

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

In the Matter of

BANK LEUMI USA,  
BANK LEUMI LE-ISRAEL, B.M.

**CONSENT ORDER PURSUANT TO BANKING LAW § 44 and 44-a**

The New York State Department of Financial Services (the “Department”), Bank Leumi USA, and Bank Leumi Le-Israel, B.M. (“Bank Leumi-Israel”) (collectively, “the Parties”) stipulate that:

**WHEREAS** Bank Leumi-Israel, one of Israel’s largest banks, provides private banking, wealth management, and other financial services to high-net-worth individuals and entities around the world, including clients in the United States and New York, and had approximately \$313 billion in assets under management as of December 31, 2013;

**WHEREAS** Bank Leumi-Israel has over 13,000 employees and subsidiaries in seven countries, including Leumi Le-Israel Trust Company Ltd. (“Bank Leumi Trust”), Leumi Private Bank Ltd. (formerly Bank Leumi Switzerland Ltd.) (“Bank Leumi-Switzerland”), Bank Leumi Luxembourg S.A. (“Bank Leumi-Luxembourg”) (collectively, “foreign affiliates”), and Bank Leumi USA (collectively, “the Bank”);

**WHEREAS** Bank Leumi-Israel has operated an agency in New York, licensed and supervised by the Department, since 1959;

**WHEREAS** Bank Leumi USA, a wholly-owned subsidiary of Bank Leumi-Israel, is an FDIC-insured, full-service commercial bank, which has approximately 443 employees, and had approximately \$5.19 billion in assets under management as of December 31, 2013;

**WHEREAS** Bank Leumi USA is a New York State-chartered bank, licensed and regulated by the Department pursuant to the New York Banking Law;

**WHEREAS** the Bank knowingly and willfully operated a wrongful cross-border banking business to assist U.S. clients in concealing assets offshore and evading U.S. tax obligations, and misled the Department and its predecessor, the New York State Banking Department, about the Bank's improper activities, the Department finds that the Bank's conduct raises serious safety and soundness concerns and constitutes violations of law and regulation; and

**WHEREAS** the Bank and other Leumi Group entities are entering into a Deferred Prosecution Agreement with the U.S. Department of Justice, in which the Bank admits that the Bank did unlawfully, voluntarily, intentionally, and knowingly agree together with others to willfully aid and assist in the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department, constituting willful violations of Title 26, United States Code, Section 7206(2), in violation of 18 U.S.C. § 371, and agrees to pay a resolution amount of \$270 million.

**NOW THEREFORE**, to resolve this matter, the Parties agree to the following:

**Wrongful Cross-Border Banking Business**

1. From at least 2000 through 2011, Bank Leumi-Israel and its subsidiaries, including Bank Leumi USA, the New York State-chartered bank, operated a wrongful cross-border banking business that knowingly and willfully aided and assisted U.S. clients, including

New York clients, in opening and maintaining undeclared accounts in a foreign country, concealing their offshore assets and income from the Internal Revenue Service and other federal and state authorities, and filing false tax returns and other documents with such authorities.

2. From at least 2000 through April 2009, Bank Leumi-Israel and foreign affiliates regularly sent private bankers to the United States, including to New York, to conduct activities in furtherance of the tax evasion scheme. Such activities included:

- Falsely claiming, upon entry into the United States, under the penalties of perjury, that the primary purpose of their trip to the United States was not business, when in fact the travel was paid for by Bank Leumi-Israel and approved by relevant senior executives who knew that the purpose was to recruit and service U.S. clients, in part because upon return, the bankers produced reports that summarized the new business generated;
- Meeting prospective customers to discuss opening undeclared accounts;
- Meeting existing customers to discuss undeclared accounts held with Bank Leumi-Israel and foreign affiliates; and
- Bringing bank statements to the United States for review by U.S. clients and disposing of such bank statements after they were reviewed so as to conceal the beneficial owner of the undeclared account and reduce the risk of disclosure to U.S. authorities.

3. Bank Leumi-Israel assisted U.S. clients in concealing accounts through the use of certain practices and procedures, including:

- “Hold mail” service for approximately 2450 U.S. accounts, whereby every statement of account, notice, or other document associated with the

account would be held abroad at the foreign bank and would not be sent to the customer's address in the United States, a service for which the Bank charged a total of approximately \$1.5 million to U.S. clients;

- “Assumed name” and “numbered” accounts, where the name of the account holder would not appear on any correspondence or account statements, and the Bank would accept wire transfers using these assumed names or numbers in lieu of actual customer names;
- Referring U.S. clients to outside lawyers and consultants who would establish and maintain offshore corporations in jurisdictions like the British Virgin Islands, Panama, and Belize, to nominally hold the undeclared accounts and hide their true tax status from U.S. authorities; and
- Suggesting to U.S. clients to open accounts through Bank Leumi Trust in order to add an “extra level of secrecy” to the account.

