

February 3, 2023

Re: Proposed Tender Offers by Banco Santander, S.A.

Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Attn: Ted Yu, Chief, Office of Mergers and Acquisitions
Christina E. Chalk, Senior Special Counsel, Office of Mergers and Acquisitions
Michael Killoy, Special Counsel, Office of Mergers and Acquisitions

Dear Ms. Chalk and Messrs. Yu and Killoy:

We are writing on behalf of our client Banco Santander, S.A., a bank organized under the laws of the Kingdom of Spain ("**Santander Spain**"). On October 21, 2022, Santander Spain announced its intention to make concurrent cash tender offers in Mexico and the United States to acquire all the issued and outstanding (i) Series B shares ("**Santander Mexico Shares**") of Banco Santander México, S.A., Institución de Banca Múltiple, Grupo Financiero Santander México, a bank organized under the laws of Mexico ("**Santander Mexico**"), and (ii) American Depositary Shares (each of which represents five Santander Mexico Shares) ("**Santander Mexico ADSs**," and together with the Santander Mexico Shares, the "**Santander Mexico Securities**"), in each case other than any Santander Mexico Securities owned, directly or indirectly, by Santander Spain. Santander Spain intends to structure the transaction as a dual tender offer comprising a tender offer executed in the United States for Santander Mexico ADSs and for Santander Mexico Shares held by U.S. holders (the "**U.S. Tender Offer**") and a separate tender offer executed in Mexico for Santander Mexico Shares (the "**Mexican Tender Offer**," and together with the U.S. Tender Offer, the "**Tender Offers**"). Pursuant to the Tender Offers, holders of Santander Mexico Securities will be offered 24.52 Mexican pesos in cash per Santander Mexico Share and the U.S. dollar equivalent of 122.6 Mexican pesos in cash per Santander Mexico ADS (as applicable, the "**Offer Price**").¹

The initial U.S. Tender Offer period is expected to commence on February 7, 2023, and to expire at 5:00 p.m., New York City time, on March 8, 2023, unless extended or terminated. Santander Spain will file a Schedule TO-T and a Schedule 13E-3 with the U.S. Securities and Exchange Commission (the "**Commission**") upon commencement of the U.S. Tender Offer. In accordance with Mexican law, Santander Spain will file an information statement (*folleto informativo*) with the Mexican *Comisión Nacional Bancaria y de Valores* (the "**CNBV**") in connection with the Mexican Tender Offer.

¹ Pursuant to Mexican law, the consideration for the holders tendering their Santander Mexico Shares represents the greater of (i) the volume-weighted average price of the transactions executed with the Santander Mexico Shares on the MSE during each of the thirty (30) trading days prior to commencement of the Tender Offers (for a period not to exceed six (6) months) and (ii) the book value of each Santander Mexico Share in accordance with Santander Mexico's last quarterly report filed with the CNBV and the MSE prior to the launch of the Tender Offers (and the U.S. dollar equivalent of such amount multiplied by the exchange ratio with respect to each Santander Mexico ADS).

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Unless otherwise specified, all references herein to “U.S. business days” refer to business days within the meaning of Rule 14d-1(g)(3) of the U.S. Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and all references to “Mexican business days” refer to business days in Mexico.

As previously discussed with members of the staff of the Commission, we hereby respectfully request the following relief from the Commission in connection with the Tender Offers:

- exemptive relief from the provisions of Rule 14d-10(a)(1) under the Exchange Act, to permit the making of the Tender Offers in the manner described herein;
- exemptive relief from the provisions of Rule 14d-11(d) under the Exchange Act to permit the Statutory Sell-out (as defined herein) to begin on the same Mexican business day as the date of the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the CNBV, as described herein;
- exemptive relief from the provisions of Rule 14d-11(e) under the Exchange Act to permit Santander Spain to accept and pay for the Santander Mexico Shares sold in the Statutory Sell-out in the manner described herein; and
- exemptive relief from the provisions of Rule 14e-5 under the Exchange Act to permit Santander Spain to conduct the Mexican Tender Offer and to purchase Santander Mexico Shares tendered pursuant to the Mexican Tender Offer.

I. Background

Santander Spain

Santander Spain and its consolidated subsidiaries are a group of banking and financial companies that operate through a network of offices and subsidiaries across Spain and other European countries (including, among others, the United Kingdom, Austria, Germany, Italy, Poland, Portugal and Norway), several Latin American countries (including, among others, Argentina, Brazil, Chile, Colombia, Mexico, Peru and Uruguay) and the United States offering a wide range of financial products and also conducting banking operations in other parts of the world.

Santander Spain was established on March 21, 1857 and incorporated in its present form by a public deed executed in Santander, Spain, on January 14, 1875. Santander Spain is incorporated under, and governed by the laws of the Kingdom of Spain and conducts business under the commercial name “Santander”. Santander Spain is a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act.

The ordinary shares and ADSs of Santander Spain are registered pursuant to Section 12(b) of the Exchange Act and the ADSs are listed on the New York Stock Exchange (“**NYSE**”) under the symbol “SAN.”

Santander Mexico

Santander Mexico is a leading full-service bank in Mexico. The Santander Mexico Shares are listed on the Mexican Stock Exchange (the “**MSE**”) under the symbol “BSMX.” The Santander Mexico Shares and the Santander Mexico ADSs are registered pursuant to Section 12(b) of the Exchange Act and the Santander Mexico ADSs are listed on the NYSE under the symbol “BSMX.” Santander Mexico is a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act. As of both the announcement of the Tender Offers on October 21, 2022 and the date hereof, Santander Spain and its affiliates owned approximately 96.2% of Santander Mexico’s total share capital.

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Ownership of Santander Mexico Shares by U.S. Residents

At Santander Spain's request, Santander Mexico, with the assistance of CMI2i Ltd. ("CMI2i"), conducted a look-through analysis to determine the percentage of the Santander Mexico Shares, including Santander Mexico Shares underlying Santander Mexico ADSs, that are beneficially owned by U.S. residents following the method prescribed by Instruction 2 to paragraphs (c) and (d) of Rule 14d-1 as of October 28, 2022, which is a date no later than 30 days following the public announcement of the Tender Offers on October 21, 2022.

