

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79113 / October 18, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4555 / October 18, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17631

In the Matter of

**Bank Leumi le-Israel B.M.,
Leumi Private Bank, and
Bank Leumi (Luxembourg)
S.A.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b)(6) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e) AND (k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Bank Leumi le-Israel B.M., Leumi Private Bank, and Bank Leumi (Luxembourg) S.A. (collectively, “Respondents”); and also pursuant to Sections 203(e) and (k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Leumi Private Bank.

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondents admit the facts set forth in Section III.B. through E. below, acknowledge that their conduct violated the federal securities laws, admit the Commission’s jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b)(6) and 21C of the Exchange Act for Bank Leumi le-Israel B.M., Leumi Private Bank, and Bank Leumi (Luxembourg) S.A., and Sections 203(e) and

(k) of the Advisers Act for Leumi Private Bank, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offer, the Commission finds¹ that:

A. Summary

1. From at least 2002 through 2013, Respondents violated certain provisions of the federal securities laws by providing cross-border brokerage services to customers in the U.S. (“U.S. customers”) without registering with the Commission as broker-dealers. During that time, Bank Leumi le-Israel B.M., Leumi Private Bank, and Bank Leumi (Luxembourg) S.A. held securities assets for U.S. customers with an aggregate peak value of approximately \$537 million. From 2009 to 2013, Respondents had at least 711 unique customer accounts that held securities and were beneficially owned by U.S. customers. From at least 2008, Respondents were aware that, in certain instances, if their employees were to provide such services in the U.S. or otherwise by use of the mails or other modes of interstate commerce, Respondents would be required to register in the U.S. as broker-dealers, absent an available exemption from registration. None of the Respondents were registered as broker-dealers with the Commission.

2. With limited exceptions not applicable here, Section 15(a)(1) of the Exchange Act requires anyone who makes use of the mails or any other means or instrumentality of interstate commerce, to engage in the business of effecting transactions in securities for the account of others, or to engage in a regular business of buying and selling securities for the person’s own account, to register with the Commission as a broker-dealer.

3. Among other actions, prior to April 2009 certain of Respondents’ Relationship Managers (“RMs”) traveled to the U.S. to solicit new and/or service existing U.S. customers, in part by soliciting or attempting to solicit securities transactions. These activities required Respondents to register with the Commission as broker-dealers, which they did not.

4. From at least 2008, Respondents understood that there was a risk of violating the federal securities laws by providing broker-dealer services to U.S. customers without being registered with the Commission, and they took certain measures to manage and mitigate the risk that such services might be provided to U.S. customers, including issuing internal policies aimed at complying with U.S. securities laws. In 2009, Respondents prohibited RM travel to the U.S., prohibited the provision of securities services to U.S. customers, and began working to exit securities accounts of existing U.S. customers. However, while Respondents were coming into compliance with these new policies, violations of their policies and the federal securities laws continued.

¹ The findings herein are made pursuant to Respondents’ Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. It was not until 2011 that the vast majority of U.S. customer securities accounts that had been serviced in violation of U.S. federal securities laws were exited.

6. Because certain of their RMs provided broker-dealer services in the U.S. at a time when Respondents were not registered with the Commission as broker-dealers, Respondents willfully² violated Exchange Act Section 15(a).

7. In addition to the broker-dealer violations described above, from at least 2002 through at least 2009, Leumi Private Bank violated certain provisions of the federal securities laws by providing cross-border investment advisory services to clients in the U.S. (“U.S. clients”) without registering with the Commission as an investment adviser. Beginning in at least 2008, Leumi Private Bank became aware that, in certain instances, if its employees were to provide advisory services in the U.S. or otherwise by use of the mails or other modes of interstate commerce, Leumi Private Bank would be required to register in the U.S. as an investment adviser, absent an available exemption from registration. Leumi Private Bank was not registered with the Commission as an investment adviser.

8. Under Section 202(a)(11) of the Advisers Act, an investment adviser is a person who, for compensation, is in the business of providing investment advice with respect to securities, unless the person falls within one of the exclusions from the definition of investment adviser. Per Section 203(a) of the Advisers Act, an investment adviser whose principal offices or places of business are outside of the U.S. who makes use of the mails or any means or instrumentality of interstate commerce in doing business with U.S. clients is required to register with the Commission unless an exemption from registration is available.

9. Among other actions, prior to 2009 certain Leumi Private Bank RMs traveled to the U.S. to solicit new and/or service existing U.S. clients through the provision of investment advice for compensation. These activities required Leumi Private Bank to register with the Commission as an investment adviser, which it did not.

