



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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April 22, 2020

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**Re: *United States v. Hapoalim (Switzerland) Ltd. (formerly Bank Hapoalim (Switzerland) Ltd.), 20 Cr. \_\_\_\_ ( )***

Dear Counsel:

On the understandings specified herein (this "Agreement"), the Office of the United States Attorney for the Southern District of New York (the "Office"), and the Tax Division of the Department of Justice (with the Office, the "Department"), will accept a guilty plea from the defendant Hapoalim (Switzerland) Ltd. (formerly Bank Hapoalim (Switzerland) Ltd.) ("BHS" or "the defendant" and, together with Bank Hapoalim B.M. and its subsidiaries, branches, representative offices, and predecessors in interest, the "Bank") to Count One of the above-referenced Information (the "Information"). Count One of the Information charges the defendant with conspiring with others, including U.S. taxpayers, in violation of Title 18, United States Code, Section 371, (1) to defraud the United States and an agency thereof, to wit, the United States Internal Revenue Service (the "IRS"); (2) to file false federal income tax returns, in violation of Title 26, United States Code, Section 7206(1); and (3) to evade federal income taxes, in violation of Title 26, United States Code, Section 7201, for the period from 2002 to 2014. This charge carries a maximum term of five years' probation, pursuant to Title 18, United States Code, Sections 3551(c)(1) and 3561(c)(1); a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$500,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a \$400 mandatory special assessment. In addition to the foregoing, the Court must order restitution as specified below.

BHS agrees that, at the time of its guilty plea, it will admit the facts set forth in the Statement of Facts (Exhibit A to this Agreement, which is hereby incorporated by reference). BHS hereby acknowledges and accepts as true the facts set forth in the Statement of Facts.

BHS agrees to make restitution to the Internal Revenue Service in the amount of \$138,908,073 (the "Restitution Amount"). BHS agrees that the Restitution Amount represents the gross pecuniary loss to the United States as a result of the conduct charged in the Information and admitted by BHS in the Statement of Facts. The parties agree that, pursuant to Title 18, United States Code, Section 3664(h), the Court should apportion liability for the Restitution Amount solely to BHS. BHS agrees to pay the Restitution Amount within seven days of the entry of the plea and acceptance of this Agreement by the Court by making payment to the IRS pursuant to instructions provided by the Department.

BHS agrees that it will forfeit \$124,628,449 (the "Forfeiture Amount") to the United States, representing a substitute *res* for the approximate gross fees paid to BHS by U.S. taxpayers with undeclared accounts at BHS from 2002 through 2014 and BHS agrees that the Forfeiture Amount is subject to civil forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), as alleged in the civil forfeiture complaint (the "Civil Forfeiture Complaint"), a copy of which is attached hereto as Exhibit B, which will be filed against the Forfeiture Amount. The Forfeiture Amount shall be sent by wire transfer to a seized asset deposit account maintained by the United States Department of the Treasury within seven days of the entry of the plea and acceptance of this Agreement by the Court. If BHS fails to timely make the payment required under this paragraph, interest (at the rate specified in 28 U.S.C. § 1961) shall accrue on the unpaid balance through the date of payment. Upon payment of the Forfeiture Amount, BHS shall release any and all claims it may have to such funds and execute such documents as necessary to accomplish the forfeiture of the funds. BHS agrees this Agreement, the Information, and the Statement of Facts may be attached and incorporated into a Civil Forfeiture Complaint. By this Agreement, BHS expressly waives service of the Civil Forfeiture Complaint and agrees that a Judgment of Forfeiture may be entered against the Forfeiture Amount. BHS also agrees that the facts contained in the Information and Statement of Facts are sufficient to establish that the Forfeiture Amount is subject to civil forfeiture to the United States.

BHS further agrees that the Restitution Amount, the Forfeiture Amount, and any fine ordered by the Court at sentencing shall be paid separately to the Government, with no further credit, including by restoration or other means, received for payments made to the Government by U.S. taxpayers through the Offshore Voluntary Disclosure Initiative and similar programs before or after the date of this Agreement that have not already been credited against the Restitution Amount.

In consideration of BHS's plea to the above offense, BHS will not be further prosecuted criminally by the Office and, with respect to tax offenses, the Tax Division, Department of Justice, for any crimes relating to its conspiracy in violation of Title 18, United States Code, Section 371, (1) to defraud the United States and the IRS, (2) to file false federal income tax returns in violation of Title 26, United States Code, Section 7206(1), and (3) to evade federal income taxes in violation of Title 26, United States Code, Section 7201, for the period from 2002 to 2014, as charged in Count One of the Information. This Agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to Title 18, United States Code, Sections 1961 *et seq.* The Department's prosecution of BHS for the conduct charged in the Information will be concluded

following BHS's conviction, completion of its sentence, and satisfaction of the monetary requirements of this Agreement, consistent with the other provisions of this Agreement. This Agreement does not provide any protection against prosecution except as set forth above, and applies only to BHS and not to any individuals. BHS agrees that with respect to any and all dismissed charges it is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

### **Statement Regarding the Bank's Past Cooperation**

In 2011, the Department requested certain statistical data from BHS through the Swiss authorities, and advised that the Department had commenced a criminal investigation of the Bank for assisting U.S. taxpayers in evading income taxes. The Bank, which believed the focus of the investigation was on BHS, responded to the requests for statistical data regarding BHS, but the Bank did not conduct an internal investigation of its U.S. accounts at that time.

The Department continued to pursue its investigation of the Bank. When the Department reinitiated contact with the Bank's U.S. outside counsel, and after the Department resolved a criminal investigation of another Israeli bank, the Bank began to cooperate with the Department's investigation in late 2014. However, the Bank's initial cooperation was deficient, marked by an inadequate internal investigation, the failure to timely disclose relevant facts, and the provision of incomplete and, in certain cases, inaccurate information and data to the Department. For example, the Department uncovered evidence of the criminal misconduct of a BHS senior executive and board member in July 2016 through its own investigation, with no assistance from the Bank. In addition, the Bank provided unreliable data to the Department regarding, among other things, the identification of U.S. related accounts at BHS, and did not engage an external accounting firm for the purpose of assisting in providing data to the Department until May 2017. Thereafter, the Department required the appointment of an independent examiner, whose work began in early 2017. As a result of the Bank's delayed cooperation, the Department's efforts to timely resolve the investigation of the Bank were hindered, and the Department's efforts to prosecute certain potentially culpable individuals were thwarted. For example, as a result of delays in its internal investigation, the Bank did not interview a potentially culpable individual prior to his departure from BHS, and the Bank did not have access to him after his departure. In addition, the Bank failed to take adequate steps to preserve email, in that the Bank did not retain all available email records, and certain relevant email boxes were deleted up through mid-2016 and certain relevant back-up tapes were deleted up through mid-2018. Upon learning of the deletions, which do not appear to have been intended to interfere with the investigation, the Bank took all reasonable steps to recover all available emails and other data.

In 2017, the Bank enhanced its efforts in order to cooperate fully with the Department's investigation. The Bank replaced its lead outside counsel, accepted responsibility, and took the following steps, among others, as part of its cooperation: conducted an extensive internal investigation, including the review of more than 2,000,000 documents from over 300 custodians in a variety of countries; made regular presentations to the Department on a wide variety of factual topics, including the provision of relevant facts about individual wrongdoers; produced over 1,000,000 pages of documents, including producing documents from foreign countries in ways that did not implicate foreign data privacy laws and producing translations of foreign language documents; collected, analyzed and organized voluminous new evidence and information for the Department; interviewed, and/or facilitated the Department's interviews of, numerous current and former Bank employees and former members of BHS's Board of Directors; assisted the

Department with requests under the Tax Treaty and various Mutual Legal Assistance Treaties; and litigated and appealed in various courts in an attempt to obtain permission to disclose certain employee identities and documents for production to the Department. Ultimately, the Bank provided the Department with substantial information concerning the topics at issue in the investigation, including relevant facts related to the conduct described in the Statement of Facts.

### **Guidelines Stipulations**

In consideration of the foregoing and pursuant to United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) Section 6B1.4, the parties hereby stipulate to the following:

#### **A. Offense Level**

1. The Guidelines provisions in effect as of November 1, 2018 apply in this case.
2. Pursuant to U.S.S.G. §§ 8C2.1(a) and 8C2.3(a), the Guidelines provision applicable to the offense charged in Count One of the Information is U.S.S.G. § 2T1.9.
3. Pursuant to U.S.S.G. § 2T1.9(a), the base offense level is the greater of the offense level determined from U.S.S.G. §§ 2T1.1 or 2T1.4 or 10.
4. Pursuant to U.S.S.G. §§ 2T1.1(a)(1) and 2T4.1(O), because the tax loss was greater than \$150,000,000 and less than \$250,000,000, the base offense level is 32.
5. Pursuant to U.S.S.G. § 2T1.1(b)(2), because the offense involved sophisticated means, the base offense level is increased by two levels.
6. In accordance with the above, the applicable Guidelines Offense Level is 34.

#### **B. Base Fine**

1. Pursuant to U.S.S.G. §§ 8C2.4(d) and (e), based on BHS’s Offense Level of 34 and because the offense was committed prior to November 1, 2015, the fine from the Offense Level Fine Table in effect on November 1, 2014 is \$28,500,000.
2. However, pursuant to U.S.S.G. § 8C2.4(a), because the pecuniary loss from the offense caused by the defendant intentionally, knowingly, or recklessly is \$173,908,073, which is greater than the offense level fine of \$28,500,000, the base fine is \$173,908,073.