CMI2i performed an in-depth multi-phase analysis of the beneficial ownership of the Santander Mexico Shares and Santander Mexico ADSs as of October 28, 2022. CMI2i analyzed information regarding beneficial ownership gathered by or provided to CMI2i or that was publicly available. It then inquired investors, institutions, banks, brokers, dealers, custodians or other nominees, including those based in the United States and Mexico, the jurisdiction where Santander Mexico is incorporated and the principal foreign market where the Santander Mexico Shares are traded, regarding the number of Santander Mexico Shares and Santander Mexico ADSs held by them on behalf of U.S. residents. Where the recipients of CMI2i's inquiry did not respond, CMI2i contacted them a further time, where possible, to give such recipients a second opportunity to respond. CMI2i then followed-up by telephone, wherever possible, to give recipients a final opportunity to respond. The analysis identified the residency of holders of approximately 73.9% of the "free-float" (i.e., the Santander Mexico Shares, including Santander Mexico Shares underlying Santander Mexico ADSs, after excluding (i) Santander Mexico Shares held directly or indirectly by Santander Spain and (ii) Santander Mexico Shares held as treasury shares), of which approximately 57.5% (42.5% of the free-float) was held by U.S. residents.

Where the analysis was unable to obtain information about the Santander Mexico Shares represented by accounts of customers, it was assumed that nominees were holding Santander Mexico Shares on behalf of residents of the jurisdiction in which the nominee had its principal place of business. None of such nominees was identified as having its principal place of business in the United States. Where the analysis was unable to obtain information about the residency of holders of Santander Mexico ADSs, all of such ADSs were assumed to be held by U.S. residents (approximately 4.1% of the free-float).

On this basis, as of October 28, 2022, approximately 46.6% of the free-float was held by U.S. resident investors. Accordingly, Santander Spain is unable to conclude that the Tender Offers would qualify for relief under paragraphs (c) or (d) of Rule 14d-1 under the Exchange Act.

The Tender Offers

Santander Spain intends to make concurrent cash tender offers in Mexico and the United States to acquire all the issued and outstanding Santander Mexico Securities, in each case other than Santander Mexico Shares owned, directly or indirectly, by Santander Spain, in exchange for the Offer Price.

Following the Tender Offers, Santander Spain intends to (a) cancel the registration of the Santander Mexico Shares in the National Securities Registry of the CNBV and delist such Santander Mexico Shares from the MSE, and (b) remove the Santander Mexico ADSs from listing on the New York Stock Exchange and the Santander Mexico Securities from registration under sections 12(g) and 15(d) of the Exchange Act.

Santander Spain intends to structure the transaction as a dual tender offer comprising a U.S. Tender Offer open to all holders of Santander Mexico ADSs and to all U.S. holders of Santander Mexico Shares and a separate Mexican Tender Offer open to all holders of Santander Mexico Shares, wherever located. Except to the extent of any relief granted pursuant to this letter, the U.S. Tender Offer will be structured so as to comply with the applicable U.S. federal securities laws, including Regulations 13E, 14D and 14E under the

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Exchange Act, and the Mexican Tender Offer will be structured so as to comply with applicable Mexican laws and regulations. The initial offering period of the Tender Offers will be at least 20 U.S. business days in accordance with Exchange Act rules and Mexican law.

The Tender Offers will be conditioned upon the satisfaction or waiver of certain conditions that will be set forth in the U.S. Tender Offer materials, and will not be subject to any financing or minimum tender conditions. It is expected that the U.S. Tender Offer and the Mexican Tender Offer will each commence on the same U.S. business day and expire on the same U.S. business day at least 20 U.S. business days thereafter.

If the U.S. Tender Offer is completed, Santander Spain expects that holders of Santander Mexico Securities that are tendered into the U.S. Tender Offer during the initial offering period will receive the cash consideration that they are entitled to receive promptly (and in any event within three (3) U.S. business days) following the acceptance for payment of such Santander Mexico Securities following the expiration of the initial offering period of the U.S. Tender Offer. Santander Spain expects to deposit the purchase price with Casa de Bolsa Santander, S.A. de C.V., Grupo Financiero Santander México (in the case of Santander Mexico Shares tendered in the U.S. Tender Offer) and Citibank, N.A. (in the case of Santander Mexico ADSs tendered in the U.S. Tender Offer) for the purpose of transmitting such payments to tendering holders.

The tender agent for the Mexican Tender Offer will be Casa de Bolsa Santander, S.A. de C.V., Grupo Financiero Santander México, the Mexican broker-dealer subsidiary of Santander Mexico.

After completion of the initial offering period and the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the CNBV, holders of Santander Mexico Shares that have not tendered their shares during the initial offering period will have the right, but not the obligation, to sell their Santander Mexico Shares to Santander Spain during the Statutory Sell-out pursuant to Rule 14d-11 under the Exchange Act, as set forth below.

Relevant Mexican Law and Practice Considerations

In Mexico, tender offers are regulated by the Securities Market Law (*Ley del Mercado de Valores*) (the “**Mexican Securities Law**”) and by the General Rules Applicable to Issuers of Securities and Other Participants of the Securities Market, as amended (the “**Mexican Regulations**”) issued by the CNBV. The Mexican Tender Offer will accordingly be conducted in accordance with the applicable requirements of the Mexican Securities Law and the Mexican Regulations and be subject to the supervision of the CNBV and the MSE.

