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January 23, 2018

By Electronic Mail

Office of Derivatives Policy and Trading Practices,
Division of Trading and Markets,
U.S. Securities and Exchange Commission,
100 F Street, N.E.,
Washington, D.C. 20549,
United States of America.

Attention: Josephine J. Tao, Esq., Assistant Director

Re: Request for Class Exemptive or No-Action Relief from Rule 101
and Rule 102 of Regulation M in connection with distributions of
AT1 Contingent Convertible Securities of European Financial
Institutions

Dear Ms. Tao:

We are writing concerning the application of Regulation M to transactions in ordinary shares (including ordinary shares represented by American depositary shares) (collectively, "Shares") into which contingent convertible debt securities qualifying as additional tier 1 capital ("AT1 Contingent Convertible Securities") are convertible, insofar as such transactions occur at the time of distribution of such AT1 Contingent Convertible Securities. This request relates to AT1 Contingent Convertible Securities issued by European financial institutions (each, an "issuer").

Specifically, we are requesting that the U.S. Securities and Exchange Commission (the "Commission") or its staff (the "Staff") grant exemptive or no-action relief from Rule 101 and Rule 102 of Regulation M under the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act") in connection with distributions of AT1 Contingent Convertible Securities satisfying the conditions set forth below under "Request for Relief" so as to permit transactions involving Shares by an issuer and its affiliated purchasers (including those acting as distribution participants) during a distribution of such AT1 Contingent Convertible Securities.

AT1 Contingent Convertible Securities

Over the last several years, a number of European financial institutions have issued various series of AT1 Contingent Convertible Securities designed to qualify as additional tier 1 capital ("AT1 Capital") that can be counted by a financial institution towards the capital requirements mandated by European regulators. The AT1 Contingent Convertible Securities for which we are requesting relief are fundamentally fixed income securities that are priced and traded by investors as such and automatically convert into Shares if the issuer's Common Equity Tier 1 Capital Ratio, calculated in accordance with the European Union's Capital Requirements Directive IV and related Capital Requirements Regulation (collectively, "CRD IV"),¹ falls below a pre-determined level. The pre-determined level will be at or below the level at which, under CRD IV's standards, the issuer is subject to regulatory sanctions that at a minimum include limitations on its ability to pay dividends and make certain variable compensation payments to executive officers.

The requirements for qualification as AT1 Capital are set forth in CRD IV. CRD IV revised the European Union's previous Capital Requirements Directive in response to the new global regulatory frameworks on bank capital adequacy and liquidity adopted by the Basel Committee on Banking Supervision in December 2010 and generally known as "Basel III".

The purpose of AT1 Capital is to absorb future losses through conversion to common equity or write-down, allowing a financial institution to maintain sufficient Common Equity Tier 1 Capital to continue as a going concern. AT1 Contingent Convertible Securities are therefore required to contain a number of terms that distinguish them from traditional debt and debt-like instruments that convert into equity securities.

¹ Directive 2013/36/EU and Regulation (EU) No 575/2013, respectively, each issued on June 26, 2013. The requirements for AT1 Contingent Convertible Securities are primarily established by CRD IV (in particular, in Articles 51 to 55 of the Capital Requirements Regulation), as supplemented by Commission Delegated Regulation (EU) No 241/2014, issued on January 7, 2014. Institutions in the European Union were required to comply with CRD IV from January 1, 2014, though certain of the new requirements will be progressively phased in over the next several years. To the extent that regulatory requirements in the United Kingdom remain substantially similar to CRD IV following the United Kingdom's exit from the European Union, the relief requested in this letter would be understood to remain available to UK issuers. Under CRD IV, debt securities providing for one of two types of loss absorption mechanisms upon occurrence of a specified capital adequacy trigger condition may qualify as additional tier 1 capital: (1) conversion to common equity or (2) permanent or temporary write-down of the principal amount of the security, including to zero. Because the latter type of security does not convert under any circumstances into common equity, a distribution of such securities does not raise the same issues under Regulation M, and so is not being addressed in this letter.

Although some of the terms of these AT1 Contingent Convertible Securities vary from issuer to issuer and issue to issue, the basic equity-related structure is consistent.²

In order to qualify as AT1 Capital under CRD IV, AT1 Contingent Convertible Securities must have the following features, among others:

1. *Automatic Conversion to Shares.* The AT1 Contingent Convertible Securities automatically and mandatorily convert into Shares upon a capital adequacy-related trigger event, which is set forth in the terms of the relevant AT1 Contingent Convertible Security. A trigger event occurs if the issuer's Common Equity Tier 1 Capital Ratio (as calculated in accordance with CRD IV) falls below a percentage specified in the transaction documents, which may not be less than 5.125%. The terms of the AT1 Contingent Convertible Security are required to specify either (a) the rate of conversion and a limit on the permitted amount of conversion or (b) a range within which the securities will convert to Shares.³
2. *No Maturity Date.* The AT1 Contingent Convertible Securities have no fixed maturity date, and are instead perpetual instruments (though they may be callable for cash by the issuer at certain intervals or after a

