

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :
 : INFORMATION
 -v- :
 : 20 Cr.
 BANK HAPOALIM B.M., and :
 HAPOALIM (SWITZERLAND) LTD., :
 :
 Defendants. :

- - - - - x

COUNT ONE
(Conspiracy to Defraud the United States)

The United States Attorney charges:

Bank Hapoalim B.M.

1. Bank Hapoalim B.M. ("BHBM"), the defendant, is an Israeli public company that is one of Israel's largest banks. Founded in 1921, BHBM operates primarily as a retail bank with approximately 250 branches throughout Israel and more than two-and-a-half million accounts. In addition to domestic retail banking services, BHBM offered private banking services for onshore and offshore customers through its retail branches and through its Global Private Banking Center at its Hayarkon branch. Since 1950, BHBM has also had a wholly owned subsidiary in Israel, Poalim Trust Services Ltd. (known as "Pashan"), which provides trust formation and management services.

2. At all times relevant to this Information, BHBM, the defendant, provided private banking, asset management, and

other services to individuals and entities around the world, including U.S. taxpayers in the Southern District of New York. BHBM operates BHI-USA, a commercial bank located in the Southern District of New York, with branches in Miami, Florida, and elsewhere.

Hapoalim (Switzerland) Ltd.

3. Hapoalim (Switzerland) Ltd. (formerly Bank Hapoalim (Switzerland) Ltd.), the defendant ("BHS," together with BHBM, the "Bank"), was a Swiss bank and is a wholly owned subsidiary of BHBM. Established in 1975, BHS has a branch in Luxembourg ("BHS-Luxembourg"). From 2007 through May 2013, BHS also had a branch in Singapore ("BHS-Singapore"). At times between 2000 through 2014, BHS also had representative offices in Israel, Hong Kong, Mexico, and Moscow. Prior to November 2010, BHS also maintained a subsidiary, Hapoalim Fiduciary Services Limited ("Hapoalim Fiduciary"), formerly known as Hapoalim Trustees Limited, which was based in the Bailiwick of Jersey and provided trust services to BHS clients.

**Obligations of United States Taxpayers
With Respect to Foreign Financial Accounts**

4. At all times relevant to this Information, U.S. citizens and residents who had income in any one calendar year in excess of a threshold amount ("U.S. taxpayers") were required to file a U.S. Individual Income Tax Return, Form 1040 ("tax

return”), for that calendar year with the Internal Revenue Service (“IRS”) by April 15 of the following year. On that tax return, U.S. taxpayers were obligated to report their worldwide income, including all income earned from foreign bank accounts, and to pay the taxes due on that income.

5. U.S. taxpayers also had an obligation to report to the IRS on the Schedule B of a tax return whether they 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.

6. In addition, U.S. taxpayers who 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 were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (the “FBAR,” formerly known as Form TD F 90-22.1). The FBAR had to be filed on or before June 30 of the following year for calendar years up to and including 2015. From 2016 forward, the FBAR filing date coincided with the tax return due date, generally April 15.

7. The regulations relating to the required disclosure of foreign bank accounts specifically precluded U.S. taxpayers from having foreign accounts nominally held by sham corporate

structures as a means of avoiding disclosure. Specifically, as set forth in Title 31, Code of Federal Regulations, Section 1010.350(e)(3):

A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section [requiring generally the disclosure of offshore financial accounts containing over \$10,000 and over which a U.S. taxpayer has signature or other authority] shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.

8. An "undeclared account" refers to a financial account owned or beneficially owned by a U.S. taxpayer and maintained in a foreign country that had not been reported by the individual account owner or beneficial owner to the U.S. government on a tax return or FBAR.

Overview of the Conspiracy

9. From at least in or about January 2002 through in or about December 2014 (the "Relevant Period"), BHBM and BHS, the defendants, unlawfully, voluntarily, intentionally, and knowingly conspired and agreed with U.S. taxpayers (hereinafter, "U.S. taxpayer-clients"), certain Bank senior executives and relationship managers, and wholly owned and third-party fiduciaries and fiduciary service providers, to conceal from the IRS the existence of undeclared accounts maintained at the Bank

and the income earned in such accounts, and to evade U.S. taxes due on the income generated in the undeclared accounts.

Means and Methods of the Conspiracy

10. BHBM and BHS, the defendants, and their co-conspirators, carried out the conspiracy through, among others, the following means and methods:

a. Bank relationship managers and BHS senior executives opened and managed undeclared bank and securities accounts at the Bank for U.S. taxpayer-clients that were not reported to the IRS on Forms 1040, FBARs, or otherwise, and the income from which was also not reported to the IRS.

b. Bank relationship managers and BHS senior executives opened undeclared accounts for U.S. taxpayer-clients using code names or numbers, which helped U.S. clients to eliminate the paper trail associated with the undeclared assets and income they held at the Bank.

c. Bank relationship managers and BHS senior executives assisted U.S. taxpayer-clients in placing assets in undeclared accounts held in the name of foreign relatives or friends in order to conceal the U.S. taxpayer-clients' beneficial ownership of such assets.