10. Beginning in 2009, Leumi Private Bank began taking certain measures to manage and mitigate the risk that investment advisory services might be provided to U.S. clients. Leumi Private Bank prohibited RM travel to the U.S., prohibited the provision of securities investment advice to existing U.S. clients, and began working to exit securities accounts of existing U.S. clients. However, while Leumi Private Bank was coming into compliance with these new policies, violations of its policies and the federal securities laws continued.

11. Because certain of its RMs provided advisory services in the U.S. at a time when Leumi Private Bank was not registered with the Commission as an investment adviser, Leumi Private Bank willfully³ violated Advisers Act Section 203(a).

² A willful violation of the securities laws means merely ““that the person charged with the duty knows what he is doing.”” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor ““also be aware that he is violating one of the Rules or Acts.”” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

12. From 2002 to 2013, Respondents' U.S. cross-border securities business generated a pre-tax income amount of approximately \$3.37 million.

B. Respondents

13. Bank Leumi le-Israel B.M. is a corporation founded in 1902, and incorporated and domiciled in Tel Aviv, Israel. Bank Leumi le-Israel B.M. holds a banking license from the Bank of Israel and is registered with the Registrar of Companies in Israel. It is defined as a banking corporation in accordance with the Israeli Banking (Licensing) Law 1981. The Bank's shares are traded on the Tel Aviv Stock Exchange and it is therefore subject to directives of that Stock Exchange and also the Israel Securities Authority.

14. Leumi Private Bank, a wholly owned subsidiary of Bank Leumi le-Israel B.M., was founded in 1953 and is headquartered in Zurich, Switzerland. It was primarily active in providing private banking services to international high net worth individuals. In March 2015, Julius Baer Ltd. AG ("Julius Baer"), a Swiss independent private banking group, purchased Leumi Private Bank's client-related assets.

15. Bank Leumi (Luxembourg) S.A., a wholly owned subsidiary of Bank Leumi le-Israel B.M., was founded in 1994 and is located in Senningerberg, Luxembourg. Its purpose was to serve as a marketing arm for private banking services for wealthy clients worldwide. In March 2015, Julius Baer also purchased Bank Leumi (Luxembourg) S.A.'s client-related assets.

C. Respondents' U.S. Cross-Border Securities Business

16. From at least 2002 through 2013, Respondents, through actions of certain of their RMs, engaged in broker-dealer activities with U.S. customers. Among other actions, RMs solicited, established, and maintained brokerage accounts for certain U.S. customers; accepted and executed orders for securities transactions; actively solicited securities transactions; handled certain U.S. customers' funds and securities; and provided account statements and other account information. Certain of these activities required registration under the federal securities laws. For these and other services provided to U.S. clients, Respondents received compensation related to the securities transactions.

17. In addition to the broker-dealer activities, from at least 2002 through at least 2009, Leumi Private Bank, through actions of certain of its RMs, provided investment advice to U.S. clients using U.S. jurisdictional means. Leumi Private Bank received compensation related to the provision of these advisory services.

18. From 2002 through 2009, at which time the Respondents ceased travel to the U.S., RMs repeatedly traveled to the U.S. to meet with existing or prospective U.S. customers and clients to provide investment advice or solicit securities transactions. At least 11 different RMs traveled to the U.S. on a minimum of 65 occasions for such meetings. During these trips, RMs engaged in at least 245 individual meetings with both existing and potential customers and clients, and generated significant revenue through commissions and fees.

³ See fn.2.

a. For example, one RM made three trips to New York from 2002 to 2003, during which time he had at least 35 meetings with existing and prospective customers and clients. According to the trip report by the RM, one of those trips alone resulted in approximately 15 new accounts and \$4.5 million in revenue.

b. In 2007, an RM traveled to Los Angeles for 76 meetings with existing and potential customers and clients, which resulted in \$1.15 million in structured deposits, and instructions to purchase \$6.3 million in bonds and \$140,000 in mutual funds. Additionally, at a customer's instruction, the RM transferred \$21.2 million from short-term deposits to annual deposits. The RM also opened eight new accounts with total potential of \$3.3 million in assets or more. Additional 2007 RM travel to New York and Miami generated new assets estimated at \$8.89 million.

c. In 2008, an RM visited Miami and New York for 66 meetings with existing and potential customers and clients. As a result of the meetings, Respondents purchased \$11.7 million in securities on behalf of customers and clients, and the RM estimated that Respondents would accrue approximately \$8.5 million in assets from existing customers and clients. The RM estimated that new customer and client meetings from this trip would generate approximately \$5 million in new assets. Also in 2008, another RM visited New York for 25 meetings, from which he expected to generate \$5 million in assets.

d. RMs took at least two additional trips to the U.S. in 2008.

e. An additional trip to the U.S. occurred in February 2009 in which RMs met with approximately 18 customers and clients and took instructions as to securities transactions to execute.

