

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

In the Matter of:

BANK HAPOALIM B.M.  
Tel Aviv, Israel

Docket Nos. 20-005-B-FB  
20-005-CMP-FB

Order to Cease and Desist and Order  
of Assessment of Civil Money  
Penalty Issued Upon Consent  
Pursuant to the Federal Deposit  
Insurance Act, as Amended

WHEREAS, Bank Hapoalim B.M., Tel Aviv, Israel (“BHBM”) is a foreign bank as defined in section 1(b)(7) of the International Banking Act (12 U.S.C. § 3101(7)), that maintains branches and subsidiaries in other countries, including the United States;

WHEREAS, BHBM conducts operations in the United States through various offices and entities, including, but not limited to, BHBM branches in New York, New York and, until 2017, a BHBM branch in Miami, Florida (together the “U.S. Branches”);

WHEREAS, the Board of Governors of the Federal Reserve System (the “Board of Governors”) is and was the appropriate federal supervisor in the United States of BHBM and the U.S. Branches (collectively “Bank Hapoalim” or the “Firm”);

WHEREAS, from at least 2002 through 2014, Bank Hapoalim offered certain products and services that U.S. taxpayers used to conceal their assets from U.S. tax authorities, including back-to-back loans offered through the U.S. Branches;

WHEREAS, back-to-back loans frequently involved a loan from the U.S. Branches to a U.S. taxpayer that was secured by an undeclared offshore account owned or controlled by the same taxpayer at BHBM or Bank Hapoalim (Switzerland) Ltd. (“BHS”), a Swiss-incorporated banking institution that is a subsidiary of BHBM;

WHEREAS, back-to-back loans allowed U.S. taxpayers to access the economic value of the undeclared offshore funds without actually transferring them to the United States, preventing a paper trail that could alert U.S. tax authorities to the funds;

WHEREAS, as early as 1991, the U.S. Branches had identified back-to-back loans as high risk and possible vehicles to facilitate tax evasion;

WHEREAS, BHBM lacked adequate enterprise-wide risk management and compliance policies and procedures sufficient to ensure that the Firm’s back-to-back lending compliance activities complied with safe and sound practices and applicable internal policies;

WHEREAS, the Board of Governors, the United States Department of Justice (“DOJ”) and the New York Department of Financial Services (“New York DFS”) have conducted investigations into the facilitation of tax evasion by Bank Hapoalim;

WHEREAS, Bank Hapoalim lacked adequate policies, procedures, and training to ensure that documents relevant to investigations by the Board of Governors, DOJ and New York DFS were appropriately retained and maintained during the course of the investigations;

WHEREAS, on April 30, 2020, BHBM entered into a deferred prosecution agreement with the DOJ and consented to the issuance of a monetary penalty for conspiracy to aid or assist customers with filing a false tax return in violation of federal tax laws relating, in part, to back-to-back lending activities at the U.S. branches;

WHEREAS on April 30, 2020, BHS entered a guilty plea and consented to the issuance of a criminal penalty for conspiracy to aid or assist customers with filing a false tax return in violation of federal tax laws relating, in part, to back-to-back lending activities at the U.S. branches;

WHEREAS, on April 30, 2020, BHBM entered into a consent order with the New York DFS finding that Bank Hapoalim operated an illegal cross-border banking business that knowingly facilitated U.S. clients in concealing offshore assets and income from the IRS;

WHEREAS, the activities of Bank Hapoalim regarding certain products and services that U.S. taxpayers used to conceal their assets from U.S. tax authorities indicate that Bank Hapoalim lacked adequate enterprise-wide risk management and compliance policies and procedures sufficient to ensure that all of its activities comply with applicable U.S. laws and regulations, including laws and regulations administered by the Internal Revenue Service;

WHEREAS, to address the deficiencies described above, Bank Hapoalim has implemented and must continue to implement improvements in its controls, compliance, and policies and procedures relating to the Firm's compliance with U.S. laws and document retention practices in order to comply with safe and sound banking practices, and applicable laws and regulations;

WHEREAS, it is the common goal of the Board of Governors, the Federal Reserve Bank of New York (the "Reserve Bank"), and Bank Hapoalim to ensure that the Firm and its subsidiaries conduct their activities in a safe and sound manner and comply with U.S. laws, rules, and regulations that apply to the activities of the Firm;

WHEREAS, the Board of Governors is issuing this Consent Order to Cease and Desist

and Assessment of Civil Money Penalty (“Order”);

WHEREAS, pursuant to delegated authority, Dov Kotler, Chief Executive Officer and Yael Almog, Chief Legal Advisor are authorized to enter into this Order on behalf of BHBM, and to consent to compliance with each and every provision of this Order by the Firm, and to waive any and all rights that the Firm may have pursuant to section 8 of the Federal Deposit Insurance Act, as amended (the “FDI Act”) (12 U.S.C. § 1818), and 12 C.F.R. Part 263, including, but not limited to: (i) the issuance of a notice of charges on any matters set forth in this Order; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Order; (iii) judicial review of this Order; and (iv) the right to challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of the Order or any provision hereof.