4. Bank Leumi USA assisted Bank Leumi-Israel and foreign affiliates in the cross-border banking scheme. For example, in and around 2001, a Bank Leumi USA executive introduced to Bank Leumi-Luxembourg executives a U.S. tax return preparer, who had clients that sought to open undeclared accounts, and the parties negotiated a draft referral agreement for the purpose of providing compensation to the tax preparer for referring U.S. taxpayers to Bank Leumi-Luxembourg to open accounts. The tax preparer referred at least 23 customers to Bank Leumi-Luxembourg.

5. In addition to assisting Bank Leumi-Israel with customer recruitment efforts, Bank Leumi USA provided other support to Bank Leumi-Israel and foreign affiliates, including

by assisting U.S. clients with documentation relating to their foreign accounts and providing U.S. clients who had undeclared foreign accounts with loan products that enabled them to access their undeclared funds, as described further below.

### **SBLC Loan Scheme**

6. In an effort to facilitate the wrongful cross-border banking business, Bank Leumi USA offered several products to U.S. clients who maintained funds in undeclared accounts abroad, which enabled the customers to gain access to the funds without repatriating the funds or creating a paper trail that would disclose the existence of the undeclared accounts to the U.S. authorities.

7. Bank Leumi USA offered, marketed, and serviced participation loans, wherein Bank Leumi-Israel or a foreign affiliate purchased 100% funded participation in the loan, and the U.S. client executed a set-off letter securing all debts and obligations in favor of the foreign bank.

8. Bank Leumi USA also offered, marketed, and serviced standby letter of credit-backed loans (“SBLC loans”) that were secured or collateralized by a letter of credit from Bank Leumi-Israel or a foreign affiliate, which letter of credit was in turn backed by funds in the customer’s undeclared account at Bank Leumi-Israel or a foreign affiliate.

9. Bank Leumi USA received interest payments on the SBLC loans and the foreign affiliate separately collected a “guaranty fee” or “commission” for the issuance of the letters of credit, which together amounted to approximately 1% of the loan amount.

10. The SBLC loans could be renewed annually; some loans were issued in the 1990s and renewed annually for a twenty-year period, up to as recently as February 2012.

11. Around approximately 2000, the Bank shifted from offering participation loans to offering SBLC loans, which required less information to be kept on file at Bank Leumi USA that might disclose the existence and identity of U.S. clients who maintained undeclared accounts. According to some senior executives, this created greater separation between Bank Leumi USA and foreign affiliates and avoided regulatory scrutiny. For example, in a memorandum dated January 29, 2002, a Bank Leumi USA executive updated Bank Leumi USA's Chief Executive Officer on the conversion effort, explaining that the customer's credit file is now "empty... in order to create the impression that this is part of normal business procedure." The next day, the Bank Leumi USA executive wrote to a Bank Leumi-Israel executive that "the authorities could claim that in a participation sale we cooperate with the client in 'hiding' loans," but with SBLC loans, the Bank remains "clean." He also stated that the conversion was the Chief Executive Officer's idea.

12. In order to conceal the existence of the undeclared accounts, Bank Leumi USA took efforts not to identify the U.S. taxpayer who applied for the SBLC loan on any paperwork that remained in the U.S., for example, by:

- Referring to the applicant as "you" or "the applicant" in SWIFT payment messages;
- Not reviewing records concerning the collateral pledged by the client;
- Not documenting the existence of the foreign account in memoranda for review by Bank Leumi USA's credit committee; and
- Providing instructions from management to employees, such as, "Remember the bottom line – I don't want to know who the customer is, what the account number or the conditions are for credit or securities. All

I want to know is what we need to know on this side of the ocean. As you know, the security I receive is security from the central branch in Tel Aviv, and this does not include any traces of the above details.”

13. Bank Leumi USA assured U.S. clients that their names did not appear on documentation that may disclose their undeclared accounts to U.S. authorities, and at least one banker permitted clients to review documents themselves to ensure that their names were not included in the records.

14. In October 2008, when Bank Leumi USA notified foreign affiliates that, effective immediately, SBLC loans issued must include the applicant’s full name and address, a Bank Leumi-Luxembourg advisor replied that, “[c]ustomers do not want their names to appear on official documents, such as an SBLC,” and the change “will have a major impact on our business.” After “extensive internal discussions,” Bank Leumi USA’s Chief Compliance Officer rescinded the policy change in conformance with the request of the foreign affiliate. Bank Leumi USA continued to accept and maintain files in the United States that did not contain customer names, so long as the foreign affiliates maintained applicant names and current KYC information in their files.

