are: the market making activities; the derivatives hedging activities; the investment management activities; activities in connection with investment selections that are made by purchasers of insurance products; and unsolicited brokerage activities.

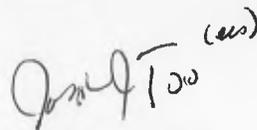
<sup>5</sup> In your New Request Letter, you represent that BBVA is seeking exemptive relief in the event that the BBVA Shares and ADSs could be considered “reference securities” in relation to the Contingent Convertible Preferred Securities for purposes of Regulation M. You also indicate that inclusion of the “Conversion Feature” (as described more fully in the Original Relief Letter), in terms of the Contingent Convertible Preferred Securities, raises a question regarding whether all the conditions of the Class Relief would be satisfied in connection with the Offering.

<sup>6</sup> In the New Request Letter, you note that BBVA’s market capitalization at June 30, 2019 was approximately €32.8 billion (\$37.3 billion), and the average daily trading volume in the BBVA Shares on the Spanish Exchanges in 2018 and in the six months ended June 30, 2019 was approximately €216 million (\$248 million) and €167 million (\$190 million), respectively. The average daily trading volume of the ADSs on the New York Stock Exchange during 2018 and in the six months ended June 30, 2019 was approximately \$26 million and \$20 million, respectively. The average daily trading volume of the BBVA Shares on the London and Mexican stock exchanges during 2018 and in the six months ended June 30, 2019 was approximately €6.2 million (\$7.1 million), and €3.6 million (\$4.1 million), respectively, in the aggregate.

<sup>7</sup> The exemption granted herein extends to subsequent offerings by BBVA of Contingent Convertible Preferred Securities if there is adherence to the representations contained in the Original Request Letter, and reiterated in the New Request Letter, and if all the conditions in the Original Relief are met.

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. This exemption is based solely on the facts presented and the representations made in your New Request Letter. Any different facts or circumstances may require a different response. In the event that any material change occurs with respect to any of those facts or representations, transactions in the BBVA Shares and ADSs must be discontinued, pending presentation of the facts for our consideration. In addition, persons relying on this exemption are directed to the antifraud 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 must rest with the participants in the various transactions. We express no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission,  
by the Division of Trading and Markets,  
pursuant to delegated authority,<sup>8</sup>

A handwritten signature in black ink, appearing to read "Josephine J. Tao" with a circled "10" to the right.

Josephine J. Tao  
Assistant Director

Attachment

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<sup>8</sup> 17 CFR 200.30-3(a)(6).



New York  
Northern California  
Washington DC  
São Paulo  
London

Paris  
Madrid  
Tokyo  
Beijing  
Hong Kong

Michael J. Willisch

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Paseo de la Castellana, 41 91 768 9710 fax  
28046 Madrid michael.willisch@davispolk.com

August 26, 2019

Re: **Banco Bilbao Vizcaya Argentaria, 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 Bilbao Vizcaya Argentaria, S.A. ("**BBVA**"), a bank organized under the laws of the Kingdom of Spain ("**Spain**"), regarding the application of Regulation M to transactions by BBVA and certain of its affiliates (also referred to as the "Global Companies," as defined below<sup>1</sup>) in the ordinary shares of BBVA ("**BBVA Shares**") and American Depositary Shares representing BBVA Shares ("**ADSs**") during the proposed offering by BBVA (the "**Offering**") of contingent convertible preferred securities structured to qualify as additional tier 1 capital for Spanish regulatory purposes (the "**Contingent Convertible Preferred Securities**").

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<sup>1</sup> As set forth in the Original Request Letter (as defined below), the "Global Companies" consist of BBVA's subsidiary dedicated to market-making activities with respect to BBVA Shares, Corporación General Financiera S.A. (the "**Market-Making Subsidiary**"), the principal trading unit of BBVA (the "**Trading Unit**"), the principal brokerage units of BBVA (the "**Brokerage Units**"), the affiliates of BBVA that manage the assets of certain mutual funds, pension funds and investor portfolios (the "**Asset Managers**"), BBVA Seguros, S.A., an affiliate of BBVA engaged in the sale of insurance products (the "**Insurance Company**") and, together with the Market-Making Subsidiary, the Trading Unit, the Brokerage Units and the Asset Managers, the "**Spanish Companies**"), the affiliates of BBVA that carry out activities similar to the Trading Unit outside Spain and the United States (the "**International Trading Units**"), the affiliates of BBVA that carry out activities similar to the Brokerage Units outside Spain and the United States (the "**International Brokerage Units**"), the affiliates of BBVA that carry out activities similar to the Asset Managers outside Spain and the United States (the "**International Asset Managers**") and BBVA's subsidiary through which it conducts its securities business in the United States, BBVA Securities, Inc. ("**BBVA Securities, Inc.**") and, together with the Spanish Companies, the International Trading Units, the International Brokerage Units and the International Asset Managers, the "**Global Companies**"). Gestion de Provision y Pensiones, S.A., E.G.F.P. is a Spanish affiliate of BBVA which, like the Asset Managers, manages the assets of certain mutual funds, pension funds and investor portfolios in Spain ("**Gestion**"). We ask that the requested relief also cover the investment management activities of Gestion. Consequently, for purposes of this letter, the terms "Asset Managers" and "Global Companies" shall also include Gestion unless the context otherwise requires.

