



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

MARK E. VAN DER WEIDE
GENERAL COUNSEL

December 24, 2021

Luigi L. De Ghenghi
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017

Dear Mr. De Ghenghi:

This letter responds to your request for an opinion that Bank Leumi Le-Israel B.M. (“BLITA”), Tel Aviv, Israel, would not be deemed to control Valley National Bancorp (“Valley”), New York, New York, for purposes of the Bank Holding Company Act of 1956 (“BHC Act”), following its acquisition of 14.6 percent of the voting common stock of Valley.

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.¹ In addition, the Board’s Regulation Y sets forth a set of rebuttable presumptions of control.²

BLITA is a foreign bank as defined under section 1(7) of the International Banking Act of 1978³ and a bank holding company under the BHC Act. BLITA controls Bank Leumi Le-Israel Corporation (“BLLC”), which controls Bank Leumi USA (“BLUSA”), New York, New York, a state non-member bank.

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

² See 12 CFR 225.31(d).

³ 12 U.S.C. § 3101(7).

Valley has agreed to acquire BLITA's interest in BLLC. As part of the proposed transaction, BLITA would acquire 14.6 percent of the voting common stock of Valley.

Pursuant to an Investor Rights Agreement, BLITA would have certain director representation rights. BLITA would have the right to appoint two directors to the 13-member boards of directors of each of Valley and Valley National Bank, as well as the right to one nonvoting observer on each of the Valley and Valley National Bank boards of directors.⁴ The boards would be required to consist of a minimum of 10 members for so long as BLITA has a right to appoint two members to each board and a minimum of 5 members for so long as BLITA has a right to appoint one member to each board.⁵ Additionally, for so long as BLITA has a director representative on the Valley and Valley National Bank boards, a BLITA representative would be permitted to serve on the Executive Committee, the Nominating and Governance Committee, and the Risk Committee of the Valley board, and on the Investment Committee of the Valley National Bank board. For so long as a BLITA representative serves on the Valley and Valley National Bank boards, each of these committees would consist of at least four members. BLITA represents that there would be no employee interlocks between BLITA, on the one hand, and Valley or its subsidiaries, on the other. Finally, the

⁴ The non-voting observer would not be considered a "director representative" for purposes of the Board's control rules. See 85 Fed. Reg. 12398, 12418 (Mar. 2, 2020).

⁵ Under the Investor Rights Agreement, BLITA would have the right to two director representatives on each board for as long as it owns at least 12.5 percent of the common shares of Valley, and one director representative on each board for as long as it owns 5 percent of the common shares of Valley.

Investor Rights Agreement would subject BLITA to customary standstill,⁶ lock-up,⁷ and transfer restrictions⁸ and provide BLITA with customary registration rights.⁹

BLITA represents that any business relationships between BLITA and Valley following closing of the transaction would be on market terms and de minimis. BLITA represents that these business relationships are expected to account for less than ■ percent of each of Valley's pro forma projected gross annual revenues and expenses for 2022. Pursuant to a Business Cooperation Agreement, BLITA and Valley would monitor their business relationships to ensure that they would account for (i) less than 5 percent of Valley's total annual revenues and expenses for so long as BLITA owns 10 percent or more of Valley's voting common stock, and (ii) less than 10 percent of Valley's revenues and expenses for so long as BLITA owns between 5 percent and 9.9 percent of Valley's voting common stock.

BLITA would be restricted for at least two years following consummation of the transaction from competing with Valley with respect to the activities of the acquired BLLC business. Non-compete and non-solicitation provisions in the Investor Rights Agreement would limit BLITA's ability to compete in certain U.S. markets in which Valley operates until at least two years after closing of the transaction. However, these provisions would not restrict Valley from expanding geographically and thereby competing with BLITA in additional markets. Under these circumstances, it does not appear that BLITA would be able to exert a controlling influence over Valley through these contractual provisions. Rather, these provisions appear to inure to the benefit of Valley.

Based on BLITA's representations, upon consummation of the proposed transactions, it appears that BLITA would not trigger any of the presumptions of control

⁶ Under the standstill provision, as long as BLITA owns 5 percent or more of Valley's outstanding shares, BLITA generally may not acquire additional voting common stock of Valley, solicit proxies, initiate shareholder proposals, or propose any merger, tender offer, or other takeover transaction.

⁷ The lock-up restriction generally would prohibit BLITA from transferring more than 25 percent of its shares of Valley in any of the four years after closing.

⁸ Following the lock-up period and subject to certain exceptions, BLITA would be restricted from transferring shares of Valley common stock it acquired in the proposed transactions to any holder of 5 percent or more of Valley's voting power, in a transaction in which a single person acquires more than 2 percent of Valley's voting power, or in an amount greater than 20 percent of Valley's average daily trading volume.

⁹ The registration rights would require Valley to file a shelf registration statement and, at the demand of BLITA, register shares that BLITA proposes to sell.

under the Board's regulations.¹⁰ Based on all the facts of record in this case, and specifically conditioned on compliance with all the representations made in connection with your request, staff of the Legal Division would not recommend that the Board find BLITA to control Valley for purposes of the BHC Act.

This opinion is based on all the facts of record, including all the representations made by or on behalf of BLITA, 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 Brian Phillips, Counsel (202-452-3321), or Tara Hofbauer, Legal Assistant/Attorney (202-680-2503), of the Board's Legal Division.

Sincerely,

A handwritten signature in blue ink that reads "Mark Van Der Weide". The signature is written in a cursive, flowing style.

¹⁰ See 12 CFR 225.32. In addition, although the divestiture presumption does not apply in this case, if it were applicable, BLITA still would not trigger the divestiture presumption because it would own or control less than 15 percent of the voting common stock of Valley. See 12 CFR 225.32(i)(1); see also 85 Fed. Reg. 12398, 12410 (Mar. 2, 2020) (noting that the divestiture presumption generally would not apply in cases where a company sold a subsidiary to a third company and received stock of the third company as consideration for the sale).