In Mexico, tender offers for securities registered in the National Securities Registry (*Registro Nacional de Valores*) are regulated by the Mexican Regulations and the Mexican Securities Law. Mexican counsel to Santander Spain has advised us that a tender offer may not be carried out, nor may definitive tender offer documents be disseminated, in Mexico unless the tender offer and the tender offer materials (i) are in the Spanish language, (ii) comply with the Mexican Regulations and the Mexican Securities Law and (iii) have been authorized by the CNBV. Mexican counsel has further advised us that, merely translating the U.S. tender offer materials into Spanish will not be sufficient, as the Mexican Regulations mandate, and the CNBV expects, that a bidder will file for approval tender offer materials that follow a specific format. As a result, dissemination in Mexico of the U.S. tender offer materials in conformity with U.S. laws, regulations and procedures would not comply with the Mexican Regulations and the Mexican Securities Law.

Additionally, under the Mexican Regulations and practice in Mexico, tender offer materials are not disseminated by mail to security holders. Instead, the dissemination requirement is satisfied by posting the

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tender offer materials on the websites of the CNBV and the MSE. Dissemination to security holders, as would be required under the Exchange Act, is neither required nor customary in Mexico and would be onerous and impractical in the absence of an established infrastructure.

Under the Mexican Regulations, the bidder must file for approval with the CNBV a preliminary offering document prior to commencement of the offer providing certain specified information and any other information that would be relevant to an investor in making an investment decision. All such information must be provided in Spanish. No such similar approval prior to commencement of the U.S. Tender Offer is required pursuant to U.S. laws.

Mexican counsel has also advised us that U.S. persons may not be excluded from the Mexican Tender Offer and that, because the Santander Mexico ADSs are not registered in Mexico or listed on the MSE, they cannot be included in the Mexican Tender Offer.

Under the Mexican Securities Law, subject to certain requirements, a mandatory public tender offer for all shares of a company registered with the National Securities Registry of the CNBV (excluding shares held by controlling shareholders) must have been completed prior to cancelling the registration of such company's shares with the National Securities Registry of the CNBV. Unless all shares of the company are tendered in the mandatory public tender offer, a repurchase trust (*fideicomiso*) (a "**Repurchase Trust**") must be incorporated by the offeror and/or the target company on the date of the cancellation of the registration of the target's company's shares with the National Securities Registry of the CNBV. The Repurchase Trust must have sufficient funds to purchase, at the option of shareholders of the target company, for a term of at least six (6) months from the date the shares of the target company are cancelled from registration with the National Securities Registry of the CNBV, any shares of the target company that remain outstanding following the completion of the mandatory public tender offer in exchange for the same consideration offered in the mandatory tender offer.

Santander Spain expects to conduct the Tender Offers to satisfy the mandatory public tender offer requirement under Mexican law described above. On the same Mexican business day on which the Mexican Tender Offer is settled, Santander Mexico will file a written application with the CNBV requesting the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the CNBV. The application will be accompanied by a copy of the resolutions passed by the general shareholders meeting of Santander Mexico on November 30, 2022 approving such cancellation. The CNBV will customarily review and approve such application within four (4) weeks. During such period, the CNBV may request additional information or confirmations from Santander Mexico, and such estimated 4-week period may be extended. Upon formal notice by the CNBV and effective as of the date of such notice, the Santander Mexico shares will be cancelled from registration with the National Securities Registry of the CNBV. As required by Mexican law, on the same Mexican business day as the date of such cancellation, Santander Spain and Santander Mexico will incorporate the Repurchase Trust, as described above. Holders of Santander Mexico Shares that remain outstanding following completion of the Tender Offers will have the right, but not the obligation, to sell their Santander Mexico Shares to the Repurchase Trust at any time during a period of six (6) months from the date the Repurchase Trust is incorporated for the same cash consideration that they would have received during the Mexican Tender Offer in respect of their Santander Mexico Shares (the "**Statutory Sell-out**"). As described below, Santander Spain believes the Statutory Sell-out is substantially equivalent to a subsequent offering period pursuant to Rule 14d-11 under the Exchange Act. However, under Mexican law and regulations, the Statutory Sell-out will not be treated as a tender offer in Mexico or a subsequent offering period of the Mexican Tender Offer.

As it will be more fully set forth in the U.S. Tender Offer materials, Santander Mexico intends to direct Citibank, N.A., as ADS depository under the Amended and Restated Deposit Agreement, dated as of October 1, 2022, as amended by Amendment No. 1, by and among Santander Mexico, Citibank, N.A., as

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ADS depository, and all holders and beneficial owners of Santander Mexico ADSs issued thereunder (the “**Deposit Agreement**”), to terminate the Deposit Agreement following completion of the initial offering period. Under the terms of the Deposit Agreement, upon receipt of a direction to terminate the Deposit Agreement from Santander Mexico, the depository is required to send notice of termination to the holders of Santander Mexico ADSs then outstanding at least 30 calendar days prior to the termination date.

Pursuant to the Deposit Agreement, if any Santander Mexico ADSs remain outstanding after termination of the Deposit Agreement, the depository may, at any time after the applicable termination date, sell the Santander Mexico Shares and any other deposited property underlying such Santander Mexico ADSs, convert the proceeds of such sale from Mexican pesos into U.S. dollars and hold un-invested the U.S. dollar net proceeds of such sale and conversion, together with any other cash then held by it under the Deposit Agreement, in an un-segregated account, net of applicable fees, taxes and expenses, and without liability for interest, for the pro rata benefit of the holders whose Santander Mexico ADSs have not theretofore been surrendered.

Although the specific date of the incorporation of the Repurchase Trust is currently uncertain,² Santander Spain expects that the Deposit Agreement will be terminated prior to commencement, or during the term, of the subsequent offering period in connection with the Statutory Sell-out. The Deposit Agreement provides that after the effective date of termination the depository may sell any Santander Mexico Shares underlying Santander Mexico ADSs that remain outstanding after termination of the Deposit Agreement. As the Santander Mexico Shares are expected to be delisted from the MSE by the time of the effective date of the termination of the Deposit Agreement, the depository may decide to sell to the Repurchase Trust during the term of the Statutory Sell-out any such Santander Mexico Shares. Any such sales to the Repurchase Trust would be for the same cash consideration that would have been paid in respect of such Santander Mexico Shares during the Mexican Tender Offer, which the depository would then convert into U.S. dollars and hold un-invested for the pro rata benefit of holders of the ADSs then outstanding upon the terms of the Deposit Agreement (net of applicable fees, taxes and expenses). However, under the terms of the Deposit Agreement, the depository is not required to make such sales to the Repurchase Trust and could decide to hold the Santander Mexico Shares or sell them to third parties.

