



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

MARK E. VAN DER WEIDE
GENERAL COUNSEL

May 17, 2018

Joseph P. Vitale, Esq.
Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022

Richard K. Kim, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

Dear Messrs. Vitale and Kim:

This letter responds to your request for a determination that Endicott SPV I, L.P. ("Endicott") and its affiliates and MSD BLUSA Investments, L.L.C. ("MSD") and its affiliates would not control Bank Leumi Le-Israel Corporation ("Leumi BHC"), New York, New York, a bank holding company, for purposes of the Bank Holding Company Act of 1956, as amended ("BHC Act"), as a result of each investor's acquisition of 7.5 percent of the voting securities of Leumi BHC.¹

In 2017, Bank Leumi le-Israel B.M. ("Parent FBO"), Tel-Aviv, Israel, a foreign bank and bank holding company, approached Endicott to see if Endicott would acquire a minority interest in Parent FBO's subsidiary U.S. bank holding company, Leumi BHC. Endicott in turn approached MSD to be a co-investor in Leumi BHC.²

¹ The proposed acquisitions by Endicott and MSD will not trigger a notice requirement under the Change in Bank Control Act of 1978. See 12 U.S.C. 1817(j); 12 CFR 225.41(c)(2).



Each investor subsequently agreed to acquire 7.5 percent of the voting securities of Leumi BHC.

Endicott has the right to appoint one director representative to Leumi BHC's 5-person board of directors and one director representative to the 12-person board of directors of Leumi BHC's subsidiary bank, Bank Leumi USA, New York, New York. The director representatives would not serve as the chairman of the board of directors of Leumi BHC, Bank Leumi USA, or of any board committee of either company.³ MSD does not have any right to appoint a director representative to the board of directors of either Leumi BHC or Bank Leumi USA.

Both Endicott and MSD represent that there will be no employee interlocks between Endicott or MSD, on the one hand, and Leumi BHC or its subsidiaries, on the other. Endicott and MSD also represent that there are no material business relationships between Endicott, MSD, or any of their respective affiliates, on the one hand, and Leumi BHC or any of its affiliates, on the other hand. In addition, neither Endicott nor MSD has any currently anticipated material business relationships with Leumi BHC or its affiliates.

Endicott and MSD have each represented that they do not propose to control or exercise a controlling influence over Leumi BHC. Accordingly, Endicott and MSD have each provided commitments in connection with their requests that are similar to those on which the Board previously has relied to ensure that an investor is not able to exercise a controlling influence over a bank or bank holding company.⁴

For purposes of the BHC Act, a company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; (ii) controls in any manner the election of a majority of the directors of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.⁵ In addition, the Board's Regulation Y sets forth a set of rebuttable presumptions of control.⁶ Under the BHC Act and the Board's Regulation Y, any company that directly or indirectly owns,

³ Endicott retains the right to one director representative on each of the boards of directors of Leumi BHC and Bank Leumi USA for as long as it maintains at least 50 percent of the Leumi BHC common shares it acquires at closing.

⁴ The commitments are set out in the appendix.

⁵ 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

⁶ See 12 CFR 225.31(d).

controls, or has the power to vote less than 5 percent of any class of voting securities of a bank or other company is presumed to not control the bank or other company.⁷

In determining whether a company has the power to exercise a controlling influence over another company, the Board typically has considered a number of factors, including the size and structure of the company's voting and total equity investment; the company's rights to director representation and committee representation; any management, employee, or director interlocks between the companies; any covenants or other agreements that allow the first company to influence or restrict management decisions of the other company; the nature and scope of the business relationships between the companies; and other indicia of the ability or incentive to exercise a controlling influence.⁸

Endicott and MSD will each own 7.5 percent of the voting common shares of Leumi BHC and will hold no other equity or debt instrument of Leumi BHC. Endicott will have one director representative on the board of directors of Leumi BHC and one director representative on the board of directors of Bank Leumi USA. Neither Endicott nor MSD will have any other director or employee interlocks with Leumi BHC or its subsidiaries. In addition, neither Endicott nor MSD has any material business relationships with Leumi BHC or its affiliates. Endicott and MSD also have represented that they do not intend to exert or attempt to exert a controlling influence over Leumi BHC. Importantly, Parent FBO would continue to own 85 percent of the voting securities of Leumi BHC and would control the election of the remaining members of the board of directors of Leumi BHC and Bank Leumi USA. Parent FBO would serve as a countervailing force to whatever influence Endicott and MSD may have as a result of their investment and director representation in Leumi BHC.⁹

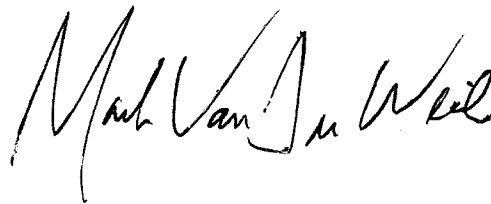
Based on all the facts of record in this case, and specifically conditioned on compliance with all the representations and commitments made in connection with your request, staff of the Legal Division would not recommend that the Board find Endicott or MSD to control Leumi BHC for purposes of the BHC Act.