#### **C. Culpability Score and Fine Multiplier**

1. Pursuant to U.S.S.G. § 8C2.5(a), BHS’s initial Culpability Score is 5.
2. Pursuant to U.S.S.G. § 8C2.5(b)(3)(A)(i), because the defendant had at least 200 employees at the relevant time and individuals within high-level personnel of the organization participated in, condoned, or were willfully ignorant of the offense, three points are added to the Culpability Score.

3. Pursuant to U.S.S.G. § 8C2.5(g)(3), because the defendant clearly demonstrated recognition and affirmative acceptance of responsibility, one point is subtracted from the Culpability Score.

4. In accordance with the above, BHS's Culpability Score is 7. Pursuant to U.S.S.G. § 8C2.6, the fine multiplier is 1.4 to 2.8.

5. Pursuant to U.S.S.G. § 8C2.7, based on BHS's fine multiplier of 1.4 to 2.8, the Guideline fine range is \$243,471,302 to \$486,942,604 (the "Stipulated Guidelines Fine Range").

### **Sentencing Stipulations**

In consideration of all of the factors set forth in U.S.S.G. § 8C2.8 and 18 U.S.C. §§ 3553(a) and 3572(a), and pursuant to Federal Rule of Criminal Procedure ("Rule") 11(c)(1)(C), the parties hereby agree that the appropriate fine in this case is \$138,998,399 (the "Stipulated Fine Amount"). This amount reflects a fine multiplier of 1.8, a total deduction of \$95,777,500 in partial credit for payments made to the Board of Governors of the Federal Reserve System and the New York Department of Financial Services related to the conduct described herein, and a 25% discount for cooperation. The parties further agree that the fine shall be paid within seven days of the entry of the plea and acceptance of this Agreement by the Court.

Further, pursuant to Rule 11(c)(1)(C), the parties agree that the financial payments applicable to the defendant shall be the \$138,998,399 Stipulated Fine Amount, the \$138,908,073 Restitution Amount, and the \$124,628,449 Forfeiture Amount, for a total financial payment of \$402,534,921 (the "Stipulated Total Financial Payment").

Pursuant to Rule 11(c)(1)(C), the parties further agree that the Court should not impose a term of probation on the defendant because the defendant has terminated its operations, sold most of its assets, and is in the process of winding down.

### **BHS's Undertakings**

BHS shall cooperate fully, subject to applicable laws and regulations, with the Department, the IRS, and any other federal law enforcement agency designated by the Department, regarding all matters related to the Department's investigation into U.S.-related accounts banking at BHS (the "Department's Investigation") about which BHS has information or knowledge, until the date on which all civil or criminal examinations, investigations, or proceedings, including all appeals, are concluded. Specifically, BHS agrees that it will:

(a) truthfully and completely disclose all information with respect to the activities of BHS, its officers and employees, and others concerning all such matters about which the Department inquires related to the Department's Investigation, which information can be used for any purpose, except as limited by this Agreement or by applicable law;

(b) retain all records relating to the Department's Investigation, for a period of ten years from the date of the execution of this Agreement;

(c) assist the Department or any designated federal law enforcement agency in any investigation, prosecution, or civil proceeding arising out of or related to the Department's Investigation by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding;

(d) use its best efforts promptly to secure the attendance and truthful statements or testimony or information of any current or former officer, director, employee, agent, or consultant of BHS at any meeting or interview or before any grand jury or at any trial or other court proceeding regarding matters arising out of or related to the Department's Investigation;

(e) provide testimony of a competent witness as needed to enable the Department and any designated federal law enforcement agency to use the information and evidence obtained pursuant to BHS's cooperation with the Department before a grand jury or at any trial or other court proceeding regarding matters arising out of or related to the Department's Investigation;

(f) provide the Department, upon request, consistent with applicable law and regulations, all information, documents, records, or other tangible evidence not protected by a valid claim of privilege or work product regarding matters arising out of or related to the Department's Investigation about which the Department or any designated federal law enforcement agency inquires;

(g) upon request, provide fair and accurate translations, at BHS's expense, of any foreign language documents produced by BHS to the Government either directly or through any government entity;

(h) provide to any state law enforcement agency such assistance as may reasonably be requested in order to establish the basis for admission into evidence of documents already in the possession of such state law enforcement agency in connection with any state civil or criminal tax proceedings brought by such state law enforcement agency against an individual arising out of or related to the Department's Investigation;

(i) expand, as soon as practicable, transaction information previously produced in response to requests based on Part II.D.2.b.vi of the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Swiss Bank Program"), to include accounts closed in the period from January 1, 2009 through December 31, 2019, in the format requested by the Department;

(j) make reasonable efforts to close recalcitrant accounts and related procedures, to the extent that it has not already done so, as set forth in Part II.G of the Swiss Bank Program;

(k) provide all necessary information and assist the United States with the drafting of treaty requests to seek account records and other information, and will collect and maintain all records that are potentially responsive to such treaty requests to facilitate prompt responses;

(l) truthfully and completely disclose, and continue to disclose, consistent with applicable law and regulations, all information described in Part II.D.1(a)-(d) of the Swiss Bank Program with respect to U.S.-related accounts held by BHS and any statistical data that would have been relevant to the calculation of the Forfeiture Amount and the Restitution Amount from 2002 through 2014 that is not protected by a valid claim of privilege or work product with respect to the activities of BHS and its officers, directors, employees, agents, consultants, and others,

which information can be used for any purpose, except as otherwise limited in this Agreement. Subject to applicable laws and regulations, BHS shall disclose to the Department that it has discovered new information required to be disclosed under this Agreement no later than thirty days from discovery, and provide such information, including information as described in Part II.D.1(a)-(d) of the Swiss Bank Program, no later than ninety days from discovery. All other terms of this Agreement shall apply with respect to any newly disclosed information; and

- (m) commit no violations of the federal criminal laws of the United States.

Nothing in this Agreement shall require BHS to waive any protections of the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege. Nothing in this Agreement shall require BHS to violate the law of any jurisdiction in which it operates.

### **Judicial Acceptance**

Pursuant to Rule 11(c)(1)(C), this Agreement, if accepted by the Court, requires the Court to impose the Stipulated Total Financial Payment as described above and not impose any term of probation. In the event the Court accepts this Agreement, pursuant to Rule 11(c)(4), the Court must inform BHS that the agreed disposition by the parties will be included in the judgment. In the event that the Court rejects this Agreement, BHS shall be afforded the right, pursuant to Rule 11(c)(5)(B), to withdraw its plea of guilty. BHS expressly understands and acknowledges that it may not withdraw its plea of guilty, unless the Court rejects this Agreement under Fed. R. Crim. P. 11(c)(5).

### **Scope of Agreement**

This Agreement shall bind BHS, subsidiaries, affiliated entities, assignees, and its successor corporation if any, and any other person or entity that assumes the obligations contained herein. No change in name, change in corporate or individual control, business reorganization, change in ownership, merger, change of legal status, sale or purchase of assets, divestiture of assets, or similar action shall alter BHS's obligations under this Agreement. BHS shall not engage in any action to seek to avoid the obligations set forth in this Agreement.

### **Breach of Plea Agreement**

This Agreement is effective when signed by BHS, BHS's attorney, an attorney for the Office, and an attorney for the Tax Division, Department of Justice. BHS agrees to entry of this Agreement at the date and time scheduled with the Court by the United States (in consultation with BHS's attorney). If BHS fails to comply with any provision of this Agreement, or commits or attempts to commit any additional federal, state or local crimes, then:

- (a) The Department will be released from its obligations under this Agreement upon the determination of the Court, as set forth below, that BHS has breached the Agreement. BHS, however, may not withdraw the guilty plea entered pursuant to this Agreement unless there is a determination by the Court, as set forth below, that the Department has breached the Agreement;

and

(b) Any prosecution, including the prosecution that is the subject of this Agreement, may be premised upon any information provided, or statements made, by BHS, and all such information, statements, and leads derived therefrom may be used against BHS. BHS waives any right to claim that statements made before or after the date of this Agreement, including the Statement of Facts accompanying this Agreement or adopted by BHS and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines, or any other provision of the Constitution or federal law.

BHS further agrees that it shall not, through its attorneys, partners, agents, or employees, make any statement, in litigation or otherwise, contradicting the Statement of Facts, the Unanimous Resolution of the Directors of BHS (the "Unanimous Resolution"), attached hereto as Exhibit C, or its representations, agreements and stipulations in this Agreement or in the deferred prosecution agreement between the Department and Bank Hapoalim B.M. and the exhibits thereof. Consistent with this provision, BHS may raise defenses, including affirmative defenses, and/or assert affirmative claims in any civil proceedings brought by private parties in the United States, and in any criminal, regulatory, civil case, investigation, or other proceeding initiated by any governmental agency or authority or private party outside the United States, so long as doing so does not contradict the Statement of Facts, the Unanimous Resolution, or its representations, agreements and stipulations in this Agreement or in the deferred prosecution agreement between the Department and Bank Hapoalim B.M. and the exhibits thereof. Any such contradictory statement by BHS, its present or future attorneys, partners, agents, or employees authorized to speak on behalf of the Bank shall constitute a material breach of this Agreement. The decision as to whether any such contradictory statement will be imputed to BHS for the purpose of determining whether BHS has breached this Agreement shall be at the sole discretion of the Department. Upon the Department's notifying BHS of any such contradictory statement by electronic mail or U.S. mail to its U.S. counsel, BHS may avoid a finding of breach of this Agreement by repudiating such statement both to the recipient of such statement and to the Department within 48 hours after receipt of such notice by the Department. BHS consents to the public release by the Department, in its sole discretion, of any such repudiation. Nothing in this Agreement is meant to affect the obligation of BHS or its officers, directors, agents or employees to testify truthfully to the best of their personal knowledge and belief in any proceeding.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which BHS's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence.