15. The SBLC loan scheme continued until approximately 2011, when new senior management identified the absence of applicant names on SBLC loan documentation and initiated an analysis, ultimately leading to remediation efforts. Prior to that, the Bank failed to develop and implement an effective compliance program with respect to U.S. law, took inadequate steps to educate bankers about compliance with U.S. law, and continued to open and service accounts of U.S. clients they knew to be evading U.S. legal obligations.

16. From approximately 2002 to 2011, Bank Leumi USA issued one or more SBLC loans to approximately 234 borrowers who were U.S. customers, including 54 customers in New York, and the average value of each loan was approximately \$1.2 million; therefore, the total aggregate value of the undeclared assets backing the loans was at least \$280 million.

17. The Bank earned profits on the SBLC loan activity of approximately \$23 million over the relevant time period.

### **Solicitation of Customers Exiting Swiss Banks**

18. Certain executives in the Bank viewed the public investigation of several Swiss banks, and their subsequent exit from the U.S. cross-border banking business, as an opportunity to attract new customers whose accounts the Swiss banks had stopped servicing. For example, when the U.S. Department of Justice investigation of UBS became public in May 2008, several senior executives at the Bank considered UBS's exit from the U.S. cross-border business a "golden opportunity to contact customers" and urged bankers "to suggest [to prospective clients] that they transfer their accounts to here (the reasons are understood)." Subsequently, Bank Leumi-Israel and its foreign affiliates opened accounts for 263 U.S. taxpayers, increasing assets under management by approximately \$401 million.

19. Similarly, in October 2008, a copy of the Mizrahi Tefahot Bank Ltd. Cease and Desist Order was circulated to executives at Bank Leumi USA, who understood that Mizrahi Bank's practices violated Bank Secrecy Act and anti-money laundering regulations. Nonetheless, Bank Leumi USA continued to issue SBLC loans, including to known former customers of Mizrahi Bank, without reviewing or maintaining records concerning the collateral pledged—the same practices for which Mizrahi was penalized. A Bank Leumi USA employee



wrote in email, “[T]hankfully we have new deals. Mizrahi bank is going through a lot of changes and it has given us a chance to attract their new customers.”

### **Employee Conduct**

20. Various Bank senior operations, compliance, and legal staff knew of the Bank’s wrongful conduct and, rather than report the conduct to the Bank’s regulators, actively supported it.

21. For example, a private banker employed by Bank Leumi-Israel for over 25 years wrote to a supervisor in 2011, “Nearly every client who has an account with us has used the bank as a tax haven, and is aware that by not declaring his account in the US is committing an offense, [and] we have by virtue of the services we provided assisted the clients with what they wished to achieve.”

22. In 2008, in the midst of the SBLC loan scheme, the Bank Leumi USA Chief Executive Officer appointed an employee, who had no compliance experience, to the position of Chief Compliance Officer. This is the Chief Compliance Officer referenced in Paragraph 14, who approved the continued practice of not requiring applicant names on BLUSA files. The employee remained in this position until 2010.

23. As a result of the internal investigation, numerous employees and senior executives involved in the wrongful conduct discussed in this Order have been removed or have left the Bank.

### **Violations of Law and Regulation**

24. With regards to the aforementioned conduct, the Bank has conducted banking business in an unsafe and unsound manner.

25. The Bank also failed to maintain or make available at Bank Leumi USA and at the New York agency location of Bank Leumi-Israel, true and accurate books, accounts, and records reflecting all transactions and actions, in violation of Banking Law § 200-c.

### **Settlement Provisions**

#### Monetary Penalty

26. The Bank shall pay a civil monetary penalty to the Department pursuant to Banking Law §§ 44 and 44-a in the amount of \$130 million. The Bank shall pay the entire amount within ten days of executing this Consent Order. The Bank agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

#### Employee Discipline

27. The Bank shall ensure that the aforementioned Bank Leumi USA Chief Compliance Officer, who is currently Chief Administrative Officer and whose involvement in the improper conduct is discussed above in Paragraphs 14 and 22, shall not assume any duties, responsibilities, or activities while employed at the Bank that involve compliance in any way.

28. The Bank will also take all steps necessary, in accordance with Israeli law, to terminate the following individual who played a central role in the improper conduct set forth in this Order: the current Head of Bank Leumi Trust, who served as a Regional Manager during the relevant time period. If, after taking whatever action is necessary to terminate this employee, a judicial or regulatory determination or order is issued finding that such action is not permissible

under Israeli law, then this employee shall not be allowed to hold or assume any duties, responsibilities, or activities involving compliance or any matter relating to U.S. operations.

29. The Department's investigation has resulted in the resignation from the Bank of two individuals who played a central role in the improper conduct discussed in this Order: a former Branch Manager, who remained employed by Bank Leumi-Israel as a credit officer in the workout unit; and a former Senior Relationship Manager, who remained employed by Bank Leumi-Israel as an operation officer in the private banking branch.