⁷ 12 U.S.C. § 1841(a)(3); 12 CFR 225.31(e).

⁸ See Policy Statement on equity investments in banks and bank holding companies (September 22, 2008), available at www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm.

This opinion is based on all the facts of record, including all the representations and commitments made by or on behalf of Endicott and MSD, whether noted in this letter or otherwise contained in correspondence or discussions with the Board or the Federal Reserve Bank of New York. Any change in the terms or circumstances of the transaction may result in a different opinion and should be reported immediately to Board and Reserve Bank staff. If you have any questions about this matter, please contact Adam Cohen, Counsel (202-912-4658), or Brian Phillips, Attorney (202-452-3321) of the Board's Legal Division.

Sincerely,

A handwritten signature in black ink, reading "Mark Van der Weide". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Appendix


Endicott SPV I, L.P., WRE SPV I, L.L.C., and Endicott Management Company (each, a “Endicott Acquirer”), and their subsidiaries and affiliates (collectively, “Endicott Acquirer Group”), will not, without the prior approval of the Board or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of Bank Leumi Le-Israel Corporation (“Leumi BHC”), New York, New York, or any of its subsidiaries;
2. Have or seek to have more than one representative of Endicott Acquirer Group serve on the board of directors of Leumi BHC or any of its subsidiaries;
3. Permit any representative of the Endicott Acquirer Group who serves on the board of directors of Leumi BHC or any of its subsidiaries to serve:
 - i. as the chairman of the board of directors of Leumi BHC or any of its subsidiaries;
 - ii. as the chairman of any committee of the board of directors of Leumi BHC or any of its subsidiaries;
 - iii. as a member of any committee of the board of directors of Leumi BHC or any of its subsidiaries if the Endicott Acquirer Group representative occupies more than 25 percent of the seats on the committee;
 - iv. as a member of any committee that has the authority or practical ability to unilaterally make (or block the making of) policy or other decisions that bind the board or management of the Leumi BHC or any of its subsidiaries;
4. Have or seek to have any employee or representative of the Endicott Acquirer Group serve as an officer, agent, or employee of Leumi BHC or any of its subsidiaries;
5. Take any action that would cause Leumi BHC or any of its subsidiaries to become a subsidiary of Endicott Acquirer Group;
6. Own, control, or hold with power to vote securities that (when aggregated with securities that the officers and directors of the Endicott Acquirer Group own, control, or hold with power to vote) represent 25 percent or more of any class of voting securities of Leumi BHC or any of its subsidiaries, including shares attributed to Endicott from MSD BLUSA Investments, LLC and its subsidiaries and affiliates (collectively, “MSD”);
7. Own or control equity interests, including shares attributed to Endicott from MSD, that would result in the combined voting and nonvoting equity interests of the Endicott Acquirer Group and its officers and directors to equal or exceed 25 percent of the total equity capital of Leumi BHC or any of its subsidiaries, except that, if the Endicott Acquirer Group and its officers and directors own, hold, or have the power to

vote less than 15 percent of the outstanding shares of any classes of voting securities of Leumi BHC, Endicott Acquirer Group and its officers and directors may own or control equity interests greater than 25 percent, but in no case more than 33.3 percent, of the total equity capital of Leumi BHC or any of its subsidiaries;

8. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Leumi BHC or any of its subsidiaries;
9. Enter into any agreement with Leumi BHC or any of its subsidiaries that substantially limits the discretion of Leumi BHC's management over major policies and decisions, including, but not limited to, policies or decisions about employing and compensating executive officers; engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;
10. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Leumi BHC or any of its subsidiaries;
11. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of Leumi BHC or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by Leumi BHC or any of its subsidiaries; or
12. Enter into any other banking or nonbanking transactions with Leumi BHC or any of its subsidiaries, except that the Endicott Acquirer Group may establish and maintain deposit accounts with Leumi BHC, provided that the aggregate balance of all such deposit accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Leumi BHC.

Each Endicott Acquirer also certifies that:

13. Endicott Acquirer is not an affiliate of any other investor (excluding other Endicott Acquirers) in the proposed transaction (individually, each an "Investor," and, collectively, the "Investors");
14. Endicott Acquirer has reached its decision to invest in Leumi BHC independently from the other Investors;
15. Endicott Acquirer is not managed or advised by an investment manager or investment advisor who performs the same services for any other Investor (excluding other Endicott Acquirers) 
16. Endicott Acquirer (including any subsidiary or affiliate of a Endicott Acquirer) has not engaged and will not engage as part of a group consisting of substantially the same entities as the Investors, in substantially the same combination of interests, in

any additional banking or nonbanking activities or business ventures in the United States without prior consultation with the Board;

17. Endicott Acquirer has not and will not enter into any agreements or understandings with any other Investor to act in concert for the purpose of exercising a controlling influence over Leumi BHC or any of its subsidiaries, including, but not limited to, any agreements or understandings regarding the voting or transfer of shares of Leumi BHC, it being understood that the potential actions contemplated by the [REDACTED] are not inconsistent with this commitment; and
18. Any director representing Endicott Acquirer will not collude or conspire with any other directors or shareholders of Leumi BHC with respect to the exercise of any director's voting rights. Nothing in this commitment shall limit a director's ability to exercise its legitimate duties/rights as a director of Leumi BHC, including the ability to consult with other directors and shareholders as appropriate.