### **Other Provisions**

In accordance with the other provisions above regarding payment of the Restitution Amount and the Forfeiture Amount, BHS agrees to pay the Stipulated Total Financial Payment within seven days of the entry of the plea and acceptance of this Agreement by the Court. BHS agrees that neither it nor any other person or entity paying all or a portion of the Stipulated Fine Amount, the Restitution Amount, and the Forfeiture Amount shall claim, assert, or apply for a tax deduction, tax credit, or any other offset with regard to any United States federal, state, or local tax, for any portion of the \$402,534,921 Stipulated Total Financial Payment that BHS has agreed to pay to the United States pursuant to this Agreement.



Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 8C2.5(g)(3), regardless of any stipulation set forth above, if BHS fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through its allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 8C2.5(e), regardless of any stipulation set forth above, should it be determined that BHS has engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice. To the extent the Court determines that BHS has failed to accept responsibility or obstructed justice, as described above, the Government is permitted to seek any fine up to the statutory maximum. In the event the Court determines that failure to accept responsibility or obstruction of justice warrants a fine above the Stipulated Fine Amount of \$138,998,399, BHS shall not be afforded the right to withdraw its plea of guilty.

It is agreed (i) that BHS will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241, of any fine less than or equal to the Stipulated Fine Amount; and (ii) that the Government will not appeal any fine that is greater than or equal to the Stipulated Fine Amount. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to BHS's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. BHS also agrees not to appeal any restitution amount that is less than or equal to the \$138,908,073 Restitution Amount, and also agrees not to appeal any forfeiture amount that is less than or equal to the \$124,628,449 Forfeiture Amount. The Government agrees not to appeal any restitution amount that is greater than or equal to the \$138,908,073 Restitution Amount, and also agrees not to appeal any forfeiture amount that is greater than or equal to the \$124,628,449 Forfeiture Amount. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights BHS may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that BHS reserves those rights.

BHS hereby acknowledges that it has accepted this Agreement and decided to plead guilty because it is in fact guilty. By virtue of the Unanimous Resolution, BHS has authorized one or more of its officers to execute this Agreement, enter the guilty plea, consent to the entry of the Consent Order of Forfeiture in this action, and otherwise act on its behalf for all purposes in this case. By entering this plea of guilty, BHS waives any and all right to withdraw its plea or to attack its conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of BHS, or impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

It is further agreed that should the conviction following BHS's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Department has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against BHS, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of

limitations with respect to any prosecution based on the Information, the Statement of Facts, or the conduct described therein that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than the Office and the Tax Division. However, if requested by BHS or its attorneys, the Department will bring to the attention of any federal, state, or local governmental authorities and agencies, including but not limited to any regulators, as applicable, this Agreement, the cooperation of BHS, and BHS's compliance with its obligations under this Agreement.

This Agreement may be executed in one or more counterparts, each of which shall be considered effective as an original signature.

The parties understand that this Agreement reflects the special facts of this case and is not intended as precedent for other cases.

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This Agreement supersedes any prior understandings, promises, or conditions between the Department and BHS. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

By:



Sagar K. Ravi  
Timothy V. Capozzi  
Assistant United States Attorneys  
(212) 637-2195/2404

APPROVED:



Laura Grossfield Birger  
Chief, Criminal Division

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

By:



Todd A. Elinwood, Assistant Section Chief  
Nanette L. Davis, Senior Litigation Counsel  
(202) 616-9330/514-8030

AGREED AND CONSENTED TO:



Barry Efram  
Chief Executive Officer  
Hapoalim (Switzerland) Ltd.

4-23-2020

DATE

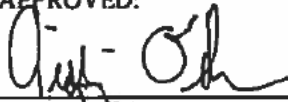


Claudia Spiess  
Head of Legal, Compliance and Tax  
Hapoalim (Switzerland) Ltd.

4-23-2020

DATE

APPROVED:

  
\_\_\_\_\_  
David Bruff, Esq.  
Aisling O'Shea, Esq.  
Marnin Michaels, Esq.

4-23-20  
DATE

  
\_\_\_\_\_  
Avi Gesser, Esq.

April 23, 2020  
DATE

Attorneys for Hapoalim (Switzerland) Ltd.

## **Exhibit A to Plea Agreement with Hapoalim (Switzerland) Ltd.**

### **STATEMENT OF FACTS**

The following Statement of Facts is incorporated by reference as part of the Plea Agreement between the United States Attorney's Office for the Southern District of New York ("USAO"), the Tax Division of the Department of Justice (with the USAO, the "Department"), and Hapoalim (Switzerland) Ltd., a subsidiary of Bank Hapoalim B.M. ("BHS" and, together with Bank Hapoalim B.M. and its subsidiaries, branches, representative offices, and predecessors in interest, the "Bank"). The parties agree and stipulate that the following is true and accurate:

#### **I. OVERVIEW**

BHS (formerly Bank Hapoalim (Switzerland) Ltd.) is a Swiss banking institution and a wholly owned subsidiary of Israel-based Bank Hapoalim B.M. ("BIBM"). Established in 1975, BHS primarily provided private banking services and is regulated by the Swiss Financial Market Supervisory Authority. BHS is headquartered in Zurich and has a branch in Luxembourg ("BHS-Luxembourg"), which is regulated by the Commission de Surveillance du Secteur Financier. BHS-Luxembourg shares its office, electronic systems, and certain employees with Bank Hapoalim (Luxembourg) SA ("BHL"), a wholly owned subsidiary of BIBM operating under the laws of Luxembourg, which primarily offers commercial banking services. From 1991 to 2017, BHS had a branch in Geneva (together with the Zurich headquarters, "BHS-Switzerland"). From 2007 through May 2013, BHS also had a branch in Singapore ("BHS-Singapore") regulated by the Monetary Authority of Singapore. At times during 2002 through 2014 (the "Relevant Period"), BHS also had representative offices in Israel, Hong Kong, Mexico, and Moscow. In 2017, BIBM announced it was terminating BHS's operations in order to minimize overall compliance risks. In November 2018, BHS sold most of its assets and is now in the process of winding down.

The BHS Board of Directors was a fully operational board that made its own decisions, and BIBM generally did not have direct involvement in the day-to-day operations and account activity at BHS. Nevertheless, BIBM executives served on the BHS Board of Directors and BIBM was significantly involved in important policy, budget, and strategy decisions as BHS's parent company. For example, after BIBM adopted a group-wide compliance policy in or around 2011, BHS was required to adopt the policy subject to local law restrictions. The Chief Executive Officer of BHS also reported formally to the BHS Board of Directors, the chair of which was typically the head of BIBM's International Division. In addition, BHS provided periodic compliance, risk management, credit, and audit reports to the BIBM International Division and other appropriate BIBM units, subject to local secrecy laws as interpreted and implemented by BHS employees. Local secrecy laws did not prevent BIBM from receiving sufficient information to adequately supervise BHS generally, as BIBM could receive information that did not reveal client-specific material. However, the process to obtain client-specific information was cumbersome due to Swiss legal restrictions. To the extent BIBM personnel needed such client-specific information, they could receive it in Switzerland or Luxembourg after signing a non-disclosure agreement.

BHS maintained a subsidiary called Trinel Ltd., located at BHS's premises in Zurich, which is currently in liquidation. Trinel was used for several purposes over the course of time, including as a trust company, to facilitate investments and real estate transactions, and, on a limited basis, to facilitate client transactions. Prior to November 2010, BHS also maintained a subsidiary, Hapoalim Fiduciary Services Limited ("Hapoalim Fiduciary"), formerly known as Hapoalim Trustees Limited and later known as BHI Trust Company, which was based in the Bailiwick of Jersey and provided trust services to BHS clients. Hapoalim Fiduciary was regulated by the Jersey Financial Services Commission. In November 2010, BHS sold its interest in Hapoalim Fiduciary to a third-party asset management company that previously had managed and owned a small stake in Hapoalim Fiduciary. BHS also acted as a custodian of assets that were managed by Hapoalim Fiduciary and other third-party investment advisors primarily based in Europe and Israel, including assets beneficially owned and controlled by citizens and residents of the United States ("U.S. taxpayers"). During the Relevant Period, the maximum total of assets under management for BHS-Switzerland was approximately \$6.7 billion, and for BHS-Luxembourg it was \$5.5 billion. The highest number of employees at BHS was 213 in 2010.