NOW THEREFORE, before the filing of any notices, or the taking of any testimony or adjudication of or finding on any issue of fact or law herein, and without BHBM admitting or denying any allegation made or implied by the Board of Governors in connection herewith, and solely for the purpose of settlement of this matter without a formal proceeding being filed and without the necessity for protracted litigation or extended hearings, or testimony, it is hereby ordered pursuant to sections 8(b)(1) and (4) of the FDI Act (12 U.S.C. §§ 1818(b)(1) and 1818(b)(4)), the Firm and its institution-affiliated parties, as defined in sections 3(u) and 8(b)(4) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(4)), shall cease and desist and take affirmative action as follows:

### **Corporate Governance and Management Oversight**

1. Within 90 days of this Order, BHBM’s Board of Directors shall submit a written plan acceptable to the Reserve Bank (the “Management Oversight Plan”) to enhance

management's oversight of Bank Hapoalim's compliance with applicable U.S. laws, including in the operation of its U.S. branches, in connection with financial account services and products provided by Bank Hapoalim to U.S. customers ("U.S. Customer Activities"). The Management Oversight Plan shall provide for a sustainable governance framework that, at a minimum, addresses, considers, and includes:

(a) actions the Board of Directors will take to maintain effective oversight of all actions taken by Bank Hapoalim to correct deficiencies regarding compliance with applicable U.S. law in U.S. Customer Activities;

(b) measures to ensure that Bank Hapoalim maintains ongoing, effective oversight of all actions taken by the Firm to correct deficiencies regarding compliance with applicable U.S. law in U.S. Customer Activities;

(c) clearly defined roles, responsibilities, and accountability regarding compliance with applicable U.S. law in U.S. Customer Activities for Bank Hapoalim's management, U.S. law compliance personnel, and internal audit staff;

(d) measures to continue to ensure that U.S. law compliance issues in U.S. Customer Activities are appropriately escalated to Bank Hapoalim's senior management for U.S. operations;

(e) measures to continue to ensure that the persons or groups at Bank Hapoalim charged with the responsibility of overseeing the Firm's compliance with applicable U.S. laws related to U.S. Customer Activities possess appropriate subject matter expertise and are actively involved in carrying out such responsibilities;

(f) steps to ensure compliance with applicable U.S. laws and regulations by Bank Hapoalim and its global business lines related to U.S. Customer Activities;

(g) adequate resources to ensure Bank Hapoalim's compliance with this Order and applicable U.S. law in U.S. Customer Activities;

(h) adequate written policies and procedures governing the issuance of back-to-back loans to U.S. Customers;

(i) measures to ensure that all policies and procedures clearly state the BIBM entities governed by the policies and procedures and the date of application; and

(j) measures to ensure adequate training for Bank Hapoalim's employees on compliance-related issues appropriate to the employees' job responsibilities relating to U.S. Customer Activities.

### **Internal Audit**

2. Within 90 days of this Order, Bank Hapoalim shall submit an enhanced written internal audit program acceptable to the Reserve Bank with respect to the Firm's compliance with applicable U.S. laws and regulations as well as Bank Hapoalim's internal policies and procedures regarding U.S. Customer Activities. The program shall, at a minimum, address, consider, and include:

(a) periodic internal audit reviews of business line controls and compliance detection and monitoring processes, as applicable, designed to identify and prevent potential misconduct in connection with U.S. Customer Activities;

(b) enhanced escalation procedures for the timely resolution of material audit exceptions and recommendations in connection with Bank Hapoalim's U.S. Customer Activities; and

(c) periodic review of risk assessments to ensure emerging risks associated with Bank Hapoalim's U.S. Customer Activities are appropriately identified and monitored.

### **Document Retention Policies and Training**

3. Within 90 days of this Order, the Firm shall submit a written plan to update and enhance the document retention policies and training in its U.S. Branches acceptable to the Reserve Bank. The plan, at a minimum, shall provide for:

(a) written policies and procedures governing the appropriate treatment of documents and data subject to a document hold;

(b) training for all Firm personnel regarding compliance with applicable document retention policies; and

(c) targeted training for Firm personnel receiving document holds shortly after the issuance of a document hold request.

### **Assessment of Civil Money Penalty**

4. The Board of Governors hereby assesses a civil money penalty in connection with the conduct described above in the amount of \$37,350,000, which shall be remitted by the Firm at the time of the execution of this Order by Fedwire transfer of immediately available funds to the Federal Reserve Bank of Richmond, ABA No. 051000033, beneficiary, Board of Governors of the Federal Reserve System. The Federal Reserve Bank of Richmond, on behalf of the Board of Governors, shall distribute this sum to the U.S. Department of the Treasury, pursuant to section

8(i) of the FDI Act (12 U.S.C. § 1818(i)). This penalty is a penalty paid to a government agency for a violation of law for purposes of 26 U.S.C. § 162(f) and 26 C.F.R. § 1.162.