The terms used in these commitments have the same meanings as set forth in the Bank Holding Company Act of 1956, as amended ("BHC Act"), and the Board's Regulation Y. For purposes of these commitments, "Investor" includes any subsidiary or affiliate of the Investor.

Nothing in these commitments releases the Endicott Acquirer Group from compliance with the Change in Bank Control Act of 1978, as amended, and any regulations thereunder for any subsequent acquisition or increase in the percentage ownership of any class of voting shares of Leumi BHC.

Each Endicott Acquirer understands that these commitments constitute conditions imposed in writing in connection with the Board's findings and decisions related to Endicott Acquirer Group's acquisition of up to 24.9 percent of voting shares of Leumi BHC, and, as such, may be enforced in proceedings under applicable law.

MSD BLUSA Investments, LLC, MSD Capital, L.P., MSD Sparrowhawk, L.P., MSD Portfolio L.P. – Investments, Coral Rock Investments, L.P. and MSD Capital Management LLC (each, a “MSD Acquirer”), and their subsidiaries and affiliates (collectively, “MSD Acquirer Group”), will not, without the prior approval of the Board or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of Bank Leumi Le-Israel Corporation (“Leumi BHC”), New York, New York, or any of its subsidiaries;
2. Have or seek to have a representative of MSD Acquirer Group serve on the board of directors of Leumi BHC or any of its subsidiaries;
3. Have or seek to have any employee or representative of the MSD Acquirer Group serve as an officer, agent, or employee of Leumi BHC or any of its subsidiaries;
4. Take any action that would cause Leumi BHC or any of its subsidiaries to become a subsidiary of MSD Acquirer Group;
5. Own, control, or hold with power to vote securities that (when aggregated with securities that the officers and directors of the MSD Acquirer Group own, control, or hold with power to vote) represent 25 percent or more of any class of voting securities of Leumi BHC or any of its subsidiaries;
6. Own or control equity interests that would result in the combined voting and nonvoting equity interests of the MSD Acquirer Group and its officers and directors to equal or exceed 25 percent of the total equity capital of Leumi BHC or any of its subsidiaries, except that, if the MSD Acquirer Group and its officers and directors own, hold, or have the power to vote less than 15 percent of the outstanding shares of any classes of voting securities of Leumi BHC, MSD Acquirer Group and its officers and directors may own or control equity interests greater than 25 percent, but in no case more than 33.3 percent, of the total equity capital of Leumi BHC or any of its subsidiaries;
7. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Leumi BHC or any of its subsidiaries;
8. Enter into any agreement with Leumi BHC or any of its subsidiaries that substantially limits the discretion of Leumi BHC’s management over major policies and decisions, including, but not limited to, policies or decisions about employing and compensating executive officers; engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;
9. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Leumi BHC or any of its subsidiaries;

10. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of Leumi BHC or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by Leumi BHC or any of its subsidiaries; or
11. Enter into any other banking or nonbanking transactions with Leumi BHC or any of its subsidiaries, except that (1) the MSD Acquirer Group may establish and maintain deposit accounts with Leumi BHC, provided that the aggregate balance of all such deposit accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Leumi BHC, and

Each MSD Acquirer also certifies that:

12. MSD Acquirer is not an affiliate of any other investor (excluding other MSD Acquirers) in the proposed transaction (individually, each an “Investor,” and, collectively, the “Investors”);
13. MSD Acquirer has reached its decision to invest in Leumi BHC independently from the other Investors;
14. MSD Acquirer is not managed or advised by an investment manager or investment advisor who performs the same services for any other Investor (excluding other MSD Acquirers);
15. MSD Acquirer (including any subsidiary or affiliate of a MSD Acquirer) has not engaged and will not engage as part of a group consisting of substantially the same entities as the Investors, in substantially the same combination of interests, in any additional banking or nonbanking activities or business ventures in the United States without prior consultation with the Board; and
16. MSD Acquirer has not and will not enter into any agreements or understandings with any other Investor to act in concert for the purpose of exercising a controlling influence over Leumi BHC or any of its subsidiaries, including, but not limited to, any agreements or understandings regarding the voting or transfer of shares of Leumi BHC.

The terms used in these commitments have the same meanings as set forth in the Bank Holding Company Act of 1956, as amended (“BHC Act”), and the Board’s Regulation Y. For purposes of these commitments, “Investor” includes any subsidiary or affiliate of the Investor.

Nothing in these commitments releases the MSD Acquirer Group from compliance with the Change in Bank Control Act of 1978, as amended, and any regulations thereunder for

any subsequent acquisition or increase in the percentage ownership of any class of voting shares of Leumi BHC.

Each MSD Acquirer understands that these commitments constitute conditions imposed in writing in connection with the Board's findings and decisions related to MSD Acquirer Group's acquisition of up to 7.5 percent of voting shares of Leumi BHC, and, as such, may be enforced in proceedings under applicable law.