BHS provided private banking and asset management services to U.S. taxpayers and assisted certain of those U.S. taxpayers to evade their U.S. tax obligations, file false federal tax returns with the Internal Revenue Service (the "IRS"), and otherwise hide accounts held at BHS from the IRS. BHS, including certain of its senior officers and at least two of its then-board members, assisted such customers in a number of ways, including by opening and maintaining undeclared accounts<sup>1</sup> for U.S. taxpayers at BHS and providing a variety of offshore private banking services that assisted U.S. clients in the concealment of their assets and income from the IRS. These services, which are described in further detail below, included, among others, opening and maintaining accounts using code names, numbers, offshore entities, and trusts; facilitating the creation of offshore entities; issuing loans that provided U.S. taxpayers access to undeclared funds held in offshore accounts while continuing to conceal their assets; opening and maintaining accounts for known U.S. clients using non-U.S. forms of identification; opening and maintaining insurance wrapper accounts for U.S. clients held in the names of insurance companies; processing wire transfers and issuing checks in amounts of less than \$10,000 to avoid scrutiny; and holding all correspondence for some clients at BHS in order to avoid any correspondence being sent to the United States.

In total, during the Relevant Period, BHS held 2,055 U.S. Penalty Accounts.<sup>2</sup> Those U.S. Penalty Accounts had an aggregate maximum total of approximately \$4.4 billion in assets under management, which consisted of approximately 22 percent of BHS's maximum total assets

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<sup>1</sup> An "undeclared account" was a financial account beneficially owned by an individual subject to U.S. tax obligations and maintained in a foreign country that had not been reported by the individual account owner to the U.S. Government on an income tax return or an FBAR.

<sup>2</sup> "U.S. Penalty Accounts" are defined as U.S. accounts valued over \$50,000 that the parties agree should be subject to a penalty for the offense conduct.

under management during the Relevant Period. BHS earned gross fees of approximately \$125 million from U.S. Penalty Accounts.

BHS was responsible under U.S. law for the acts and omissions of its employees as described in this Statement of Facts.

## **II. U.S. INCOME TAX AND REPORTING OBLIGATIONS**

U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. For the tax year 1976 forward, U.S. citizens, resident aliens, and legal permanent residents had an obligation to report to the IRS on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking “Yes” or “No” in the appropriate box and identifying the country where the account was maintained.

Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year have been required to file with the U.S. Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the “FBAR”). The FBAR for the applicable year during the Relevant Period was due on June 30 of the following year.

An IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting, was used by a non-U.S. person to establish foreign status and beneficial ownership, and to claim the benefits of exemption or reduction of tax withholding as a resident of a foreign country with which the United States has an income tax treaty. U.S. citizens and U.S. residents were not eligible to file Forms W-8BEN.

An IRS Form W-9, Request for Taxpayer Identification Number and Certification, was used by a U.S. person to provide a correct Taxpayer Identification Number to a financial institution required to report to the IRS interest, dividends, and other income earned.

Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. Similarly, Luxembourg has maintained criminal laws that ensure the secrecy of client relationships at Luxembourgish banks since at least 1993. While Swiss and Luxembourgish law permit the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss and Luxembourgish law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantees that they created, these criminal provisions have historically enabled U.S. clients to conceal their Swiss or Luxembourgish bank accounts from U.S. authorities. The secrecy laws not only impact the disclosure of client information but also information related to culpable employees. For example, under Luxembourgish law, BHS was prevented from conducting a systematic review of employees’ emails in order to detect information relevant to the investigation.

In or about 2008, Swiss bank UBS AG (“UBS”) publicly announced that it was the target of a criminal investigation by the Internal Revenue Service and the Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since the UBS investigation became public, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients. These cases have been monitored by banks operating in Switzerland, including BHS, since at least July of 2008.

BHS was aware that U.S. taxpayers had a legal duty to report assets and income to the IRS, and to pay taxes on the basis of all their income, including income earned from accounts that BHS maintained on their behalf. BHS nevertheless opened, serviced, and profited from undeclared accounts belonging to clients that it knew, or should have known, were U.S. taxpayers—including those who BHS knew, or should have known, were likely not complying with their U.S. tax obligations.

### **III. THE OFFENSE CONDUCT**

BHS conducted a cross-border banking business that assisted certain of its U.S. clients in opening and maintaining undeclared accounts in Switzerland, Luxembourg, and Singapore, and concealing the assets and income they held in these accounts from the U.S. Government. BHS knew or had reason to know that some U.S. taxpayers who had opened and maintained accounts at BHS were not complying with their U.S. income tax and reporting obligations.

#### **A. BHS Provided Offshore Private Banking Services that Facilitated Tax Evasion by U.S. Clients**

BHS offered a variety of offshore private banking services that it knew or should have known could assist, and did in fact assist, U.S. clients in the concealment of assets and income from the IRS. The most significant services are set forth below, and some are described in more detail in the sections that follow.

BHS offered code name or numbered account services. BHS would allow an account holder to replace his or her identity with a code name or number on bank statements and other documentation sent to the client. BHS charged clients a fee for these services. These services helped U.S. clients to eliminate the paper trail associated with the undeclared assets and income they held at BHS. BHS held 400 coded and/or numbered accounts that were U.S. Penalty Accounts.

BHS used an account in the name of its subsidiary Trinel as an intermediary for a limited number of transfers to or from BHS client accounts. BHS would permit a client to fund his or her BHS account by first sending the assets to an account in the name of Trinel. BHS would then transfer the funds from the Trinel account to the client’s BHS account. This structure had the effect of concealing the true destination of funds from records located in the originating



jurisdiction, including in some instances the United States. Further, BHS would allow a client to direct funds out of his or her BHS account through the Trinel account, which had the effect of concealing the source of funds from records located in the recipient's jurisdiction. Until in or about 2006, Trinel was used as an intermediary for client transfers associated with 28 U.S. Penalty Accounts.

BHS employees opened accounts for U.S. clients in the names of offshore companies and entities that purported to be non-U.S. persons exempt from U.S. tax laws. Typically, such offshore entities were located in offshore tax haven jurisdictions such as Panama and the British Virgin Islands ("BVI"). In some cases, clients used non-U.S. corporations or trusts to create ownership layers that were designed to conceal, or had the effect of concealing, assets from the United States. During the Relevant Period, BHS maintained approximately 448 offshore entity accounts that were U.S. Penalty Accounts.

BHS also processed wire transfers or issued checks in amounts of less than \$10,000 that were drawn on accounts of U.S. taxpayers or entities, even though BHS knew, or had reason to know, that the withdrawals were made to avoid scrutiny. There were 316 U.S. Penalty Accounts that conducted such structured transactions.

Another such service was hold mail, where BHS would hold all correspondence for a particular client at BHS, rather than send the correspondence to the client, thereby avoiding any correspondence regarding the client's undeclared account being sent to the United States. BHS charged clients a fee for hold mail services. Almost 69 percent of BHS's U.S. Penalty Accounts (approximately 1,135 accounts) used hold mail services.

Up to 2012, BHS employees periodically traveled to the United States to meet with existing U.S. clients for the purposes of opening accounts and servicing those clients' offshore accounts, and, in some instances, to solicit new clients. The U.S. travel, as with all international travel of BHS employees, was approved by relevant executives at BHS and paid for by BHS.

**B. BHS Used Offshore Service Providers for Some U.S. Clients and Acted as "Client of Record" for a Panamanian Law Firm for U.S. Clients' Offshore Corporations**

In some cases, BHS served as an intermediary between clients and third-party professionals to facilitate the creation of offshore corporations for its U.S. clients. BHS charged its clients a fee for its services in connection with the creation of these corporations, but did not receive any referral fees or payments from third-party professionals. One such third-party professional was a Panamanian law firm (the "Panamanian Law Firm") that provided offshore incorporation and other services to BHS clients, including U.S. clients. Until at least 2013, BHS was listed as the "client of record" in the files of the Panamanian Law Firm, rather than the U.S. client who actually owned the corporation and whose funds were on deposit with BHS.

BHS acted as the client of record on at least 50 U.S. Penalty Accounts at the Panamanian law firm. This required BHS to conduct due diligence, pay invoices, and serve as the point of contact between the client and the Panamanian Law Firm. In this specific role, BHS paid invoices and fees to the Panamanian Law Firm from the clients' accounts. The minimum deposit

amount for investment accounts with the Panamanian Law Firm was, at various times during the Relevant Period, \$100,000 or \$200,000. In some instances, the offshore corporation used by the U.S. client was established using so-called bearer shares, where the holder of the shares is deemed the owner of the shares.

In February 2010, after the announcement of the UBS deferred prosecution agreement, BHS issued a policy directive ceasing the provision of these intermediary services between third-party professionals and clients seeking to establish offshore companies. Customers could continue to use third-party professionals independently, but BHS would no longer facilitate the creation of any such entity or serve as client of record. When this client of record issue was flagged in a 2012 audit, the Bank's audit division did not advise BHS to close any accounts or to review the related accounts to see if these were hidden U.S. accounts, but simply recommended that the "client of record" in the Panamanian law firm's internal records be corrected.

In addition, BHS employees opened and maintained accounts for U.S.-related clients in the names of trusts held at Hapoalim Fiduciary. During the Relevant Period, BHS maintained approximately nine accounts connected to Hapoalim Fiduciary trusts that were U.S. Penalty Accounts.