Prior to any such sales by the depository upon termination of the Deposit Agreement, if any, holders of Santander Mexico ADSs who have not tendered their ADSs in the U.S. Tender Offer may follow the steps that will be disclosed in the U.S. Tender Offer materials (and would also be detailed in the notice of Deposit Agreement termination that the depository circulates to the holders of ADSs then outstanding) to exchange their ADSs for the underlying Santander Mexico Shares and sell the underlying shares to the Repurchase Trust pursuant to the Statutory Sell-out following completion of the U.S. Tender Offer. The Mexican Securities Law does not contemplate the sale of ADSs to the Repurchase Trust pursuant to the Statutory Sell-out.

In order to give effect to the Statutory Sell-out, Santander Spain and Santander Mexico will enter into a trust agreement (*contrato de fideicomiso*) on the same Mexican business day as the date of the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the CNBV. Pursuant to such agreement, Santander Spain and Santander Mexico will incorporate the Repurchase Trust and Santander Mexico, as trustee, will agree to manage the funds contributed by Santander Spain to pay for any Santander Mexico Shares that are sold to the Repurchase Trust during the term of the Statutory Sell-out for the same consideration offered in the Mexican Tender Offer.

² As discussed above, the Repurchase Trust will be incorporated on the same Mexican business day as the date of the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the CNBV, which could take several weeks following settlement of the Mexican Tender Offer.

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Holders of Santander Mexico Shares that wish to sell their Santander Mexico Shares to the Repurchase Trust during the term of the Statutory Sell-out must deliver a sale order (*solicitud de venta*) to Santander Mexico, which sale order must be accompanied by certain customary documentation required by the trustee, including the deposit documentation issued by S.D. Indeval Institución para el Depósito de Valores, S.A. de C.V. (“Indeval”) evidencing the holder’s title to the securities and (x) in the case of natural persons, copies of certain personal identification documentation that will be listed in the sale order (*solicitud de venta*), or (y) in the case of legal persons, certain documentation evidencing the incorporation of such person and the identity and authority of its legal representatives. Within five (5) Mexican business days from the date Santander Mexico receives such sale order from the relevant holder, Santander Mexico will either enter into a purchase agreement (*contrato de compraventa*) with the relevant holder based on a standard form used with all relevant holders or notify the relevant holder of any deficiencies or missing information in the sale order. The relevant holder will have ten (10) Mexican business days to cure any deficiencies or missing information in the sale order. Santander Mexico will pay the cash purchase price of the applicable Santander Mexico Shares within five (5) Mexican business days from the date that Santander Mexico receives a written confirmation that the relevant Santander Mexico Shares have been transferred to Santander Mexico’s securities account with Indeval, as will be more fully set forth in the payment conditions section (*condiciones de pago*) of the purchase agreement. Holders of Santander Mexico Shares who enter into a purchase agreement (*contrato de compraventa*) will not be permitted to withdraw or cancel the sale of their Santander Mexico Shares to the Repurchase Trust.

Santander Spain will not purchase any Santander Mexico Shares or Santander Mexico ADSs during the term of the Statutory Sell-out except pursuant to the Statutory Sell-out.

We attach with this letter the opinion delivered by Mexican counsel to Santander Spain, stating that the descriptions of Mexican law and tender offer regulations contained herein are accurate and complete in all material respects.

II. Discussion

Availability of Tier II Relief under Rule 14d-1 and 14e-5

Rule 14d-1(d)(2) provides exemptive relief in cross border tender offers from Rule 14d-10 and 14d-11(e), and Rule 14e-5(b)(11) provides exemptive relief in cross border tender offers from Rule 14e-5, in each case where U.S. holders do not hold more than 40% of the class of securities sought in the offer, excluding from the calculation securities held by the offeror, and the offeror complies with all U.S. tender offer laws other than those for which a specific exemption is provided by the Tier II relief. In addition:

- (i) in order to qualify for Tier II relief from the requirements of Rule 14d-10, (a) the U.S. offer must be made on terms at least as favorable as those offered to any other holder of the same class of securities that is the subject of the tender offers and (b) U.S. holders may be included in the foreign offer only where the laws of the jurisdiction governing such foreign offer expressly preclude the exclusion of U.S. holders from the foreign offer and where the offer materials distributed to U.S. holders fully and adequately disclose the risks of participating in the foreign offer;
- (ii) in order to qualify for the Tier II relief from the requirements of Rule 14d-11(e), where payment for securities tendered during any subsequent offering period may not be made on a more expedited basis under home jurisdiction law or practice, payment must be made within 20 business days (as business days are determined with reference to the target’s home jurisdiction) of the date of tender; and

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- (iii) in order to qualify for Tier II relief from the requirements of Rule 14e-5, (a) the economic terms and consideration in the U.S. offer and the foreign offer must be the same (provided that any cash consideration to be paid to U.S. security holders may be converted from the currency to be paid in the foreign tender offer to U.S. dollars at an exchange rate disclosed in the U.S. offering documents); (b) the procedural terms of the U.S. offer must be at least as favorable to tendering holders as the terms of the foreign offer; (c) the offeror's intention to purchase subject securities pursuant to the foreign offer must be disclosed in the U.S. offer documents; and (d) purchases of the subject securities in the foreign tender offer must be made pursuant to the foreign tender offer and not pursuant to open market transactions, private transactions, or any other transactions.