d. The Bank opened and maintained undeclared accounts in the name of sham corporate entities in order to conceal the U.S. taxpayer-clients' ownership of such assets.

e. The Bank referred U.S. taxpayer-clients to third-party law firms and its subsidiaries, Hapoalim Fiduciary and Pashan, for the purpose of establishing offshore corporations and trusts, respectively, which facilitated U.S. taxpayer-clients in opening and maintaining undeclared accounts at the Bank in the names of these offshore entities.

f. BHS acted as "client of record" for U.S. taxpayer-clients who engaged a Panamanian law firm for offshore incorporation services, which allowed the Bank to serve as an intermediary between the law firm and the U.S. taxpayer-clients.

g. Bank relationship managers ensured that account statements and other records relating to undeclared accounts held at the Bank by U.S. taxpayer-clients were not sent to these clients in the United States.

h. BHS relationship managers caused U.S. taxpayer-clients with undeclared accounts to travel from the United States to Switzerland in order to discuss their undeclared accounts.

i. Bank relationship managers and a BHS senior executive traveled to the Southern District of New York and elsewhere in the United States in order to meet with U.S. taxpayer-clients about their undeclared accounts at the Bank.

j. Bank relationship managers, a BHS board member, and a BHS senior executive assisted in the opening and

closure of accounts or transfers of funds in ways designed to maintain the veil of banking secrecy over the U.S. taxpayer-clients' undeclared accounts, such as causing checks to be written to nominees rather than the U.S. taxpayer-client directly, and transfers of cash to and through intermediaries.

k. Various U.S. taxpayer-clients of the Bank, including U.S. taxpayer-clients in the Southern District of New York, filed false Forms 1040 that failed to report their interest in, and income earned on, their undeclared accounts at the Bank; evaded income taxes due and owing; and failed to file FBARs identifying their undeclared accounts.

Statutory Allegations

11. From at least in or about January 2002 through in or about December 2014, in the Southern District of New York and elsewhere, BHBM and BHS, the defendants, together with others known and unknown, willfully and knowingly did conspire, combine, confederate, and agree together and with each other to defraud the United States of America and an agency thereof, to wit, the IRS, and to commit offenses against the United States, to wit, violations of Title 26, United States Code, Sections 7206(1) and 7201.

12. It was a part and object of the conspiracy that BHBM and BHS, the defendants, together with others known and unknown, willfully and knowingly would and did defraud the

United States of America and the IRS by impeding, impairing, obstructing, and defeating the lawful governmental functions of the IRS in the ascertainment, computation, assessment, and collection of revenue, to wit, federal income taxes.

13. It was further a part and an object of the conspiracy that various U.S. taxpayer-clients of BHBM and BHS, the defendants, together with others known and unknown, willfully and knowingly would and did make and subscribe income tax returns, statements, and other documents, which contained and were verified by written declarations that they were made under the penalties of perjury, and which these U.S. taxpayer-clients, together with others known and unknown, did not believe to be true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).

14. It was further a part and an object of the conspiracy that BHBM and BHS, the defendants, together with others known and unknown, willfully and knowingly would and did attempt to evade and defeat a substantial part of the income tax due and owing to the United States of America by certain of the Bank's U.S. taxpayer-clients, in violation of Title 26, United States Code, Section 7201.

Overt Acts

15. In furtherance of the conspiracy and to effect the illegal objects thereof, BHBM and BHS, the defendants, and others

known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about June 14, 2006, BHBM's Global Private Banking Center in Israel faxed a Pledge Confirmation to its branch in New York, confirming that \$24 million in a U.S. taxpayer-client's BHBM-Israel account, which was undeclared, was pledged as collateral for a loan to the U.S. taxpayer-client ("Client-1") in the United States.

b. On or about July 19, 2007, Masud Sarshar, a BHBM U.S. taxpayer-client, received into his undeclared account at BHBM approximately \$687,118.88 in income from his business. Masud Sarshar omitted this income from his total income when he filed his 2007 Form 1040.

c. From on or about March 23, 2008 through April 6, 2008, a BHBM relationship manager ("BHBM RM-1") traveled to New York and Los Angeles to service existing U.S. taxpayer-clients, some of whom had undeclared accounts at BHBM, and to recruit new U.S. clients for BHBM.

d. On or about September 3, 2008, Masud Sarshar filed a false and fraudulent Form 1040 for tax year 2007 with the IRS, on which he omitted approximately \$513,003 in interest income from BHBM.

e. On or about December 31, 2008, a U.S. taxpayer-client ("Client-2") faxed a signed promissory note to

BHBM's Miami branch in support of the renewal of a \$7.8 million back-to-back loan that was secured by Client-2's undeclared BHS account.

f. In or about March 2009, a U.S. taxpayer-client ("Client-3"), with the assistance of a BHS senior executive ("Senior Executive-1"), opened an account at BHS-Singapore in the name of an offshore corporation. Senior Executive-1 appointed himself as the sole director of the corporation and was the sole signatory on the account. Client-3 further funded the account with undeclared funds from Client-3's account at Union Bank Privée in Switzerland.