### **Approval, Implementation, and Progress Reports**

5. BHBM shall submit the written plans and programs that are acceptable to the Reserve Bank as set forth in paragraphs 1 through 3 of this Order.

(a) Each plan or program shall contain a timeline for full implementation of the plan or program with specific deadlines for the completion of each component of the plan or program;

(b) Within 10 days of approval by the Reserve Bank, the Firm shall adopt the approved plans and programs. Upon adoption, the Firm shall promptly implement the approved plans and programs and thereafter fully comply with them; and

(c) During the term of this Order, the approved plans and programs shall not be amended or rescinded without the prior written approval of the Reserve Bank.

6. Within 30 days after the end of the first full calendar quarter following the date of this Order, and quarterly thereafter, the Firm shall submit to the Reserve Bank written progress reports detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof.

### **Accountability for Employees Involved in Misconduct**

7. The Firm shall not in the future directly or indirectly retain any individual as an officer, employee, agent, consultant, or contractor of the Firm or of any affiliate of the Firm who, based on the investigative record compiled by U.S. authorities, has done all of the following:

(i) participated in the illegal conduct described in this Order; (ii) been subject to formal

disciplinary action as a result of the Firm's internal disciplinary review or performance review in connection with the conduct described herein; and (iii) has been separated from or has had his or her employment terminated by the Firm in connection with the conduct described above.

8. The Firm shall continue to fully cooperate with and provide substantial assistance to the Board of Governors, including but not limited to, the provision of information, testimony, documents, records, and other tangible evidence and perform analyses as directed by the Board of Governors in connection with the investigations of whether separate enforcement actions should be taken against individuals who are or were institution-affiliated parties of the Firm and who were involved in the misconduct underlying this Order. For purposes of clarity and not limitation, substantial assistance as used in this Order means the Firm will use its best efforts, as determined by the Board of Governors, to make available for interviews or testimony, as requested by the Board of Governors, present or former officers, directors, employees, agents and consultants of the Firm, to the extent permitted by law. This obligation includes, but is not limited to, sworn testimony pursuant to administrative subpoena as well as interviews with regulatory authorities. Cooperation under this paragraph shall also include identification of witnesses who, to the Firm's knowledge, may have material information regarding the matters under investigation.

### **Communications**

9. All communications regarding this Order shall be sent to:
- (a) Richard M. Ashton, Esq.  
Deputy General Counsel  
Jason A. Gonzalez, Esq.  
Senior Special Counsel  
Board of Governors of the Federal Reserve System  
20th & C Streets, N.W.  
Washington, D.C. 20551

- (b) Bettyann Griffith  
Vice President  
Federal Reserve Bank of New York  
33 Liberty Street  
New York, N.Y. 10045
  
- (c) Dov Kotler  
Chief Executive Officer  
Yael Almog  
Chief Legal Advisor  
Bank Hapoalim B.M.  
63 Yehuda Halevi Street  
Tel Aviv 65781  
Israel

### **Miscellaneous**

10. Notwithstanding any provision of this Order to the contrary, the Reserve Bank may, in its sole discretion, grant written extensions of time to the Firm to comply with this Order.

11. The provisions of this Order shall be binding upon the Firm and each of its institution-affiliated parties, in their capacities as such, and their successors and assigns.

12. Each provision of this Order shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Board of Governors.

13. The Board of Governors hereby agrees not to initiate any further enforcement actions, including for civil money penalties, against the Firm and its affiliates, successors and assigns, with respect to the conduct involving the Firm's facilitation of tax evasion and failure to preserve documents described in the WHEREAS clauses of this Order to the extent known by the Board of Governors as of the effective date of this Order. This release and discharge shall not preclude or affect (i) any right of the Board of Governors to determine and ensure compliance with this Order, (ii) any proceedings brought by the Board of Governors to enforce the terms of this Order, or (iii) any proceedings brought by the Board of Governors against

individuals who are or were institution-affiliated parties of the Firm.

14. Except as provided in paragraph 13, the provisions of this Order shall not bar, estop or otherwise prevent the Board of Governors, or any other federal or state agency from taking any other action affecting the Firm or any of its current or former institution-affiliated parties and their successors and assigns.

15. Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto and their successors hereunder, any legal or equitable right, remedy, or claim under this Order.

By Order of the Board of Governors of the Federal Reserve System effective this 30th day of April, 2020.

BANK HAPOALIM B.M.

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

By: /s/ Dov Kotler  
Dov Kotler  
Chief Executive Officer

By: /s/ Ann E. Misback  
Ann E. Misback  
Secretary of the Board

By: /s/ Yael Almog  
Yael Almog  
Chief Legal Advisor