#### Monitor

30. Bank Leumi USA will engage an independent monitor, selected by the Department in the exercise of its sole discretion, to conduct, consistent with applicable law, a comprehensive review of the Bank's compliance programs, policies, and procedures in place at the time of the conduct discussed in this Consent Order through the present.

31. In connection with the Bank's compliance with U.S. and New York laws and regulations, the monitor will review and report on, at least the following:

- The elements of the Bank's corporate governance and the involvement of individual employees, including but not limited to present and former officers, directors, and other employees, that contributed to or facilitated the wrongdoing discussed in this Consent Order and that permitted it to go on;
- The timeliness and effectiveness of the Bank's efforts to correct the misconduct identified in this Consent Order; and
- Enhancements to the Bank's reporting structure and compliance programs that will benefit the Bank's efforts to comply with U.S. and New York

laws and regulations in the future, and ensure the safety and soundness of the Bank.

32. The Bank and its management will fully cooperate with the monitor and support its investigation by, among other things, providing the monitor, consistent with all applicable laws, access to all relevant personnel, files, reports, or evidence, whether located in New York, Israel, or elsewhere.

33. The term of the monitor's engagement will be one year. Any dispute as to the scope of the monitor's authority or mandate will be resolved by the Department in the exercise of its sole discretion after appropriate consultation with the Bank and the monitor.

34. Within three months of the date of formal engagement, the monitor shall submit to the Department and Bank Leumi USA's Board of Directors a written interim report stating the work done and conclusions reached to date. The monitor shall submit a written progress report to the Department and to the Bank at intervals to be determined by the Department. The monitor shall submit its final report to the Department and to Bank Leumi USA's Board of Directors, including proposals for improvements to the Bank's compliance programs as it pertains to U.S. and New York laws and regulations, at the conclusion of the engagement.

35. Within thirty days of receiving the monitor's final report, the Bank will submit to the Department a written plan to improve and enhance its compliance programs with respect to U.S. and New York law, which will include a plan for implementing any recommendations made by the monitor or an explanation as to why the monitor's recommendations are not being incorporated.

### Breach of Consent Order

36. In the event that the Department believes the Bank to be in material breach of the Consent Order, the Department will provide written notice to the Bank and the Bank must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or that the breach has been cured.

37. The parties understand and agree that the Bank's failure to make the required showing within the designated time period shall be presumptive evidence of the Bank's breach. Upon a finding that the Bank has breached this Consent Order, the Department has all the remedies available to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

### Waiver of Rights

38. The parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

### Parties Bound by the Consent Order

39. This Consent Order is binding on the Department and the Bank, as well as the Bank's successors and assigns that are under the Department's supervisory authority. But this Consent Order does not bind any federal or other state agency or any law enforcement authority.

40. No further action will be taken by the Department against the Bank for the conduct set forth in the Consent Order, provided that the Bank complies with the terms of the Consent Order.

41. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against the Bank for transactions or conduct that the

Bank did not disclose to the Department in connection with the Department's investigation into this matter.

Notices

42. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

James Caputo  
Senior Counsel  
New York State Department of Financial Services  
One State Street  
New York, NY 10004

For Bank Leumi USA:

Avner Mendelson  
President and Chief Executive Officer  
Bank Leumi USA  
562 Fifth Avenue  
New York, NY 10036

For Bank Leumi Le-Israel, B.M.:

Daniel Tsiddon  
Deputy CEO, Head, Capitals Markets, Private Banking & Strategy  
Bank Leumi Le-Israel, B.M.  
34, Yehuda Halevy st, TEL-AVIV 6513617

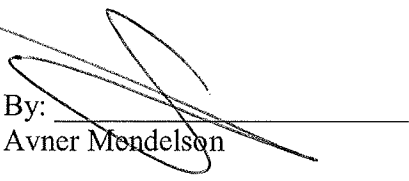
Miscellaneous

43. Each provision of this Consent Order shall remain effective and enforceable until stayed, modified, suspended, or terminated by the Department.


44. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of the Consent Order.

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 22<sup>nd</sup>  
day of December, 2014.

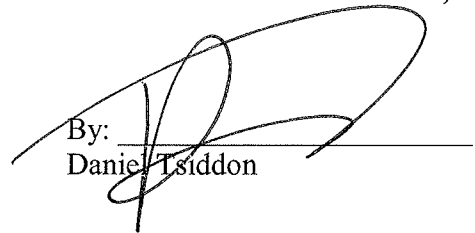
**BANK LEUMI USA**

By:   
Avner Mendelson

**NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES**

By:   
**BENJAMIN M. LAWSKY**  
Superintendent of Financial Services

**BANK LEUMI LE-ISRAEL, B.M.**

By:   
Daniel Tsiddon