19. Shortly thereafter, in about April 2009, Respondents discontinued RM travel to the U.S.

20. In addition to traveling to the U.S., RMs with U.S. customers and clients communicated securities-related information to them by means of interstate commerce, including mail and e-mail, while the customers and clients were present in the U.S. Respondents' RMs provided broker-dealer services to these U.S. customers using U.S. jurisdictional means. In addition, prior to September 2009, Leumi Private Bank RMs provided investment advisory services for fees to their U.S. clients and made recommendations as to the merits of various types of investments using U.S. jurisdictional means.

D. Respondents Were Not Registered with the Commission to Provide Broker-Dealer or Investment Advisory Services to U.S. Customers or Clients

21. Respondents engaged in the above-referenced broker-dealer activities with U.S. customers at a time during which they were not registered as broker-dealers under Exchange Act Section 15(a). Leumi Private Bank also provided investment advisory services to U.S. clients at a time during which it was not registered as an investment adviser under Advisers Act Section 203(a). Respondents were not exempted from registration as broker-dealers, and Leumi Private Bank was not exempted from registration as an investment adviser.

E. Respondents' Efforts to Address the U.S. Cross-Border Securities Business

22. In late February 2008, Respondents' Head of International Private Banking ("IPB") contacted U.S. counsel about permissible activities for RMs who periodically traveled to the U.S. In May 2008, in consultation with counsel, management determined that "[a]dvisors who travel to the U.S. are prohibited from giving securities advice."

23. UBS, a large Switzerland-based multinational financial services company, publicly announced that it was being investigated by the U.S. government in early May 2008 for activities arising from UBS's provision of cross-border banking, broker-dealer, and investment adviser services to U.S. customers and clients. Two months later, in July 2008, UBS formally announced that it would cease providing banking services to U.S. customers and clients through its non-U.S. regulated entities.

24. On July 9, 2008, Bank Leumi le-Israel B.M. issued a policy containing a list of permitted and prohibited activities for RMs in the U.S. ("2008 List"). The 2008 List, which reflected U.S. counsel's advice, stated that RMs may not engage in securities transactions on behalf of U.S. customers or open or manage any securities deposits. In addition, the 2008 List stated that RMs should not provide advisory services in the U.S., with advisory services defined as "any oral or written method of informing others about the value of securities or the advisability of investing in securities or publishing reports about securities." While management and RMs discussed these changes at meetings, Respondents implemented no procedures at the time to ensure compliance with the 2008 List.

25. Management determined to stop RM travel to the U.S. for the purpose of servicing U.S. customers and clients in April 2009, and a prohibition on travel to the U.S. was included in Respondents' June 2009 guidelines regarding the handling of accounts of U.S. customers and clients ("2009 Guidelines"). Respondents disseminated the 2009 Guidelines to all relevant Bank units. In addition to prohibiting travel to the U.S., the 2009 Guidelines prohibited direct communications with U.S. customers and clients, emphasizing that no securities investment advice or securities transactional services should be provided to U.S. customers or clients, regardless of the location from which the advice was given or the type of transactions conducted.

26. Respondents issued clarifying rules on July 1, 2009 ("2009 Clarification"). The 2009 Clarification was more detailed, stating that for new U.S. customers and clients, no contact via any U.S. jurisdictional means of communication may be made, and defined "means" to include "mail, telephone, cell phone, fax, internet or anything similar." In addition, for existing U.S. customers and clients holding securities, it was forbidden for Respondents to give them investment advice or carry out for them any purchase of securities. The 2009 Clarification also instructed employees to contact existing U.S. customers and clients and tell them to transfer or sell their Bank-held securities as soon as possible. In August 2009, employees were provided with draft letters to send to existing U.S. customers and clients regarding termination of their securities accounts.

27. Leumi Private Bank issued a bank manual regarding the provision of securities services to U.S. customers ("Bank Manual") in September 2009. The Bank Manual, which was

specific to Leumi Private Bank, prohibited the provision of brokerage and investment advisory services to existing U.S. customers and clients and reiterated the prohibition on business trips to the U.S. For new U.S. customers and clients, Leumi Private Bank prohibited brokerage and investment advisory services except where managed via a discretionary investment management account or a third-party independent portfolio manager compliant with U.S. securities laws.

28. Respondents faced resistance from customers with regard to Respondents' efforts to close customers' securities accounts. Beginning in 2011, Respondents increased pressure on customers to close their securities accounts, including by forced sales.