The Tender Offers meet all of the requirements for Tier II relief except for the U.S. ownership limitation and the relief requested in this letter. As noted above, approximately 46.6% of Santander Mexico Shares, including Santander Mexico Shares underlying Santander Mexico ADSs but excluding (i) Santander Mexico Shares held directly or indirectly by Santander Spain and (ii) Santander Mexico Shares held as treasury shares, were held by U.S. holders. Accordingly, Tier II relief is not available in the proposed Tender Offers. However, in SEC Release Nos. 33-7759, 34-42054 (October 22, 1999) (the “**Cross-Border Release**”) adopting the Tier II exemptions, the Commission stated that, when U.S. ownership of the class of security of the foreign company sought in the offer is greater than 40%, it would consider relief on a case-by-case basis when there is a direct conflict between U.S. laws and practice and those of the home jurisdiction. Cross Border Release, Note 41. As noted above and discussed below, there are certain direct conflicts between U.S. law and practice and those of Mexico, necessitating the relief requested in this letter.

Rule 14d-10(a)(1)

Rule 14d-10(a)(1) under the Exchange Act provides that no person shall make a tender offer for an equity security unless the offer is open to all security holders of the class of securities subject to the tender offer. Literal application of Rule 14d-10(a)(1) would prohibit the dual offer structure of the Tender Offers,³ which is proposed in this case due to certain direct conflicts between Mexican and U.S. tender offer law and practice. As described in greater detail above, Mexican tender offer documentation is required to be presented in a different format and has different (although substantially similar) substantive disclosure requirements than those applicable to a tender offer subject to U.S. rules. In addition, tender offer documentation in Mexico must be in the Spanish language and must be in the form approved by the Mexican securities regulator. Finally, Mexican law does not require dissemination of the tender offer document by mail and, as a matter of practice, such dissemination is not made and would be impracticable due to the lack of architecture such as exists in the United States for distribution of materials to beneficial owners.

We respectfully submit that the best method for reconciling the points of conflict between U.S. and Mexican law and practice is the dual offer structure proposed herein. The Commission has previously recognized that reconciliation of points of conflict or tender offer practice differences present in the Tender Offers is facilitated by a dual tender offer structure. See e.g., *PagoNxt Merchant Solutions, S.L.*, SEC No-Action Letter (October 31, 2022) (granting dual offer relief for two concurrent offers carried out in the U.S. and Brazil); *Banco Santander, S.A.*, SEC No-Action Letter (August 8, 2019) (granting dual offer relief for two concurrent offers carried out in the U.S. and Mexico upon a showing of certain direct conflicts between Mexican and U.S. tender offer law and practice); *Banco Santander, S.A.*, SEC No-Action Letter (September 18, 2014) (granting dual offer relief for two concurrent offers carried out in the U.S. and Brazil); *Coca-Cola*

³ As described in further detail above, the U.S. Tender Offer will be open to all holders of Santander Mexico ADSs and to all U.S. holders of Santander Mexico Shares. The Mexican Tender Offer will be open to all holders of Santander Mexico Shares, wherever located because the Mexican Securities Law, provides that U.S. persons may not be excluded from the Mexican Tender Offer. Additionally, because the Santander Mexico ADSs are not registered in Mexico or listed on the MSE, they cannot be included in the Mexican Tender Offer.

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Hellenic Bottling Company S.A. & Coca-Cola HBC AG, SEC No-Action Letter (March 14, 2013) (granting relief for a dual offer structure due in part to the restrictions on making amendments to exchange offers under Greek law); *America Movil, S.A.B. de C.V.*, SEC No-Action Letter (April 23, 2010) (granting dual offer relief for two concurrent offers carried out in the U.S. and Mexico); *Vimpelcom Ltd., Altimo Holdings & Investments Ltd. and Telenor ASA* SEC No-Action Letter (February 5, 2010) (granting dual offer relief where foreign law and practice required that the foreign offer settlement occur after the U.S. offer settlement); *In the Matter of Movil Access, S.A. de C.V. for Grupo Iusacell, S.A. de C.V.*, SEC No-Action Letter (June 24, 2003) (granting dual offer relief for two concurrent offers carried out in the U.S. and Mexico); *In the Matter of The Pepsi Bottling Group, Inc., Bottling Group LLC and PBG Grupo Embotellador Hispano-Mexicano S.L.'s Tender Offer for Shares, CPOs and GDSs of Pepsi-Gemex, S.A. de C.V.*, SEC No-Action Letter (October 14, 2002) (granting dual offer relief for two concurrent offers carried out in the U.S. and Mexico); *Telefonica S.A., Telecomunicacoes de Sao Paulo S.A., Tele Sudeste Celular Participacoes S.A., Telefonica de Argentina S.A. & Telefonica del Peru, S.A.A.* SEC No-Action Letter (June 5, 2000) (granting dual offer relief for concurrent offers carried out in the U.S. and other foreign jurisdictions); and *ENDESA, S.A.*, SEC No-Action Letter (February 3, 1999) (granting dual offer relief for two concurrent offers carried out in the U.S. and Chile). In each of these instances, Tier II relief was not available either because the offers predated the relief introduced in the Cross-Border Release or because the level of U.S. ownership in the securities subject to the offer exceeded 40%.