g. On or about April 28, 2009, a U.S. taxpayer-client ("Client-4") signed and submitted a letter to a BHS senior executive ("Senior Executive-2"), who later became a board member, instructing Senior Executive-2 to issue ten checks totaling \$88,000, all in amounts less than \$10,000 during the period of April and May 2009, to the order of a Swiss lawyer ("Swiss Lawyer-1") known to both Client-4 and Senior Executive-2. The checks were to be debited from Client-4's undeclared account at BHS held in the name of Client-4's Israeli friend.

h. On or about May 4, 2009, following Client-4's instructions, BHS Senior Executive-2 caused BHS to issue a bank check and mail it to Client-4 via priority mail. The envelope was sent to a postal box held by a corporation owned by

Client-4's friend in Miami, Florida, and contained a blank greeting card enclosing the BHS check made payable to Swiss Lawyer-1.

i. In or about May 2009, BHS opened an account for a U.S. taxpayer-client friend ("Client-5") of a BHS senior executive ("Senior Executive-3"), whose account opening paperwork was completed during a meeting between Client-5 and Senior Executive-3 in New York, New York, but without the required Form W-9. The account opening was approved by BHS's compliance department, and the account was funded with a \$300,000 transfer from Clariden Leu, another Swiss bank.

j. On or about September 14, 2009, BHBM processed "irregular withdrawals" of funds for certain U.S. taxpayer-clients of BHBM RM-1 whom he described to his manager as fearful that "Israeli banks will follow the Swiss UBS and expose to the American Authorities the names of American customers who hold accounts in Israel," including: (a) a U.S. taxpayer-client ("Client-6") who transferred \$1.8 million to his U.K. citizen/resident brother's account at BHBM in which the transfer was described as a loan; and (b) a U.S. taxpayer-client ("Client-7") who transferred his \$3.5 million BHBM account balance to a lawyer's trust account.

k. On or about November 25, 2009, a BHBM manager ("Senior Manager-1") emailed a BHBM employee to say

that, although new guidelines for opening new accounts for Americans were forthcoming, if an existing U.S. client initiated contact, it was "business as usual."

l. On or about April 26, 2010, a BHS senior manager ("Senior Manager-2") forwarded an email to the son of a BHS U.S. taxpayer-client ("Client-8") that summarized proposed changes to the structure of Client-8's undeclared U.S. account. The original email, sent by an employee at Hapoalim Fiduciary to Senior Manager-2 and copying Senior Executive-3, proposed creating a new British Virgin Islands ("BVI") company to be owned by the existing trust and transferring accounts into the name of the new BVI company.

m. On or about December 22, 2010, BHBM opened an undeclared account for a U.S. taxpayer-client ("Client-9"), which was funded by transfers from a Swiss bank he was being forced to leave. Client-9's BHBM relationship manager told him not to worry, advising that, in the view of the relationship manager, the United States was not after Israeli banks, only Swiss banks, and that his money would be safe at BHBM.

n. On or about March 1, 2011, Senior Executive-2 facilitated BHS issuing BHI check number 205266 for \$8,950 payable to Swiss Lawyer-1 for the benefit of Client-4.

o. On or about December 5, 2011, Client-4's Liechtenstein foundation mailed BHS a letter, asking BHS to

distribute \$200,000 in cash to Client-4 for the purpose of living expenses. With the assistance of Senior Executive-2, BHS provided the cash to Client-4 during Client-4's visit to BHS on or about that same date.

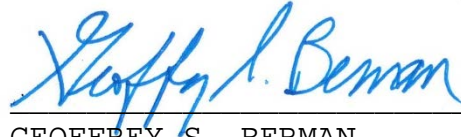
p. On or about May 21, 2012, BHS closed the account of Client-5 by providing the client with the equivalent of \$25,000 in cash from Client-5's account and transferring the remaining approximate \$140,000 as follows: (1) 79,150 Swiss francs to a Swiss jewelry store, and (2) more than 62,000 euros to a Swiss rug merchant.

q. On or about November 2, 2012, a BHBM compliance officer approved the transfer to an Israeli insurance policy account of \$3.96 million in an account in the name of a Panamanian corporation with a U.S. taxpayer-client beneficial owner ("Client-10") who refused to sign a Form W-9. Consistent with BHBM's transfer policies, the wire transfer named the beneficiary and designated the transfer as relating to a U.S. person.

r. On or about March 5, 2013, a BHS employee created false know-your-customer documents with respect to Client-6's BHS account, in order to conceal Client-6's ownership of the account as a U.S. person. The documentation falsely

portrayed the source of funds as deriving from Client-6's
deceased non-U.S. father's alleged real estate investments.

(Title 18, United States Code, Section 371.)



GEOFFREY S. BERMAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

BANK HAPOALIM B.M.,
HAPOALIM (Switzerland) Ltd.,

Defendants.

INFORMATION

20 Cr.

(18 U.S.C. § 371)

GEOFFREY S. BERMAN
United States Attorney.