29. In February 2011, Respondents reviewed their U.S. securities accounts for potential noncompliance with the above-described policies. Despite multiple policies dating back to 2008, Respondents' progress in following the policies and exiting their U.S. cross-border securities business was slow. The 2011 review flagged the following issues:

- a) ongoing communication "with the United States" by fax and phone,
- b) transactions in "tainted" accounts of U.S. customers and clients, with tainted accounts being defined as those U.S. customer and client accounts with securities-related activity in the 12 months preceding September 2009,
- c) lack of clarity by employees as to what constituted a tainted account,
- d) twenty offshore company accounts beneficially owned by U.S. persons still open, and
- e) approximately one hundred tainted accounts for U.S. customers and clients still open.

30. On May 5, 2011, Respondents issued a supplement to the 2009 Guidelines titled "Supplemental Rules for Securities and Banking Services for Existing US Persons" ("2011 Supplemental Rules"). The 2011 Supplemental Rules focused on continuing the exit of U.S. customers' and clients' tainted securities accounts, which was still not complete, and directed that all remaining such accounts should be closed by force by June 30, 2011. By the end of 2011, Respondents had exited nearly all of the tainted accounts. The last of the accounts was closed in 2015.

31. On September 8, 2013, Respondents implemented a new, centralized procedure on the subject of securities transactions and investment advice for U.S. customers and clients ("Centralized Procedure"), over four years after implementing their first policy on the same subject. The Centralized Procedure, like prior guidelines, emphasized that Respondents were prohibited from providing investment advice or brokerage services to U.S. customers and clients with the exception of one division of the Bank – Global Private Banking ("GPB"). GPB could provide such services under very limited circumstances that comported with U.S. securities laws.

32. In 2014, Respondents carried out an internal audit focused on their U.S. cross-border securities business. The 2014 audit looked at the period between July 2011 and October 2013, and identified two securities accounts that had been re-opened for U.S. customers despite being previously closed in 2011. Respondents had closed the accounts in 2011 in accordance with Bank directives because they were tainted due to securities-related activity that took place. In violation of their policies, Respondents re-opened securities accounts for these customers in 2012 and 2013 and conducted securities-related activities.

33. In total, from 2002 through 2013, Respondents generated a pre-tax income amount of \$3.37 million from their U.S. cross-border securities business.

34. In July 2014, Leumi Private Bank announced that it had sold the majority of its private banking business and client assets to Julius Baer. The transfer was completed on March 16, 2015. Similarly, in March 2015, Julius Baer purchased Bank Leumi (Luxembourg) S.A.'s client assets.

F. Violations

35. As a result of the conduct described above, Bank Leumi le-Israel B.M., Leumi Private Bank, and Bank Leumi (Luxembourg) S.A. willfully violated Exchange Act 15(a), and Leumi Private Bank also willfully violated Advisers Act Section 203(a).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Sections 15(b)(6) and 21C of the Exchange Act and Sections 203(e) and (k) of the Advisers Act, it is hereby ORDERED that:

A. Bank Leumi le-Israel B.M., Leumi Private Bank, and Bank Leumi (Luxembourg) S.A. are censured;

B. Bank Leumi le-Israel B.M., Leumi Private Bank, and Bank Leumi (Luxembourg) S.A. cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act;

C. Leumi Private Bank cease and desist from committing or causing any violations and any future violations of Section 203(a) of the Advisers Act; and

D. Bank Leumi le-Israel B.M., Leumi Private Bank, and Bank Leumi (Luxembourg) S.A. shall, within ninety (90) days of the entry of this Order, pay disgorgement of \$65,700, which represents the outstanding unpaid balance from a total disgorgement figure of \$3,372,700, less \$3,307,000 already disgorged to the U.S. Department of Justice ("DOJ") for related conduct as part

of a Deferred Prosecution Agreement (“DPA”) in December 2014⁴; prejudgment interest of \$8,713.20; and a civil money penalty in the amount of \$1,517,715 to the Securities and Exchange Commission. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier’s check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Bank Leumi le-Israel B.M., Leumi Private Bank, and Bank Leumi (Luxembourg) S.A. as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott W. Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5012.

By the Commission.

Brent J. Fields
Secretary

⁴ On December 22, 2014, various Bank Leumi entities, including Bank Leumi le-Israel, Bank Leumi Luxembourg, and Leumi Private Bank, signed a DPA with the DOJ waiving charges that the Bank voluntarily, intentionally, and knowingly sought to willfully aid and assist in the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department in violation of Title 26, United States Code, Section 7206 (2), all in violation of 18 U.S.C. § 371. Under the DPA, the Bank paid approximately \$270 million, which included approximately \$72 million in restitution from Bank Leumi le-Israel and Bank Leumi Luxembourg (and other subsidiaries), and \$157 million in lieu of restitution from Leumi Private Bank consistent with the Swiss Program for Non-Prosecution Agreement or Non-Target Letters for Swiss Banks. The DPA focused on violative conduct between 2002 and 2010. The amount paid by the Bank under the terms of the DPA included income generated from U.S. securities accounts.