**C. BHS's Qualified Intermediary Agreement and Efforts to Assist U.S. Taxpayers in Avoiding Identification to the IRS Pursuant to BHS's QI Obligations**

In 2001, BHS entered into a qualified intermediary agreement ("QI Agreement") with the IRS. The qualified intermediary regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account at BHS, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons holding U.S. securities were properly paying U.S. tax.

The QI Agreement took account of the fact that BHS, like other non-U.S. financial institutions, was prohibited by foreign law from disclosing the identities of account holders. In general, the agreement required that, if a U.S. account holder wanted to trade in U.S. securities and avoid mandatory U.S. tax withholding, BHS would have to either (i) obtain the consent of the account holder to disclose the client's identity to the IRS or (ii) the account holder would have to grant BHS the authority to sell all of the account's U.S. securities (for accounts opened before January 1, 2001) and exclude all U.S. securities from the account (for accounts opened on or after January 1, 2001). The QI Agreement also required BHS to obtain IRS Forms W-9 and to undertake IRS Form 1099 reporting for new and existing U.S. clients engaged in U.S. securities transactions.

BHS established policies and procedures for complying with the QI Agreement. These policies required U.S. clients who held U.S. securities in accounts to either sign an IRS Form W-9 or authorize BHS to sell the U.S. securities in their accounts. BHS's QI forms specifically allowed clients to elect between the two options. These policies also required foreign corporations holding U.S. securities to sign IRS Forms W-8BEN to establish both the foreign status and beneficial owner of the account. Existing U.S. clients and foreign corporations who

refused to sign IRS Forms W-9 or W-8BEN were to have their accounts blocked from transacting in U.S. securities. These policies further barred the opening of any new accounts holding U.S. securities if the U.S. client or foreign corporation refused to sign an IRS Form W-9 or Form W-8BEN.

Notwithstanding the QI Agreement and its policies, BHS continued to service U.S. clients without disclosing their identity to the IRS and without considering the impact of U.S. criminal law on that decision. In certain cases, BHS failed to adhere to the requirements of BHS's QI Agreement with the IRS and BHS's own QI policies by (i) not identifying clients holding U.S. securities as U.S. persons, (ii) permitting U.S. clients who had not provided BHS with the proper IRS Forms W-8BEN and/or W-9 to continue trading in accounts holding U.S. securities, and (iii) failing to timely address QI-related compliance deficiencies in U.S. client accounts holding U.S. securities, including failing to comply with the requirements regarding proper documentation for opening and maintaining accounts holding U.S. securities.

Certain BHS relationship managers and supervising employees allowed some U.S. clients to create and open accounts in the name of sham offshore entities, non-U.S. nominees, and insurance companies. BHS opened and maintained client accounts for known U.S. clients using non-U.S. forms of identification, which enabled U.S. taxpayers to avoid being identified as U.S. persons, in violation of BHS's internal policies and the QI Agreement. In some cases, relationship managers advised U.S. clients to use their non-U.S. passports to open accounts instead of their U.S. passports. In connection with some of these accounts, certain BHS employees accepted and included in BHS's account records IRS Forms W-8BEN (or BHS's substitute forms) provided by the directors of the offshore companies that falsely represented under penalty of perjury that such companies were the beneficial owners, for U.S. federal income tax purposes, of the assets in the accounts. These false Forms W-8BEN were obtained at the same time as the Swiss Forms A that accurately and truthfully represented the true beneficial owners of the assets in the accounts.<sup>3</sup>

#### **D. Additional Methods And Means Of Concealment**

##### **1. Back-To-Back Loans**

During the Relevant Period, BHS offered and serviced back-to-back loans that in certain cases were used by U.S. taxpayers to access in the United States their funds held in offshore accounts while continuing to conceal their assets and evade their U.S. tax obligations. A "back-to-back loan" was a loan offered by BHBM's U.S. branches to U.S. customers that was secured by funds in an offshore BHS account, generally held by the same U.S. beneficial owner (the "pledge account"). During the Relevant Period, accounts at BHS secured or collateralized approximately 51 back-to-back loan facilities issued by BHBM's U.S. branches with an approximate value of \$162.3 million. Certain BHS employees knew or should have known that back-to-back loans allowed U.S. customers to enjoy the economic benefits of the funds in the offshore accounts without directly repatriating the funds or creating a paper trail that could potentially disclose the existence of the undeclared accounts to U.S. authorities.

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<sup>3</sup> A "Form A" is used by Swiss banks to declare the identity of the true beneficial owner of a bank account, along with the owner's address, date of birth and nationality.

Bank employees who prepared the loan documents and approved the back-to-back loans were aware in some cases that the borrower and owner of the pledge account were the same person. BHS employees assisted customers in circumventing BHBM's U.S. branch policies requiring disclosures of the pledgors of back-to-back loans either by (a) using a trust account held at BHS as the pledge account, as a result of which the name of the trust account, rather than the trust beneficiary, was disclosed to the U.S. branch issuing the loan; or (b) maintaining the pledge account in the name of a non-U.S. relative of the U.S. customer who was the actual beneficial owner of the funds in the account and granting the U.S. customer a power of attorney over the pledge account, as a result of which the name of the account holder, rather than the beneficial owner, was disclosed to the U.S. branch issuing the loan.

For example, between approximately 2002 and December 2008, a family of U.S. citizen and resident customers used a back-to-back loan facility issued by one of BHBM's U.S. branches and secured by assets in the U.S. clients' Hapoalim Fiduciary trust account held at BHS in order to conceal their ownership of the assets while repatriating the assets to the United States. The loan facility was terminated in 2009, and BHS closed the accounts in March 2010.

In 2008, following the announcement that Mizrahi Tefahot Bank Ltd. ("Mizrahi Bank") had entered into a Cease & Desist Order with the Federal Deposit Insurance Corporation and California Department of Financial Institutions in connection with Mizrahi Bank's practices regarding, among other matters, back-to-back loans, BHBM's U.S. branches reexamined their own back-to-back loan practices and determined that the U.S. files of some loans secured by accounts at BHS did not contain sufficient information concerning the collateral accounts. Thereafter, BHBM's Miami branch amended its policies to require bankers to identify all guarantors on loan accounts, and to require anti-money-laundering compliance personnel to ensure that the Miami branch obtained descriptions of the purpose of the loan, source of repayment, source and location of the collateral, parties involved in the loan, and tax and financial statements related to the borrower (as applicable). BHS did not, however, consistently respond to the Miami branch's requests for information needed to satisfy its policies. The number of back-to-back loans involving collateral held at BHS decreased following the introduction of post-2008 policy enhancements, and BHBM and BHS undertook enhanced scrutiny of the underlying business reasons for requested back-to-back loans.

## **2. Insurance Wrappers**

BHS also opened and maintained insurance wrapper accounts for clients. Insurance wrapper accounts are accounts held in the names of insurance companies, but funded with assets transferred to the accounts by the beneficial owners of insurance products at the insurance companies (the "policy holders"). These accounts were typically managed by external asset managers for the ultimate benefit of the policy holders, often through powers of investment that were given by the insurance companies to the external asset managers. BHS treated the insurance company as the beneficial owner, and did not have internal forms identifying the policy holders as the actual beneficial owners of such accounts. The lack of such information prevented BHS from thoroughly disclosing such accounts to the Department.

During the Relevant Period, BHS maintained 17 such accounts for the benefit of U.S. clients with a total value of more than \$62 million. Ten of these accounts were held in BHS-Singapore, and all were connected to the same relationship manager. Insurance wrapper accounts were commonly used during the Relevant Period as a means of enabling U.S. taxpayers to conceal their assets and income from the IRS, and in evading their U.S. tax obligations.

**E. Certain BHS Senior Executives, Board Members, and Employees Directly Aided and Abetted U.S. Tax Evasion**

**1. Senior Executive-1**

In the early 1990s, a then-senior officer of BHS who later became a member of the BHS Board of Directors (“Senior Executive-1”) introduced to BHS one of his long-time U.S. citizen and resident clients (“Client-1”), whom Senior Executive-1 had serviced at his prior Swiss bank. With the assistance of Senior Executive-1, Client-1, a Certified Public Accountant, opened an undeclared account at BHS-Switzerland in the name of a Liechtenstein foundation, which had a maximum value of more than \$4 million. In coordination with Client-1, the Liechtenstein directors of the Liechtenstein foundation instructed Senior Executive-1 to transfer U.S. securities and funds in the Liechtenstein foundation account to a second undeclared BHS account, held by a non-U.S. person who was an Israeli friend and nominee for Client-1 (“the Nominee Account”). Client-1 and Senior Executive-1 transferred approximately \$2 million to the Nominee Account.

Senior Executive-1 and Client-1 worked together to surreptitiously repatriate funds to the United States from the Nominee Account. Following the transfers to the Nominee Account, and again at the direction of Senior Executive-1, BHS issued checks from the Nominee Account in amounts that were the same or similar to the amounts of the transfers from the Liechtenstein foundation account, with the checks made payable in the name of a second nominee, the Swiss lawyer who had originally referred Client-1 to Senior Executive-1. Between 2002 and 2011, BHS issued a total of 240 checks in amounts ranging from \$3,000 to \$9,900 (and totaling approximately \$2 million) from the Nominee Account for the benefit of Client-1. Client-1 also withdrew cash from the account during his visits with Senior Executive-1 in Switzerland to review his account.