We refer to our letter of November 3, 2017 (the "**Original Request Letter**"), in which BBVA sought an exemption to permit BBVA and the Global Companies to conduct the ongoing market-making activities, derivatives hedging activities, investment management activities, activities in connection with investment selections that are made by purchasers of insurance products and unsolicited brokerage activities, described therein ("**Market Activities**") in connection with the offering by BBVA of contingent convertible preferred securities, which was completed on November 16, 2017 and for which relief was granted (the "**Original Relief**").<sup>2</sup> BBVA reiterates the facts and representations contained in the Original Request Letter and confirms that, since the date of the Original Request Letter, there has been no material change in the matters described therein other than the details of the Offering described herein.

In this request letter, specifically, on behalf of BBVA, we ask the members of the staff (the "**Staff**") of the Securities and Exchange Commission (the "**SEC**") to grant BBVA and the Global Companies exemptive relief from Rules 101 and 102 of Regulation M to permit them to continue, in the ordinary course of business and in accordance with applicable Spanish anti-market abuse and other laws, to engage in the Market Activities described in the Original Request Letter involving BBVA Shares and ADSs during the distribution of the Contingent Convertible Preferred Securities. The availability of the exemption that BBVA is requesting would be conditioned on the undertakings set forth in conditions 1 to 7 of the Original Relief and in the Original Request Letter.

BBVA is seeking exemptive relief in the event that the BBVA Shares and ADSs could be considered "reference securities" in relation to the Contingent Convertible Preferred Securities for purposes of Regulation M. In connection with the relief requested by BBVA in this letter, please note that, in addition to the Original Relief, substantially similar exemptive relief from Rules 101 and 102 of Regulation M was granted by the Staff to BBVA on three additional previous occasions under the exemptive letters dated June 25, 2007,<sup>3</sup> October 28, 2010<sup>4</sup> and November 17, 2014.<sup>5</sup> Further, exemptive relief from Rule 101 and Rule 102 of Regulation M in connection with offerings of contingent convertible debt securities qualifying as additional tier 1 capital has been granted to: (i) Lloyds Banking Group plc under the exemptive letter dated March 25, 2014;<sup>6</sup> (ii) Barclays PLC under the exemptive letter dated May 14, 2014;<sup>7</sup> (iii) ING Groep N.V. under the exemptive letter dated April 7, 2015;<sup>8</sup> (iv) the Royal Bank of Scotland Group plc under the exemptive letter dated August 8, 2016;<sup>9</sup> and (v) a class of European financial institutions under

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<sup>2</sup> See Banco Bilbao Vizcaya Argentaria, S.A., SEC No-Action Letter, File No. TP 18-01 (November 3, 2017).

<sup>3</sup> See Banco Bilbao Vizcaya Argentaria, S.A., SEC No-Action Letter, File No. TP 07-67 (June 25, 2007).

<sup>4</sup> See Banco Bilbao Vizcaya Argentaria, S.A., SEC No-Action Letter, File No. TP 10-69 (October 28, 2010).

<sup>5</sup> See Banco Bilbao Vizcaya Argentaria, S.A., SEC No-Action Letter, File No. TP 15-05 (November 17, 2014).

<sup>6</sup> See Lloyds Banking Group plc, SEC No-Action Letter, File No. TP 14-07 (March 25, 2014). Similar relief was also provided to Lloyds Banking Group plc in the exemptive letter dated September 16, 2013, File No. TP 13-12.

<sup>7</sup> See Barclays PLC, SEC No-Action Letter, File No. TP 14-09 (May 14, 2014). Similar relief was also provided to Barclays PLC in the exemptive relief letters dated November 7, 2013, File No. TP 14-04, and July 31, 2013, File No. TP 13-10.

<sup>8</sup> See ING Groep N.V., SEC No-Action Letter, File No. TP 15-11 (April 7, 2015).