² A European Banking Authority report assessed 33 issuances of securities qualifying as AT1 Capital, issued between August 2013 and December 2015, and found that "issuances are in general quite standardised, except for features that are, by nature, institution-specific (such as the level of the triggers and the definition of the triggers at different applicable levels depending on the structure of the groups). This is probably partly due to the existence of quite prescriptive provisions in both the [Capital Requirements Regulation] and the [Commission Delegated Regulation]." European Banking Authority, "*EBA Report on the Monitoring of Additional Tier 1 (AT1) instruments of EU institutions – Second update: FINAL*", page 4 (October 10, 2016).

³ When an issuer reaches the point of non-viability, its AT1 Contingent Convertible Securities would generally be subject to statutory write-down and/or conversion powers pursuant to the requirements of Directive 2014/59/EU (May 15, 2014) establishing a framework for the recovery and resolution of credit institutions and investment firms (the "BRRD"). In these circumstances, a relevant resolution authority may, among other things, take actions that result in the conversion of AT1 Contingent Convertible Securities into Shares. The power of a relevant resolution authority to take those actions is commonly referred to as its "bail-in" power. The potential conversion of the AT1 Contingent Convertible Securities into Shares as a result of the exercise of any bail-in power by a relevant resolution authority is (i) separate and distinct from an automatic conversion following a capital adequacy-related trigger event pursuant to a contractual term, (ii) expected to be more remote than an automatic conversion following a capital adequacy-related trigger event because it only occurs in what is effectively a failure or likely failure of the institution and (iii) a feature that is, with certain exceptions, characteristic of all unsecured debt securities issued by a financial institution subject to the BRRD, whether or not such securities contain an automatic contingent conversion feature.

certain period, in each case generally only upon the approval of the competent regulator).

3. *Interest Payments Discretionary.* Interest on the AT1 Contingent Convertible Securities may generally be paid at periodic intervals, subject to the availability of distributable reserves⁴ and the solvency of the issuer. In addition, the issuer must, in its sole discretion, have the right not to make interest payments at any time. Failure to pay interest cannot be an event of default.
4. *Subordination.* The AT1 Contingent Convertible Securities are deeply subordinated, including to the claims of the holders of Tier 2 (as defined in CRD IV) subordinated debt.

Apart from CRD IV's requirements for AT1 Contingent Convertible Securities that qualify as AT1 Capital, we are requesting relief in this letter only for AT1 Contingent Convertible Securities that (i) have a Common Equity Tier 1 Capital Ratio trigger level of 7.0% or lower (because 7.0% is the minimum level at which, and taking into account the additional buffers described in footnote 5 below is in most cases below the level at which, an issuer would be subject to regulatory sanctions, which include at a minimum limitations on payment of dividends and payment of certain variable compensation payments to executive officers)⁵ and (ii) do not include any right of the

⁴ Under CRD IV, an issuer that allows its capital ratio to fall below the applicable Combined Buffer Requirement (as described below) is required to calculate its "Maximum Distributable Amount" and notify its competent authority of such Maximum Distributable Amount. An issuer is prohibited from, among other things, making payments on AT1 Capital before it has calculated its Maximum Distributable Amount, and is subsequently restricted from making payments on AT1 Capital and certain other payments which in the aggregate exceed its Maximum Distributable Amount.

⁵ Pursuant to the requirements of Basel III, CRD IV establishes automatic limitations on distributions and compensation that create significant disincentives for an issuer to allow its Common Equity Tier 1 Capital Ratio to fall below the applicable "Combined Buffer Requirement". In addition to the basic 4.5% minimum Common Equity Tier 1 Capital Ratio under CRD IV, there is a Combined Buffer Requirement applicable to any institution which is incremental to the minimum requirement and is composed of: (1) in all cases, an additional 2.5% capital conservation buffer (with the consequence that the sum of the basic minimum and the Combined Buffer Requirement is never less than 7.0%); and (2) at least three other potential buffers – namely, (i) an institution-specific counter-cyclical capital buffer (which may be disappplied by member states to small and medium-sized institutions), (ii) a member state-specific systemic risk buffer and (iii) any applicable systemically important institution buffers. In addition to these CRD IV buffers, issuers in some jurisdictions may be required to maintain a separate additional buffer. If a financial institution's Combined Buffer Requirement is not met, the financial institution will, in addition to the limitations on distributions described above, also be subject to certain reporting and oversight requirements, including submission of a capital conservation plan for review and approval by the relevant regulator. We have been informed that because the regulatory limitations that apply to an issuer which has entered its "buffer zone" (i.e., an issuer who has a capital

issuer or the holders to convert the AT1 Contingent Convertible Securities into Shares at their option.