Client-1 picked up certain of the checks in person at BHS-Switzerland’s headquarters in Zurich, while BHS mailed others to a post office box held by a third nominee for Client-1 in the United States. Adding another layer of secrecy, Senior Executive-1 enclosed some of the checks in greeting cards before mailing them to the post office box in the United States. By 2009, BHS compliance personnel had flagged certain of the checks as potentially problematic and sought additional information regarding the relationship between Client-1 and Senior Executive-1. However, there is no indication that BHS personnel investigated this matter further or took any other actions, and the flow of funds continued until December 2011, more than two years after the announcement of the UBS deferred prosecution agreement. In 2012, BHS closed Client-1’s accounts and transferred over \$1.8 million to an account with another Israeli bank in the name of Client-1. Client-1 eventually entered the IRS’s Offshore Voluntary Disclosure Program.

## **2. Senior Executive-2**

Senior Executive-2, a then-member of BHS's Board of Directors, served as a director of an offshore corporation and the nominee owner of an undeclared account controlled by a relative who was a U.S. citizen and resident ("Client-2"). In late 2004, Senior Executive-2 contacted a trust company in Liechtenstein to purchase an offshore shelf company incorporated in St. Vincent and the Grenadines that would be beneficially owned by Client-2. The offshore corporation was created in December 2004 and Client-2 opened an account in the name of the offshore corporation at Union Bancaire Privée ("UBP"), another Swiss bank.

When UBP stopped doing business with U.S. clients around 2009, Senior Executive-2 approached BHS's compliance department and sought to move Client-2's account to BHS. In March 2009, Client-2, with the assistance of Senior Executive-2, opened an account at BHS-Singapore in the name of the offshore corporation. Senior Executive-2 was listed as the sole director of the corporation and the sole signatory on the account. BHS compliance employees allowed the account to be opened despite a BHS policy barring the opening of accounts for U.S. persons. According to BHS's Know Your Customer ("KYC") documentation, Senior Executive-2 and Client-2 "are not entirely happy with the current situation in Switzerland. They have lost their confidence and trust in the regulations of Switzerland and therefore they are looking into Singapore as an alternative." Senior Executive-2 signed a BHS-Singapore QI form that falsely stated, "The Undersigned Account Holder [the offshore corporation] hereby declares that it is the beneficial owner according to U.S. tax principles to the assets and income to which this form relates." This is inconsistent with BHS-Switzerland's own beneficial ownership form, which included Client-2's name, U.S. residential address, and U.S. nationality. Client-2 periodically called Senior Executive-2 to provide account instructions related to the BHS-Singapore account. Senior Executive-2 ultimately informed Client-2 that he should become tax compliant and advised Client-2 to enter the IRS Offshore Voluntary Disclosure Program, which he did in November 2011. The account was closed shortly thereafter.

## **3. Senior Executive-3**

In May 2009, another then-BHS senior officer ("Senior Executive-3") opened an account for a friend who was a U.S. citizen and resident ("Client-3"), shortly after BHS had implemented a written policy requiring new U.S. clients to sign IRS Forms W-9. Client-3 signed the account opening forms in the United States during a meeting with Senior Executive-3. Thereafter, BHS compliance personnel indicated that the account could not be opened without an IRS Form W-9. In response, Senior Executive-3 requested that BHS's compliance department make an exception to this requirement because of Senior Executive-3's personal relationship with Client-3. The compliance department granted the exception and BHS opened the account in May 2009 without submission of an IRS Form W-9. The account was funded by a transfer of approximately \$300,000 from Clariden Leu, another Swiss bank. In 2012, BHS closed the account because Client-3 was known to be a U.S. person and no IRS Form W-9 was on file. At closing, Client-3's relationship manager provided the client approximately \$21,000 and approximately 5,000 Swiss francs in cash from Client-3's account and transferred the remaining approximate \$140,000 as follows: (1) 79,150 Swiss francs to a Swiss jewelry store, and (2) more than 62,000 euros to a Swiss rug merchant.

#### 4. Senior Executive-4

In 2002, BHS opened the first of a series of accounts for a U.S. client (“Client-4”) who had allegedly received a large amount of money from a business sale in the Republic of Georgia. Client-4 presented a U.S. passport to BHS and was identified as a U.S. citizen in BHS’s records. In August 2002, Senior Executive-4 approved the opening of an account for Client-4 in the name of a BVI corporation. Over \$72 million was sent to Client-4’s account at BHS from the personal account of an alleged cousin and business partner of Client-4 (the “Cousin”), despite the fact that no due diligence as to the source of the funds had yet been done. Client-4 sent a letter dated five days after the wire transfer, claiming that he was the beneficial owner of the funds and that the funds were the result of a bona fide transaction. He stated that he could not provide copies of any transaction documents due to “business secrets” concerns, but he would allow two senior BHS executives, Senior Executive-1 and Senior Executive-4, to review the documents at his home on the Mediterranean. The meeting at Client-4’s home occurred 14 days after BHS had received the funds and deposited them into the account controlled by Client-4. Ultimately, following the meeting and due diligence, BHS treated Client-4 as the beneficial owner, even though the funds came from a personal bank account in the name of the Cousin, who had significant connections to Russia and Georgia.

In addition to BHS, Hapoalim Fiduciary was involved in the management of the account and served as directors of the BVI corporation for Client-4. In October 2002, Hapoalim Fiduciary filed a “Money Laundering Disclosure Report” related to the account. Later in October 2002, a Hapoalim Fiduciary employee emailed Senior Executive-4 to say it was his view that “we still haven’t undertaken sufficient due diligence” on Client-4, “especially in view of his apparent relationship with [the Cousin].” Following this email, BHS undertook further due diligence on Client-4 and the Cousin. The total assets of the 14 accounts related to Client-4 reached a combined maximum balance of at least \$150 million.

While highly unusual, Senior Executives-1 and -4 acted as Client-4’s relationship managers, with Senior Executive-1 taking the primary role. According to the May 3, 2004 minutes of BHS’s Money Laundering Committee, one of the policies for approving transactions above 100,000 Swiss francs by Politically Exposed Persons was not followed, noting that “[t]he relationship to this client is a special one, because [Senior Executives-1 and -4] are in direct contact with” Client-4. Both served on the BHS credit committee, which was tasked with approval of certain credit issues related to the Client-4 accounts.

After a foreign government initiated an investigation in 2005 and requested documents related to one of Client-4’s accounts, the Swiss government informed BHS that in light of information received from the foreign country, there was “reason to suspect that the indications regarding the identity of the beneficial owners listed in the forms A could be partially or totally inaccurate.” BHS also learned in 2005 of a second foreign government investigation. Despite this, BHS continued its banking relationship with Client-4, although the AUM of Client-4’s accounts significantly decreased and certain of the accounts were frozen for periods of time. For example, after a meeting in September 2006, a BHS employee sent an email to a representative of Client-4 that stated, “We are looking forward to a further successful and beneficial business

relationship with you.” No one in management advised BHS’s Board of Directors of the fact that two foreign countries were investigating accounts related to Client-4.

In 2008, BHS became aware that a relative of the Cousin filed a lawsuit against Client-4. In December 2008, Client-4 requested an “off-the-shelf offshore company with an active Hapoalim account.” Instead of closing, freezing, or investigating the account group, Senior Executive-1 and another BHS senior manager endeavored to help Client-4 establish a “new BVI company” by providing the names of currently available BVI companies; ultimately Client-4 did not establish a new offshore entity. In November 2009, BHS received a letter informing it that a foreign court had issued a freezing order on assets controlled by Client-4. It was not until April 2010 that BHS’s Anti Money Laundering Committee decided to terminate BHS’s business relationship with Client-4.

In March 2015, a BHS employee who was reviewing accounts sent an email to the compliance department noting that one of Client-4’s accounts was opened in 2003, and that in 2008 the domicile listed for compliance purposes was changed from the United States to the United Kingdom. The BHS employee asked, “Should he, or any other related accounts, be included in our US list?” The compliance department responded that BHS had “actual knowledge” that the account was not controlled by Client-4 and was therefore not a U.S. related account.

## **5. Senior Managers-1 and -2**

A U.S. client (“Client-5”) held assets at BHS through accounts held in his own name and the names of non-U.S. relatives. The high balance of the various accounts was over \$28 million. The relationship managers for this client knew that Client-5 lived and worked in the United States and that he was a U.S. citizen, and different BHS personnel, including Senior Executive-3, visited him in the United States. In 2008, Senior Manager-1, then a relationship manager (who was later a branch manager), suggested that Client-5 restructure the trust, with the non-U.S. mother of Client-5 listed as the grantor of the trust. The trust was created and managed by Hapoalim Fiduciary. By using this trust structure, Client-5’s control of the account was concealed. In response to an October 2007 alert from BHS’s transaction monitoring system, Senior Manager-1 noted, in regard to a related account owned by Client-5, that Client-5 maintained a business in the United States and transferred assets to BHS that he did not want to declare for tax purposes. Senior Manager-1 also noted that Senior Executive-3 approved of the trust structure of the accounts.