In view of the fact that the U.S. Tender Offer will be for all Santander Mexico ADSs and for Santander Mexico Shares held by U.S. persons, and the Mexican Tender Offer will be for all Santander Mexico Shares, in each case other than any Santander Mexico Shares owned, directly or indirectly, by Santander Spain, and that there are otherwise no material differences between the U.S. Tender Offer and the Mexican Tender Offer, Santander Spain respectfully requests that the Tender Offers in respect of the Santander Mexico Shares be exempted from compliance with Rule 14d-10(a)(1) of the Exchange Act to the extent necessary to conduct the Tender Offers as described herein. The Tender Offers will meet all of the conditions set forth in Rule 14d-1(d)(2)(ii), with the exception of the requirement that the Tender Offers qualify for Tier II exemptive relief because the level of U.S. ownership of Santander Mexico Shares exceeds 40% when calculated in accordance with the instructions to Rule 14d-1(d), as described above. Given (a) the protections afforded by the Mexican regulatory regime; (b) that the Tender Offers will be made on substantially similar terms (provided that the cash consideration to be paid to holders of Santander Mexico ADSs will be converted from Mexican pesos to U.S. dollars at an exchange rate that will be disclosed in the U.S. Tender Offer materials); (c) that U.S. residents who hold Santander Mexico Shares may not be excluded from the Mexican Offer; (d) the U.S. Tender Offer materials will fully and adequately disclose the risks of participating in the Mexican Tender Offer; and (e) that Mexican regulations and the Mexican Securities Law prohibit the wide dissemination in Mexico of the U.S. Tender Offer materials, we believe that the requested exemption is therefore consistent with both the intent of the Commission expressed in the Cross-Border Relief and the relief granted by the Commission in the past.

The Subsequent Offering Period under Rule 14d-11

Consistent with previous positions taken by the staff of the Commission, Santander Spain intends to treat the Statutory Sell-out procedure as a six-month subsequent offering period pursuant to Rule 14d-11,⁴ during which, Santander Mexico Shares that have not been tendered in the Mexican Tender Offer or during the initial offering period of the U.S. Tender Offer may be sold to the Repurchase Trust for the same consideration offered in the Mexican Tender Offer. In SEC Release Nos. 33-8957; 34-58597 (September 19, 2008) (the "**Cross-Border Amendments**"), the Commission stated that it would treat a "put right" that

⁴ As noted above, the Statutory Sell-out will not be treated as a tender offer in Mexico or a subsequent offering period of the Mexican Tender Offer under Mexican law and regulations.

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arises under home country law after termination of a successful voluntary tender offer "to be a tender offer or to constitute the subsequent offering period in a voluntary offer." Cross Border Amendments, Note 208.

Rule 14d-11 requires, as a condition to the commencement of a subsequent offering period, that, among other things, the offeror (i) announce the results of the tender offer, including the approximate number and percentage of securities deposited to date, no later than 9:00 a.m. Eastern time on the next U.S. business day after the expiration date of the initial offering period and immediately begin the subsequent offering period (Rule 14d-11(d)), and (ii) immediately accept and promptly pay for all securities as they are tendered during the subsequent offering period (Rule 14d-11(e)).

Rule 14d-11(d)

Rule 14d-11(d) requires as a condition to the commencement of a subsequent offering period that the offeror announce the results of the tender offer, including the approximate number and percentage of securities deposited to date, no later than 9:00 a.m. Eastern Time on the next U.S. business day after the expiration date of the initial offering period and immediately begin the subsequent offering period.

As noted above, Santander Spain intends to treat the Statutory Sell-out procedure as a six-month subsequent offering period pursuant to Rule 14d-11. However, the subsequent offering period in connection with the Statutory Sell-out will commence in accordance with Mexican law on the same Mexican business day as the date of the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the CNBV, rather than immediately following the announcement of the results of the Tender Offers as required under Rule 14d-11(d). As set forth under "Relevant Mexican Law and Practice Considerations" above, on the same Mexican business day on which the Mexican Tender Offer is settled, Santander Mexico will file a written application with the CNBV requesting the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the CNBV. The CNBV will customarily review and approve such application within four (4) weeks. During such period, the CNBV may request additional information or confirmations from Santander Mexico, and such estimated 4-week period may be extended. Upon formal notice by the CNBV and effective as of the date of such notice, the Santander Mexico shares will be cancelled from registration with the National Securities Registry of the CNBV. As required by Mexican law, on the same Mexican business day as the date of such cancellation, Santander Spain and Santander Mexico will incorporate the Repurchase Trust and the subsequent offering period in connection with the Statutory Sell-out will commence.

We respectfully request that the staff of the Commission grant exemptive relief from the provisions of Rule 14d-11(d) under the Exchange Act to allow the Statutory Sell-out to begin on the same Mexican business day as the date of the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the CNBV, in accordance with the requirements of the Mexican Securities Law, rather than no later than 9:00 a.m., Eastern time, on the next U.S. business day after the expiration of the initial offering period of the Tender Offers as required under Rule 14d-11(d) under the Exchange Act.

The staff of the Commission has recognized that offerors may be required to commence a subsequent offering period on a delayed basis to comply with the requirements of local law and practice. The Commission has previously granted relief from Rule 14d-11(d) under similar circumstances where foreign law and practice imposed practical obstacles to complying with such Rule. See e.g., *Sierra Wireless France SAS*, SEC No-Action Letter (January 5, 2009); *Gemalto S.A.*, SEC No-Action Letter (November 7, 2008); *International Business Machines Corporation*, SEC No-Action Letter (October 9, 2008); and *Alcan Inc.*, SEC No-Action Letter (October 7, 2003).

Rule 14d-11(e)

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Rule 14d-11(e) requires that securities tendered during a subsequent offering period be immediately accepted and promptly paid for.

As noted above, Santander Spain intends to treat the Statutory Sell-out procedure as a six-month subsequent offering period pursuant to Rule 14d-11. Acceptance and settlement of Santander Mexico Shares sold to the Repurchase Trust in connection with the Statutory Sell-out will typically occur within approximately five (5) to fifteen (15) Mexican business days, rather than as required under Rule 14d-11(e). The settlement procedures and timetable of the Statutory Sell-out are determined by Mexican trust agreement governing the Repurchase Trust and Mexican market practice. As set forth under “Relevant Mexican Law and Practice Considerations” above, holders of Santander Mexico Shares that wish to sell their Santander Mexico Shares to the Repurchase Trust during the term of the Statutory Sell-out must deliver a sale order (*solicitud de venta*) to Santander Mexico, which sale order must be accompanied by certain documentation as discussed above. Within five (5) Mexican business days from the date Santander Mexico receives such sale order from the relevant holder, Santander Mexico will either enter into a purchase agreement (*contrato de compraventa*) with the relevant holder based on a standard form used with all relevant holders or notify the relevant holder of any deficiencies or missing information in the sale order. The relevant holder will have ten (10) Mexican business days to cure any deficiencies or missing information in the sale order. Santander Mexico will pay the cash purchase price of the applicable Santander Mexico Shares within five (5) Mexican business days from the date that Santander Mexico receives a written confirmation that the relevant Santander Mexico Shares have been transferred to Santander Mexico’s securities account with Indeval, as will be more fully set forth in the payment conditions section (*condiciones de pago*) of the purchase agreement. Holders of Santander Mexico Shares who enter into a purchase agreement (*contrato de compraventa*) will not be permitted to withdraw or cancel the sale of their Santander Mexico Shares to the Repurchase Trust.