While early issuers of AT1 Contingent Convertible Securities set capital adequacy-related triggers at the minimum Common Equity Tier 1 Capital Ratio of 5.125%, higher trigger levels are permitted under CRD IV and may be requested by the relevant regulator. For example, guidance from the UK Prudential Regulation Authority will generally result in a 7.0% trigger level for AT1 Contingent Convertible Securities issued by UK financial institutions, which is intended to ensure that only instruments that will reliably absorb losses while a firm is still a going concern can count towards the leverage ratio under CRD IV. The applicable 7.0% threshold is equivalent to the sum of the basic 4.5% minimum for Common Equity Tier 1 Capital under CRD IV and the additional 2.5% capital conservation buffer which is also required to be satisfied with Common Equity Tier 1 Capital under CRD IV. A Common Equity Tier 1 Capital Ratio below 7.0% is effectively a sign of distress and conversion of AT1 Contingent Convertible Securities with a trigger level of 7.0% or lower is unlikely to occur as a result of actions within an issuer's control.

Regulation M Considerations

Rule 101 of Regulation M is an anti-manipulation regulation that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase, any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the Regulation. The provisions of Rule 101 apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities.

In addition, Rule 102 of Regulation M prohibits an issuer or selling security holder, or any of their affiliated purchasers, from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of the issuer or selling security holder.

Regulation M applies both to activities in the securities in distribution and to activities in any "reference securities", such as common stock underlying an exercisable, exchangeable, or convertible security that is being distributed. In the adopting release for Regulation M, the Commission stated that it believed transactions in reference securities could have a direct and substantial effect on the pricing and terms of

ratio below its Combined Buffer Requirement) would generally result in significant difficulties in maintaining access to the capital markets as a source of funding, issuers have a strong incentive to maintain capital levels with a meaningful cushion above the Combined Buffer Requirement.

the security in distribution.⁶ Although AT1 Contingent Convertible Securities are not convertible in the conventional sense, some past offerings of AT1 Contingent Convertible Securities have proceeded on the basis that the issuer's Shares may be deemed to be "reference securities" in relation to the AT1 Contingent Convertible Securities.

Unlike traditional convertible debt instruments, the AT1 Contingent Convertible Securities for which we are requesting relief in this letter convert into Shares automatically upon the occurrence of a contingent trigger event, i.e., that the issuer's Common Equity Tier 1 Capital Ratio falls below a specified trigger level (for the purposes of this request for relief, not higher than 7.0%), that at the time of issuance would be considered remote. This contingency would be considered remote because of the regulatory sanctions that would apply to an issuer that allows its Common Equity Tier 1 Capital Ratio to decline below 7.0% – namely, and as discussed above, restrictions on the ability to pay dividends and make certain variable compensation payments to executive officers. Because of the perceived severity of those sanctions, financial institutions target capital levels, and investors expect them to maintain capital levels, well in excess of the level at which the contingency would be triggered. Accordingly, trading activity in the Shares at or around the time of distribution is quite unlikely to influence the pricing or trading of AT1 Contingent Convertible Securities, particularly during the restricted period with which Regulation M is concerned.

Issuers have also previously indicated that they expect AT1 Contingent Convertible Securities to price and trade more like traditional fixed-income debt instruments than conventional convertible instruments.⁷ Investors in AT1 Contingent Convertible Securities are generally focused on receiving interest payments during the life of the AT1 Contingent Convertible Securities rather than any potential equity upside in the unlikely event of a conversion into Shares.

As a result of the foregoing, a distribution of AT1 Contingent Convertible Securities having the terms contemplated by this request for relief does not raise the same concerns underlying Regulation M as may arise with respect to a distribution of conventional convertible debt securities for the following reasons:

- (1) Because the AT1 Contingent Convertible Securities would convert only if Common Equity Tier 1 Capital fell below a pre-determined threshold

⁶ Anti-manipulation Rules Concerning Securities Offerings, Securities Act Release No. 33-7375, Exchange Act Release No. 34-38067, Investment Company Act Release No. IC-22412; 63 SEC Docket 1141 (December 20, 1996).