In 2013, the structure of the accounts was again changed, moving from the trust structure to an account in the name of the non-U.S. mother of Client-5. Senior Manager-1 prepared KYC documents in March 2013 indicating that the funds in the trust account originally came from the mother’s late husband, which Senior Manager-1 knew to be false. In August 2016, another senior BHS employee (Senior Manager-2) had several telephone calls with Client-5’s non-U.S. brother, who disclosed that although he held the power of attorney on the account, Client-5 had the capacity to make decisions regarding the funds as 90% of the assets in the account actually belonged to Client-5. This call was not recorded in BHS’s system for logging customer communications. In addition, Senior Manager-2’s written records of calls with these clients did



not accurately record the substance of the calls. In the entry she made a few days after the phone call, she stated that there was no U.S. person on the account, despite the prior statements of Client-5's brother and the wealth of documentary evidence in the bank files to the contrary. Client-5 eventually entered the IRS's Offshore Voluntary Disclosure Program.

## **F. Other BHS Employees Assisted Clients in Concealing their Assets**

### **1. Example 1**

Between approximately 2002 and December 2008, a family of U.S. citizen and resident clients ("Client-6") routinely transferred the interest accrued on deposits in a trust account to a non-U.S. person relative's account at BHS. The non-U.S. person relative then transferred the funds to Client-6 in the United States. In September and October 2006, a BHS compliance employee inquired about the economic rationale for these arrangements, and a BHS relationship manager suggested closing the trust account, but the account was not closed. In connection with a February 2007 compliance alert, a relationship manager explained that the non-U.S. person relative "forwards interest received in another account to make less conspicuous that his relative has an account in CH [Switzerland]." A BHS compliance officer responded, "The answer fits the fact. From this account to the relative and the to heir [sic] account in the US. Fine." In a different 2007 compliance alert, the relationship manager further noted that Client-6 engaged in these transfers for "tax reasons." BHS closed Client-6's accounts in March 2010.

### **2. Example 2**

In 2009, at a U.S. person's request ("Client-7"), a BHS relationship manager opened an account at BHS-Luxembourg in the name of Client-7's non-U.S. wife, who granted Client-7 a power of attorney over the account. The primary source of the account assets was Client-7's business savings, and KYC records identified Client-7 as the client, but stated that he wanted the account in his wife's name "as he does not want to be the principal account holder for personal reason [sic]." The relationship manager opened the account in the wife's name and failed to obtain an IRS Form W-9 from Client-7.

## **IV. POLICIES AND PRACTICES CONCERNING U.S. CUSTOMERS**

In early May 2008, the fact that UBS was being investigated by the Department of Justice became public. UBS disclosed that it was being investigated for, among other things, assisting U.S. taxpayers with evading their taxes. In July 2008, UBS announced that it was closing its U.S. cross-border banking business. Thereafter, several other Swiss banks publicly announced that they were the targets of similar criminal investigations and that they likewise would be exiting their U.S. cross-border businesses and not accepting certain U.S. clients.

While BHS took no systematic or institutional efforts to solicit U.S. clients from UBS or other Swiss banks, between August 2008 and December 2012, it accepted transfers from UBS and other Swiss banks and opened a number of new accounts of U.S. citizens or residents who had not previously held accounts with BHS. There were 63 U.S. Penalty Accounts at BHS that

received such transfers from Swiss banks, 37 of which were accounts opened by new customers.<sup>4</sup>

In some cases, BHS personnel, including the compliance unit, failed to take appropriate steps to prevent certain U.S. clients leaving Swiss banks from transferring funds to BHS in order to continue their evasion of U.S. tax obligations. For example, in August 2008, a client who had an existing BHS-Switzerland account closed his UBS account and transferred the account assets to BHS-Switzerland. The assets under management for this account reached a maximum of \$1,187,030 in September 2008. Account records indicate that the relationship manager for the account was aware that, in an effort to avoid sending Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) messages, the client transferred the assets in Swiss francs, rather than in U.S. dollars.

Apart from its obligations under the QI Agreements with the IRS and the internal regulations it introduced to implement them, prior to the public announcement of the UBS investigation, BHS did not have specific cross-border tax policies for U.S. clients that would have enabled it to ensure the tax compliance of these clients.

Following the announcement of UBS’s settlements with the Department of Justice and the Securities and Exchange Commission, and subsequent pressure from U.S. clients to open offshore accounts at BHS, in April 2009, BHS management issued a written directive prohibiting the opening of new accounts for U.S. residents without an IRS Form W-9. Existing U.S. accounts were not covered by the initial policy; furthermore, U.S. non-resident citizens were still permitted under the initial policy to open new accounts. BHS issued its first policy to deal with existing U.S. accounts on December 31, 2009. The policy stated that BHS would cease to provide securities services to U.S. residents, and also would stop the disparate treatment of U.S. resident and non-resident citizens for compliance purposes.

Certain BHS employees opened accounts in violation of these policies. For example:

- Between May and September 2009, a relationship manager at BHS-Singapore opened at least four accounts with beneficial owners known to be U.S. persons without obtaining IRS Forms W-9 from those clients.
- In September 2010, a relationship manager at BHS-Switzerland opened an account for the daughter of existing clients. At the account opening, the daughter provided a Peruvian address and passport, and did not provide an IRS Form W-9. According to the daughter, an employee at BHBM’s representative office in Chile instructed the daughter to provide her Peruvian passport instead of her U.S. passport. In June 2012, the client told her relationship manager at BHS-Switzerland, whom BHS had hired from UBS in 2010, that the client’s father and the representative office employee hid her U.S. citizenship. The relationship manager suggested that the client use a trust in order to continue to conceal her U.S. citizenship. Two months later, the client asked the relationship manager to forget about their last conversation, and the relationship manager confirmed that

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<sup>4</sup> This figure does not include Jersey or Georgetown, due to a lack of data.

this meant the client was only a Peruvian citizen, which the client then confirmed. The relationship manager apparently did not raise any further questions about the prior conversation regarding the client's U.S. status. Ultimately, the client, unprompted by BHS, provided an IRS Form W-9 in October 2013.

Although there was no formal policy, by 2010, BHS compliance officers advised BHS relationship managers of the need to inform existing U.S. clients that they must declare their accounts by providing IRS Forms W-9 in order to maintain their accounts with BHS; however, not all employees did so.

Although BHS was not required to report under FATCA prior to 2014, it began implementing the policies and systems required for FATCA reporting in 2011. In July 2011, BIBM implemented a group-wide policy that specifically prohibited employees from providing advice to U.S. clients aimed at avoiding FATCA requirements. But these efforts were inadequate. Compliance and information technology weaknesses hindered BHS's ability to identify all U.S. accounts. For example, after the third quarter of 2011, BHS compliance reported that in preparation for FATCA, three students reviewed data in the Swiss branches looking for U.S. indicia and that the same was done in Luxembourg with students. This data review did not include a review of hard files or the computerized customer relationship manager system. A complete file review was not commenced until 2015 and was limited to accounts valued over \$1 million. As another example, Bank Audit conducted a review of BHS's Geneva branch in 2012. BHS had an account opening checklist that was to be used to confirm the receipt of all required documents; Audit took a sample of 20 accounts and determined that not a single account complied with this procedure.

In 2012, BHS introduced a policy with respect to the exiting of U.S. clients. Under the policy, BHS permitted U.S. clients to close their accounts through wire transfers or checks, subject to certain restrictions. Absent approval by BHS's compliance department, clients could not transfer funds to accounts in non-FATF<sup>5</sup> jurisdictions, and, without an IRS Form W-9 on file, could not transfer funds internally at BHS. Customers could transfer funds externally only to an account in the name of the U.S. person. BHS nevertheless closed some U.S. client accounts via means that were inconsistent with this policy.

BHS was slow to assess its U.S. client business and risks. In response to a document that discussed the UBS investigation, Senior Executive-3 sent an email in July 2008 to other senior executives of BHS and BIBM stating that "Swiss secrecy can only be overcome with Swiss judicial support which requires EVIDENCE of a crime or tax fraud (suspicion of tax avoidance is not enough)." In March 2009, just after the announcement of the UBS deferred prosecution agreement, a then-BHS Board Member ("Board Member-1") suggested to Senior Executives-3 and -4 that BHS do a review of the client base for client with "US links" and hire a U.S. law firm with experience in the area to assist. Board Member-1 further observed, "We need to have a zero tolerance policy in this respect. It will be no defense with the US authorities that we have only a small number of US clients if one high profile case is detected (which we all assume do

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<sup>5</sup> FATF is the Financial Action Task Force (on Money Laundering), an intergovernmental organization founded to develop policies to combat money laundering and terrorism financing.

not exist).” BHS management did not conduct such a review at that time.

BHS management did not provide statistical information regarding its U.S. client business to the BHS Board of Directors until March 2010, when it reported that there were 782 “US persons” with accounts that had assets under management of \$785.6 million (when, in fact, there were 849 such persons with approximately \$2.4 billion). Thereafter, certain then-members of BHS management failed to accurately determine the number of U.S. accounts at BHS and therefore reported to the BHS Board of Directors numbers of U.S. accounts at BHS that were significantly lower than the actual number of such accounts. Such underreporting led Board members to believe that BHS had a small number of U.S. accounts and therefore the issue posed little risk to BHS.