Given the various steps involved in settling the Statutory Sell-out in Mexico, it is not practicable to immediately accept and promptly pay for Santander Mexico Shares sold to the Repurchase Trust pursuant to the Statutory Sell-out in Mexico. We note that for offers qualifying for Tier II relief, Rule 14d-1(d)(2)(iv) permits offerors engaged in a subsequent offering period, where payment cannot be made on a more expedited basis under home jurisdiction law or practice, to pay for securities tendered in the subsequent offering period within 20 U.S. business days of the date of tender. While Santander Spain is unable to conclude that the Tender Offers qualify for Tier II relief, the timing of acceptance and settlement of Santander Mexico Shares sold to the Repurchase Trust pursuant to the Statutory Sell-out would not ordinarily exceed the relief that Rule 14d-1(d)(2)(iv) provides with respect to settlements of subsequent offering periods.

The objective of Rule 14d-1(d)(2)(iv) is to permit payment in a subsequent offering period to be made in accordance with home country law and practice. Rule 14d-1(d)(2)(iv) also reflects the position of the Commission that without a time limit for payment, investors tendering securities in the subsequent offering period may face an indefinite waiting period for payment for their tendered securities and that maintaining a time limit is particularly important because target security holders who tender during the subsequent offering period do not have withdrawal rights. The relief requested herein would not be inconsistent with the position expressed by the Commission. In effect, Santander Spain will be purchasing shares sold to the Repurchase Trust in the subsequent offering period in connection with the Statutory Sell-out on a rolling basis as mandated by Rule 14d-11(e).

We respectfully believe that granting relief from Rule 14d-11(e) is consistent with the positions previously expressed by the Commission and provides a fair and reasonable approach for holders Santander Mexico Shares that wish to sell their shares to the Repurchase Trust during the subsequent offering period in connection with the Statutory Sell-out. The Commission has previously granted relief from Rule 14d-11(e) in circumstances where foreign law and practice imposed practical obstacles to complying with the Rule. See

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e.g., *PagoNxt Merchant Solutions, S.L.*, SEC No-Action Letter (October 31, 2022) (granting relief for payment to occur at the end of successive 15-calendar days periods in accordance with established practice in Brazil); *Banco Santander, S.A.*, SEC No-Action Letter (September 18, 2014) (granting relief for payment to occur at the end of multiple 13-business day periods due to administrative complexities with respect to the issuance of shares under Spanish law); *Coca-Cola Hellenic Bottling Company S.A. & Coca-Cola HBC AG*, SEC No-Action Letter (March 14, 2013) (granting relief for payment for securities tendered during the subsequent offering period to take place one time, eight business days following the expiration of the three-month subsequent offering period as required by Greek law); *Alamos Gold Inc.*, SEC No-Action Letter, (March 7, 2013) (granting relief for payment to occur at the end of multiple 10 calendar day periods due to administrative complexities under Canadian law, noting that shareholder will retain withdrawal rights during such 10 day periods); *Sierra Wireless France SAS*, SEC No-Action Letter (January 5, 2009) (granting relief for payment for securities tendered during the subsequent offering period to take place once following the expiration of the subsequent offering period in accordance with French law and practice); and *Alcan, Inc.*, SEC No-Action Letter (October 7, 2003) (granting relief for payment for securities tendered during the subsequent offering period to take place once following the expiration of the subsequent offering period in accordance with French law and practice, noting that shareholder will retain withdrawal rights during such period).

Rule 14e-5

Rule 14e-5 under the Exchange Act provides, among other things, that an offeror is prohibited from directly or indirectly purchasing or arranging to purchase any securities subject to a tender offer, except pursuant to such offer. The prohibition applies from the time of public announcement of the tender offer until the tender offer expires. Read literally, Rule 14e-5 could be interpreted to prohibit the commencement of the Mexican Tender Offer and purchases of Santander Mexico Securities pursuant to the Mexican Tender Offer.

The Tender Offers will meet all of the conditions set forth in Rule 14e-5(b)(11), with the exception of the requirement that the Tender Offers qualify for Tier II exemptive relief because the level of U.S. ownership of Santander Mexico Shares exceeds 40% when calculated in accordance with the instructions to Rule 14d-1(d). As described above: (a) the Tender Offers will be made on the same economic terms and consideration (provided that the cash consideration to be paid to holders of Santander Mexico ADSs will be converted from Mexican pesos to U.S. dollars at an exchange rate that will be disclosed in the U.S. offering documents); (b) the procedural terms of the U.S. Tender Offer will be at least as favorable to tendering holders as the terms of the Mexican Tender Offer; (c) Santander Spain's intention to purchase Santander Mexico Shares pursuant to the Mexican Tender Offer will be disclosed in the U.S. offer documents; and (d) purchases of Santander Mexico Shares will be made pursuant to the Mexican Tender Offer and not pursuant to open market transactions, private transactions, or any other transactions.