<sup>9</sup> See The Royal Bank of Scotland Group plc, SEC No-Action Letter, File No. TP 16-11 (August 8, 2016). Similar relief was also provided to The Royal Bank of Scotland Group plc in the exemptive letter dated August 3, 2015, File No. TP 15-12.

the order dated January 23, 2018 (the “**Class Relief**”).<sup>10</sup> The Contingent Convertible Preferred Securities are expected to include a term (the “**Conversion Feature**”) pursuant to which, unless a holder of the Contingent Convertible Preferred Securities elects otherwise, the Contingent Convertible Preferred Securities will convert into BBVA Shares if BBVA’s shareholders adopt a resolution to reduce BBVA’s share capital and to reimburse the value of shareholders’ contributions through a reduction in the par value of the BBVA Shares. The Conversion Feature was described on pages 10 and 11 of the Original Request Letter. The inclusion of the Conversion Feature in the terms of the Contingent Convertible Preferred Securities raises a question regarding whether all of the conditions of the Class Relief would be satisfied in connection with the Offering. As a result, in order to ensure its proper compliance with Regulation M, BBVA is requesting relief hereby.

The descriptions of factual matters in this letter, including the market for BBVA Shares and BBVA’s and the Global 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 BBVA.

## I. The Market for BBVA Shares

As noted in the Original Request Letter, the principal trading market for BBVA Shares is on the Spanish stock exchanges in Madrid, Barcelona, Bilbao and Valencia (collectively, the “**Spanish Exchanges**”) through the Automated Quotation System (*Sistema de Interconexión Bursátil Español*) in Spain. The BBVA Shares are also listed on the New York (in the form of ADSs), London and Mexican stock exchanges. As noted above, BBVA reiterates the factual representations set forth in the Original Request Letter and confirms that there has been no material change in the matters described therein since the date of the Original Request Letter. We do, however, note that at June 30, 2019, there were 6,667,886,580 BBVA Shares outstanding, held by 888,559 record holders. BBVA’s market capitalization at June 30, 2019 was approximately €32.8 billion (\$37.3 billion),<sup>11</sup> and the average daily trading volume in the BBVA Shares on the Spanish Exchanges in 2018 and in the six months ended June 30, 2019 was approximately €216 million (\$248 million) and €167 million (\$190 million), respectively. The average daily trading volume of the ADSs on the New York Stock Exchange during 2018 and in the six months ended June 30, 2019 was approximately \$26 million and \$20 million, respectively. The average daily trading volume of the BBVA Shares on the London and Mexican stock exchanges during 2018 and in the six months ended June 30, 2019 was approximately €6.2 million (\$7.1 million), and €3.6 million (\$4.1 million), respectively, in the aggregate.

## II. The Offering

On June 25, 2019, BBVA filed its shelf Registration Statement on Form F-3 to register the Contingent Convertible Preferred Securities, among other securities, which Registration

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<sup>10</sup> See Order Granting Limited Exemptions from Rules 101 and 102 of Regulation M in Connection with Distributions of AT1 Contingent Convertible Securities Pursuant to Rules 101(d) and 102(e) of Regulation M, Release No. 34-82575, File No. TP 18-08 (January 23, 2018).

<sup>11</sup> Throughout this letter, euros have been translated to dollars at the rate of €1.00 = \$1.1445, the last noon buying rate in New York City published by the Federal Reserve Bank of New York in the year ended December 31, 2018, with regard to data for 2018, and €1.00 = \$1.1374, the last noon buying rate in New York City published by the Federal Reserve Bank of New York in the six months ended June 30, 2019, with regard to data for the period ended June 30, 2019.

Statement became effective upon filing in accordance with the rules of the SEC. Pursuant to the rules of the SEC, BBVA plans to file a prospectus supplement pursuant to Rule 424(b) reflecting the specific terms of the Contingent Convertible Preferred Securities. The Contingent Convertible Preferred Securities will be issued pursuant to an indenture qualified under the Trust Indenture Act of 1939, as amended. In addition, the Contingent Convertible Preferred Securities will be governed by New York law, except that the subordination, waiver of right of set-off and acknowledgment of bail-in provisions will be governed by the law of BBVA's jurisdiction of incorporation, Spain.

BBVA expects that the Offering will be launched the week of August 26, 2019, or as soon as possible thereafter as market conditions permit, and that the Contingent Convertible Preferred Securities will be marketed exclusively to institutional investors, especially those focused on subordinated regulatory bank capital and similar fixed income products. BBVA expects the issue price of the Contingent Convertible Preferred Securities to be based primarily on a spread above an appropriate benchmark to reflect BBVA's credit risk, rather than on the current and expected trading price of the BBVA Shares.