**Exhibit B to Plea Agreement with Hapoalim (Switzerland) Ltd.**

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By: TODD A. ELLINWOOD, Assistant Chief  
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150 M Street, N.E.  
Washington, DC 20002

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
- - - - -x

UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, : VERIFIED COMPLAINT  
 :  
 -v.- : 20 Civ. \_\_\_\_  
 :  
 \$160,325,378 IN UNITED STATES :  
 CURRENCY, :  
 :  
 Defendant *in rem.* :  
 - - - - -x

Plaintiff United States of America, by its attorneys,  
GEOFFREY S. BERMAN, United States Attorney for the Southern  
District of New York, and RICHARD E. ZUCKERMAN, Principal Deputy  
Assistant Attorney General for the United States Department of  
Justice Tax Division, for its Verified Complaint (the  
"Complaint") allege, upon information and belief, as follows:

**I. JURISDICTION AND VENUE**

1. This action is brought by the United States of America pursuant to 18 U.S.C. § 981(a)(1)(C), seeking the forfeiture of \$160,325,378 in United States Currency (the "Defendant Funds").

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1355.

3. Venue is proper pursuant to 28 U.S.C. § 1355(b)(1)(A) because acts and omissions giving rise to the forfeiture took place in the Southern District of New York.

4. The Defendant Funds constitute proceeds of mail and wire fraud, and are thus subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 981 (a)(1)(C).

**II. NATURE OF THE ACTION**

5. As alleged in *United States v. Bank Hapoalim B.M. and Hapoalim (Switzerland) Ltd.*, 20 Cr. \_\_\_ (\_\_\_) (the "Hapoalim Information", attached as Exhibit A and incorporated by reference herein), from at least in or about January 2002 up through and including at least in or about December 2014, Bank Hapoalim B.M. ("BHBM"), an Israeli bank, and Hapoalim (Switzerland) Ltd. ("BHS"), its Swiss subsidiary bank

(collectively, "the Bank"), conspired with others known and unknown to defraud the United States of certain taxes due and owing by concealing from the United States Internal Revenue Service ("IRS") undeclared accounts owned by U.S. taxpayers at the Bank. On or about April [x], 2020, the United States Attorney's Office for the Southern District of New York and the Department of Justice Tax Division (the "Offices") and BHBM entered into a deferred prosecution agreement (the "BHBM DPA," attached as Exhibit B and incorporated by reference herein). On or about April [x], 2020, the Offices and BHS entered into a plea agreement (the "BHS Plea Agreement," attached as Exhibit C and incorporated by reference herein).

6. As set forth in the Statements of Facts, attached as an exhibit to the BHBM DPA and BHS Plea Agreement and incorporated by reference herein, the fraud conspiracy alleged in the Hapoalim Information involved the use by U.S. taxpayer-clients of the Bank of the U.S. mails, private or commercial interstate carriers, or interstate wire communications to submit individual federal income tax returns to the IRS that were materially false and fraudulent in that these returns failed to disclose the existence of such taxpayers' undeclared accounts or the income earned in such accounts.

**III. THE DEFENDANT-IN-REM**

7. Under the DPA, BHBM agreed to forfeit \$35,696,929. Under the Plea Agreement, BHS agreed to forfeit \$124,628,449. The Bank, pursuant to the DPA and Plea Agreement, transferred the Defendant Funds to the United States in the Southern District of New York as a substitute *res* for gross proceeds from its scheme to defraud the United States as set forth in the Hapoalim Information. The Bank agrees that the Defendant Funds are subject to civil forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) as proceeds of mail and wire fraud.

**IV. CLAIM FOR FORFEITURE**

8. The allegations contained in paragraphs one through seven of this Verified Complaint are incorporated by reference herein.

9. Title 18, United States Code, Section 981(a)(1)(C) subjects to forfeiture “[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to a violation of . . . any offense constituting ‘specified unlawful activity’ (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.”



10. "Specified unlawful activity" is defined in 18 U.S.C. § 1956(c)(7) to include any offense under 18 U.S.C. § 1961(1). Section 1961(1) lists as offenses both mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343).

11. By reason of the above, the Defendant Funds are subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C).

WHEREFORE, plaintiff the United States of America prays that process issue to enforce the forfeiture of the defendant *in rem* and that all persons having an interest in the defendant *in rem* be cited to appear and show cause why the forfeiture should not be decreed, and that this Court decrees forfeiture of the defendant *in rem* to the United States of America for disposition according to law, and that this Court

grant plaintiff such further relief as this Court may deem just and proper.

Dated: New York, New York  
\_\_\_\_\_, 2020

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Attorney General for Plaintiff  
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By: \_\_\_\_\_  
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(202) 616-9330/514-8030

VERIFICATION

AMY LINDNER, pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury that she is a Special Agent with the Internal Revenue Service, Criminal Investigation; that she has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to the best of her knowledge, information and belief; and that the sources of her information and the grounds of her belief are her personal involvement in the investigation, and conversations with and documents prepared by law enforcement officers and others.

Executed on \_\_\_\_\_, 2020.

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AMY LINDNER  
Special Agent  
Internal Revenue Service,  
Criminal Investigation

**Exhibit C to Plea Agreement with Hapoalim (Switzerland) Ltd.**

**CERTIFICATE OF CORPORATE RESOLUTIONS**

WHEREAS, Hapoalim (Switzerland) Ltd. (“BHS”) has been engaged in discussions with the United States Attorney’s Office for the Southern District of New York and the Tax Division of the United States Department of Justice (collectively the “Department”) regarding certain issues arising out of, in connection with, or otherwise relating to the conduct of BHS’s cross-border banking business with U.S. customers; and

WHEREAS, in order to resolve such discussions, it is proposed that BHS enter into a plea agreement (the “Agreement”) with the Department; and

WHEREAS, outside counsel for BHS has advised the Board of Directors of BHS of its rights, possible defenses, the Sentencing Guidelines’ provisions, and the consequences of entering into the Agreement with the Department; and

Therefore, after closely reviewing the Agreement and the accompanying documents, including the Information and the Statement of Facts, at a duly held meeting on April 23, 2020, the Board of Directors has unanimously RESOLVED that:

1. BHS: (a) consents to the filing of a one-count Information in the United States District Court for the Southern District of New York charging BHS and its parent, Bank Hapoalim B.M., with conspiring with others, including U.S. taxpayers, in violation of Title 18, United States Code, Section 371, to (i) defraud the United States and an agency thereof, to wit, the United States Internal Revenue Service; (ii) file false federal income tax returns in violation of Title 26, United States Code, Section 7206(1); and (iii) evade federal income taxes in violation of Title 26, United States Code, Section 7201; (b) waives indictment on such charges; (c) waives its rights to a speedy trial pursuant to the Sixth Amendment to the United States

Constitution, Title 18, United States Code Section 3161, and Federal Rule of Criminal Procedure 48(b); (d) consents to conducting all proceedings, including a plea hearing, via video or telephonic conference as provided for by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") and hereby waives any right to be present for such proceedings under the Sixth Amendment to the U.S. Constitution and Rules 11 and 43 of the Federal Rules of Criminal Procedure; and (e) agrees to pay a total of \$402,534,921 to the United States Treasury, which includes a monetary penalty of \$138,998,399, forfeited funds of \$124,628,449, and restitution in the amount of \$138,908,073;

2. The Board of Directors has unanimously voted to enter into the Agreement and accepts its terms and conditions;

3. The Chief Executive Officer of BHS, Barry Elram, and the Head of Legal, Compliance and Tax of BHS, Claudia Spiess, are hereby jointly authorized, empowered, and directed, on behalf of BHS, to execute the Agreement substantially in such form as reviewed by this Board of Directors, with such minor changes as either the Chief Executive Officer of BHS, Barry Elram, or the Head of Legal, Compliance and Tax of BHS, Claudia Spiess, may approve;

4. The Chief Executive Officer of BHS, Barry Elram; the Head of Legal, Compliance and Tax of BHS, Claudia Spiess; and BHS's outside counsel, David H. Braff and Aisling O'Shea of Sullivan & Cromwell LLP, Avi Gesser of Debevoise and Plimpton LLP, and Marnin Michaels of Baker McKenzie Zurich, are hereby each individually authorized and empowered to act and speak on behalf of BHS in any proceeding or as otherwise necessary for the purpose of executing the Agreement, including entry of a guilty plea in a court on behalf of BHS;

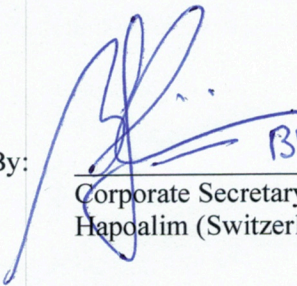
5. The Chief Executive Officer of BHS, Barry Elram; the Head of Legal, Compliance and Tax of BHS, Claudia Spiess; and BHS's outside counsel, David H. Braff and Aisling O'Shea of Sullivan & Cromwell LLP, Avi Gesser of Debevoise and Plimpton LLP, and Marnin Michaels of Baker McKenzie Zurich, are hereby each individually authorized, empowered, and directed to take any and all actions as may be necessary or appropriate to approve the forms, terms, or provisions of any agreement or other documents as may be necessary or appropriate, to carry out and effectuate the purpose and intent of the foregoing resolutions; and

6. All actions of the Chief Executive Officer of BHS, Barry Elram, and the Head of Legal, Compliance and Tax of BHS, Claudia Spiess, which would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of BHS.

Date:

April 23, 2020

By:

  
BERNARD FISHMAN  
Corporate Secretary  
Hapoalim (Switzerland) Ltd.