The Commission has granted relief from Rule 14e-5 for several transactions structured as dual offers. See, e.g., *America Movil, S.A.B. de C.V.*, SEC No-Action Letter (April 23, 2010); *In the Matter of Movil Access, S.A. de C.V. for Grupo Iusacell, S.A. de C.V.*, SEC No-Action letter (June 24, 2003); *In the Matter of The Pepsi Bottling Group, Inc., Bottling Group LLC and PBG Grupo Embotellador Hispano-Mexicano S.L.'s Tender Offer for Shares, CPOs and GDSs of Pepsi-Gemex, S.A. de C.V.*, SEC No-Action Letter (October 14, 2002); and *Telefonica S.A., Telecomunicacoes de Sao Paulo S.A., Tele Sudeste Celular Participacoes S.A., Telefonica de Argentina S.A. & Telefonica del Peru, S.A.A.*, SEC No-Action Letter (June 5, 2000).

The Commission has also granted relief from Rule 14e-5 with respect to dual offers that met all the criteria set forth in Rule 14e-5(b)(11) other than the condition that the offers qualify for the Tier II exemption. See, e.g., *PagoNxt Merchant Solutions, S.L.*, SEC No-Action Letter (October 31, 2022); *Banco Santander, S.A.*, SEC No-Action Letter (August 8, 2019); *Banco Santander, S.A.*, SEC No-Action Letter (September 18, 2014); *Coca-Cola Hellenic Bottling Company S.A. & Coca-Cola HBC AG*, SEC No-Action Letter (March 14,

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2013); *America Movil, S.A.B. de C.V.*, SEC No-Action Letter (October 3, 2011); and *Vimpelcom Ltd., Altimo Holdings & Investments Ltd. and Telenor ASA*, SEC No-Action Letter (February 5, 2010).

Finally, we respectfully note that Rule 14e-5 is designed to prevent manipulative and deceptive practices whereby an offeror purchases or arranges to purchase shares outside of a tender offer, either during or promptly following it. Because the proposed dual tender offer structure only involves purchases by the offeror pursuant to a concurrent, substantially identical foreign tender offer and U.S. holders of Santander Mexico Shares will be entitled to participate in the U.S. Tender Offer on terms at least as favorable as those offered in the Mexican Tender Offer, it does not present the same risks as would open market purchases and thus the policies forming the basis for Rule 14e-5 are not violated by the requested exemption.

III. Exemptive Relief Requested

14d-10(a)(1) Relief

We hereby respectfully request relief from Rule 14d-10(a)(1) under the Exchange Act to permit the making of the Tender Offers in the manner described herein.

14d-11(d) Relief

We hereby respectfully request relief from Rule 14d-11(d) under the Exchange Act to permit the Statutory Sell-out to begin on the same Mexican business day as the date of the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the CNBV, as described herein.

14d-11(e) Relief

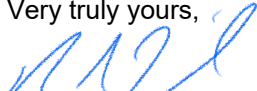
We hereby respectfully request relief from Rule 14d-11(e) under the Exchange Act to permit Santander Spain to accept and pay for the Santander Mexico Shares sold in the Statutory Sell-out in the manner described herein.

14e-5 Relief

We hereby respectfully request relief from Rule 14e-5 under the Exchange Act to permit Santander Spain to conduct the Mexican Tender Offer and to purchase Santander Mexico Shares tendered pursuant to the Mexican Tender Offer.

If you have any questions about this request, please do not hesitate to contact me at +34-91-768-9600. We appreciate your assistance in this matter.

Very truly yours,



Michael J. Willisich

Copy to:

Mr. Javier Illescas
Banco Santander, S.A.
Ciudad Grupo Santander
28660 Boadilla del Monte (Madrid)
Kingdom of Spain

February 3, 2023

Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C., 20549

Attn: Ted Yu, Chief, Office of Mergers and Acquisitions
Christina E. Chalk, Senior Special Counsel, Office of Mergers and
Acquisitions
Michael Killoy, Special Counsel, Office of Mergers and Acquisitions

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Re: Proposed tender offers by Banco Santander, S.A.

Dear Ms. Chalk and Messrs. Yu and Killoy,

We are acting as Mexican counsel to Banco Santander, S.A., a bank organized under the laws of the Kingdom of Spain (“*Santander Spain*”), in connection with its proposed tender offers (the “*Tender Offers*”) for all the issued and outstanding (i) series “B” shares (the “*Santander Mexico Shares*”) of Banco Santander México, S.A., Institución de Banca Múltiple, Grupo Financiero Santander México, a bank organized under the laws of Mexico (“*Santander Mexico*”), and (ii) American Depositary Shares (each of which represents five Santander Mexico Shares) (“*Santander Mexico ADSs*” and together with the Santander Mexico Shares, the “*Santander Mexico Securities*”), in each case, other than any Santander Mexico Securities owned directly or indirectly by Santander Spain; and the repurchase trust (*fideicomiso*) that will remain open for a term of six (6) months from the effective date of the cancellation of the registration of the Santander Mexico Shares with the National Securities Registry of the Mexican *Comisión Nacional Bancaria y de Valores* to purchase, from shareholders who wish to sell, any Santander Mexico Shares that remain outstanding following completion of the Tender Offers for the same cash consideration that shareholders would have received during the proposed tender offer in Mexico (the “**Statutory Sell-out**”).

In such capacity, we have reviewed the letter, dated February 3, 2023, prepared by Davis Polk & Wardwell LLP on behalf of Santander Spain requesting certain exemptive relief in connection with the Tender Offers and the Statutory Sell-out as described therein (the “*Letter*”). We are of the opinion that the descriptions of Mexican law and regulation, and we believe the description of Mexican practice, in the Letter are fair, complete and accurate as they relate to the Tender Offers and the Statutory Sell-out.

The foregoing confirmation is limited to matters involving the laws of Mexico and is not to be read as extending by implication to any other matters not referred to herein. The confirmation set forth above is effective as of the date hereof and is subject to change and qualifications by reason of change of law and circumstances, lapse of time and other similar matters. We hereby consent to the inclusion of this letter with any request for relief submitted to the U.S. Securities and Exchange Commission in connection with the Tender Offers and the Statutory Sell-out.

Sincerely,

White & Case, S.C.

White & Case, S.C.