⁷ See the requests for relief from Rule 101 and Rule 102 of Regulation M in connection with offerings of AT1 Contingent Convertible Securities by Barclays PLC dated November 7, 2013, Lloyds Banking Group dated March 6, 2014, ING Groep N.V. dated April 7, 2015 and Banco Bilbao Vizcaya Argentaria, S.A., dated November 3, 2017.

which would effectively indicate distress of the issuer, investors do not purchase the AT1 Contingent Convertible Securities in their initial distribution in order to have the possibility of acquiring Shares in a conversion or for purposes of increasing their exposure to the issuer's common equity;

(2) Because investors are focused on receiving interest payments during the life of the AT1 Contingent Convertible Securities rather than any potential equity upside in the unlikely event of a conversion into Shares, a distribution of AT1 Contingent Convertible Securities is more similar to that of a non-convertible debt security rather than a traditional convertible debt security; and

(3) Because the risk of regulatory capital falling below a pre-determined threshold at which regulatory sanctions would apply is considered remote at the time of issuance, the price of the underlying Shares is not expected to have a significant impact on pricing or market demand for the AT1 Contingent Convertible Securities at the time of issuance.

Request for Relief

As a result of the low risk of manipulation of Share prices in a distribution of AT1 Contingent Convertible Securities with the features described above, we respectfully request that the Commission or the Staff grant class exemptive or no-action relief from Rule 101 and Rule 102 of Regulation M in connection with a distribution of such AT1 Contingent Convertible Securities satisfying the conditions set forth below, thus permitting transactions involving Shares by an issuer and its affiliated purchasers during a distribution of AT1 Contingent Convertible Securities convertible into such Shares upon the occurrence of a capital adequacy-related trigger event.

We note that the Staff has previously granted exemptive relief from Rule 101 and Rule 102 of Regulation M in connection with offerings of AT1 Contingent Convertible Securities to Barclays PLC under the exemptive letters dated July 31, 2013, November 7, 2013 and May 14, 2014, to Lloyds Banking Group plc under the exemptive letter dated March 6, 2014, to ING Groep N.V. under the exemptive letter dated April 7, 2015, to the Royal Bank of Scotland Group plc under the exemptive letters dated August 3, 2015 and August 8, 2016 and to Banco Bilbao Vizcaya Argentaria, S.A. under the exemptive letter dated November 3, 2017.

The exemptive or no-action relief requested above would be subject to the following conditions:

(1) The issuer of the AT1 Contingent Convertible Securities is a foreign private issuer (within the meaning of Rule 3b-4 under the Exchange Act);

(2) The AT1 Contingent Convertible Securities in distribution have a Common Equity Tier 1 Capital Ratio (as calculated in accordance with CRD IV) trigger level of 7.0% or lower;⁸

(3) As of the date of the most recent calculation required to be reported to the relevant supervisor under applicable regulatory capital rules prior to the distribution of the AT1 Contingent Convertible Securities, the issuer's Common Equity Tier 1 Capital Ratio exceeded the Combined Buffer Requirement applicable to it;

(4) The AT1 Contingent Convertible Securities in distribution do not include any right of the issuer or the holders to convert the AT1 Contingent Convertible Securities into Shares at their option;

(5) Any transactions in Shares by the issuer or its affiliated purchasers are effected in the ordinary course of business and not for the purposes of facilitating the distribution of the AT1 Contingent Convertible Securities;

(6) Any prospectus or other offering document distributed to U.S. investors in connection with the offering of the AT1 Contingent Convertible Securities will disclose the possibility of, or the intention to engage in, transactions in Shares by the issuer or its affiliated purchasers;

(7) The principal market (within the meaning of Rule 100 of Regulation M) of the Shares is outside the United States;

(8) The Shares have an ADTV (within the meaning of Rule 100 of Regulation M) value of at least \$1 million during the two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price, and the Shares are issued by an issuer whose common equity securities have a public float value (within the meaning of Rule 100 of Regulation M) of at least \$150 million; and

(9) Except as otherwise exempted by this letter, the issuance of the AT1 Contingent Convertible Securities would remain subject to Regulation M.⁹

⁸ As discussed above, a Common Equity Tier 1 Capital Ratio below 7.0% is effectively a sign of distress and conversion of AT1 Contingent Convertible Securities with a trigger level of 7.0% or lower is unlikely to occur as a result of actions within an issuer's control.

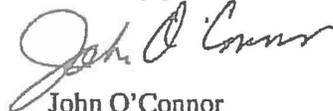
⁹ The issuance of the AT1 Contingent Convertible Securities would also remain subject to the anti-fraud and anti-manipulation provisions of the Exchange Act, including Sections 9(a) and 10(b), and Rule 10b-5 thereunder.

* * *

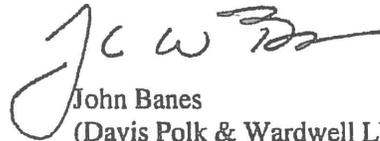
Conclusion

Based on the foregoing, we respectfully request that the Commission or the Staff grant the relief requested herein. If you have any questions or require any additional information, please contact John O'Connor at +011 44 20 7959 8515.

Sincerely yours,



John O'Connor
(Sullivan & Cromwell LLP)



John Banes
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