### III. Application of Regulation M

In connection with the Offering, BBVA, directly or through underwriters (as defined under the Securities Act), will offer the Contingent Convertible Preferred Securities which, under certain very limited circumstances, could automatically and mandatorily convert into BBVA Shares. Although BBVA expects that the Contingent Convertible Preferred Securities will be priced and trade more like traditional fixed-income debt instruments than conventional convertible instruments, BBVA Shares and ADSs may be deemed to be "reference securities" in relation to the Contingent Convertible Preferred Securities pursuant to Rule 100 of Regulation M. As a result, BBVA Shares and ADSs may be deemed to be "covered securities" for purposes of the Offering.

The underwriters and BBVA will determine the issue price for the Contingent Convertible Preferred Securities following a period of meetings and discussions with prospective investors. BBVA believes that the restricted period for the BBVA Shares and ADSs under Regulation M (the "**Restricted Period**") will begin one business day prior to the determination of the issue price, and will end upon the completion of the distribution of the Contingent Convertible Preferred Securities in the United States. Accordingly, the Restricted Period for BBVA and the Global Companies is expected to last up to several days.

Subject to enumerated exceptions, Rule 102 of Regulation M makes it unlawful for an issuer or its affiliated purchaser, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase a covered security during the applicable restricted period. Accordingly, if BBVA Shares and ADSs are considered covered securities, the Market Activities of BBVA and the Global Companies may be subject to Rule 102 of Regulation M throughout the Restricted Period, except to the extent that any of them acts as a "distribution participant" subject to Rule 101 of Regulation M.

As business units or affiliates of BBVA that, from time to time, purchase BBVA Shares and ADSs for their own accounts and the accounts of others and recommend and exercise investment discretion with respect to the purchase of BBVA Shares and ADSs, the Global Companies may be deemed to be "affiliated purchasers" of BBVA, as defined in Rule 100 of Regulation M. As

such, their Market Activities will be subject to Rule 102 throughout the Restricted Period, except to the extent that any of them acts as a “distribution participant” subject to Rule 101.<sup>12</sup>

If BBVA or any of the Global Companies participates in the Offering it would likely be a “distribution participant” and thus its Market Activities would be subject to Rule 101 during the Restricted Period, at least until it completes its participation, after which it will be subject to Rule 102 as an affiliated purchaser until the Restricted Period ends.<sup>13</sup> As such, we request relief for the Market Activities of BBVA and the Global Companies described in this letter under both Rules 101 and 102, whichever may apply.

If BBVA is required to cease its Market Activities during the Restricted Period, it would be problematic for the reasons set forth in the Original Request Letter. Moreover, BBVA believes that the withdrawal of one of the largest market participants in BBVA Shares in the primary market for those shares, which are among the most actively traded in Spain, would have serious harmful effects in the home market, and, indirectly, in the U.S. market, for BBVA Shares. These effects could include an imbalance of buy and sell orders, and thus greater volatility and reduced liquidity.

Finally, BBVA believes that the risk of market manipulation by BBVA or the Global Companies is further limited by the information barrier procedures and fiduciary duties described in the Original Request Letter, the fact that the Market Activities that are the subject of this request for exemptive relief are the ordinary course market activities of BBVA and the Global Companies rather than activities commenced or managed in contemplation of the Offering and the fact that the jurisdictions in which the Global Companies operate have laws which prohibit market manipulation.

#### **IV. Relief Requested**

For these reasons, BBVA asks the Staff to provide an exemption from Regulation M that would allow BBVA and the Global Companies to continue to engage in the Market Activities in the ordinary course of their respective businesses described in the Original Request Letter during the Restricted Period, as permitted in accordance with applicable law in their home jurisdictions.

The availability of the exemption that BBVA is requesting would be conditioned on the undertakings set forth in conditions 1 to 7 of the Original Relief and in the Original Request Letter.

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<sup>12</sup> It is expected that BBVA will act as Joint Global Coordinator (but not underwriter) for the Offering and engage in solicitation activities outside of the United States, and thus would be a distribution participant.

<sup>13</sup> Although, as discussed more fully below, the BBVA Shares easily meet the ADTV and public float requirements set forth in Rule 101(c)(1), the exception for actively traded securities would not be available because the Global Companies are affiliates of BBVA.

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If you have any questions about this request, please do not hesitate to contact me at +34-91-768-9610. We appreciate your assistance in this matter.

Very truly yours,



Michael J. Willis

cc: Domingo Armengol, BBVA

Jaime Sáenz de Tejada, BBVA