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8
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) CFL LICENSE NO.: 60DBO-65349
12 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
13 PROTECTION AND INNOVATION,)
14 Complainant,)
15 v.)
16 SVB INNOVATION CREDIT FUND VIII,)
17 L.P., FORMERLY KNOWN AS WESTRIVER)
INNOVATION LENDING FUND VIII, L.P.,)
18 Respondent.)

19
20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Complainant or Commissioner) and Respondent SVB INNOVATION CREDIT FUND
22 VIII, L.P., FORMERLY KNOWN AS WESTRIVER INNOVATION LENDING FUND VIII, L.P.
23 (Respondent) and is made with respect to the following facts:

24 **I.**

25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of finance lending or brokering under the California Financing Law
28 (CFL) (Fin. Code, § 22000 et seq.).

1 B. Respondent is a limited partnership, with a principal place of business at 2770 Sand
2 Hill Road, Menlo Park, California 94025.

3 C. Respondent is licensed as a finance lender under the CFL with main license number
4 60DBO-65349.

5 D. Respondent conducts business under its CFL license at its primary place of business
6 described in paragraph B. above and does not operate any branch offices in California.

7 E. In accordance with Financial Code section 22159, CFL licensees must file an annual
8 report with the Commissioner by March 15 of each year (Annual Report).

9 F. On December 21, 2020, the Commissioner notified CFL licensees of the March 15,
10 2021 deadline to file their annual reports by sending notice to the email address of each CFL
11 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
12 November 22, 2013. The notification admonished licensees that the Commissioner could assess
13 penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

14 G. Effective as of December 23, 2020, pursuant to an acquisition transaction, the control
15 and management of Respondent was changed to a new (and current) general partner, SVB
16 Innovation Credit Partners VIII, LLC. Upon such change of control, the general partner of
17 Respondent initiated notices to the Department of Financial Protection and Innovation (DFPI) to
18 change Respondent's address, name, contact information, and other management information, which
19 is currently in process, pending the DFPI's review.

20 H. On January 21, 2021, the Commissioner again notified CFL licensees of the March
21 15, 2021 deadline to file their annual reports by sending notice to the email address each CFL
22 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
23 November 22, 2013. The notification again warned that the Commissioner could assess monetary
24 penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

25 I. On February 16, 2021, the Commissioner again notified CFL licensees of the March
26 15, 2021 deadline to file their annual reports by sending notice to the email address each CFL
27 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
28 November 22, 2013. The notification warned that the Commissioner could assess penalties and

1 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section
2 22715.

3 J. On March 12, 2021, the Commissioner again notified CFL licensees of the March 15,
4 2021 deadline to file their annual reports by sending notice to the email address each CFL licensee
5 established pursuant to the Commissioner's Order on Electronic Communications, dated November
6 22, 2013. The notification warned that the Commissioner could assess penalties and summarily
7 revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

8 K. As of March 15, 2021, Respondent had not filed its Annual Report with the
9 Commissioner. As a result, the Commissioner issued a notice on March 18, 2021 to Respondent to
10 Respondent's email address established pursuant to the Commissioner's Order on Electronic
11 Communications, dated November 22, 2013, advising Respondent that it should file its annual report
12 by or before March 30, 2021 or else its license would be summarily revoked pursuant to Financial
13 Code section 22715 (Notice email).

14 L. The Respondent has informed the DFPI that the general partner of Respondent did
15 not receive any of the aforementioned notices to CFL licensees from the Commissioner between
16 December 2020 and March 2021, since the notification process for the changes described in
17 paragraph __ above had not yet been completed due to the DFPI's ongoing review.

18 M. As of March 30, 2021, Respondent had not filed its Annual Report with the
19 Commissioner as directed in the Notice Letter. As a result, on April 16, 2021, the Commissioner
20 issued an Order Summarily Revoking California Finance Lenders License Pursuant to Financial
21 Code Section 22715 for CFL License Number 60DBO-65349 (Summary Revocation Order).

22 N. Upon receiving the Summary Revocation Order(s), which Respondent informed the
23 DFPI occurred on April 29, 2021, Respondent timely notified the Commissioner that Respondent
24 was requesting a hearing on the Summary Revocation Order(s).

25 O. On April 30, 2021, Respondent submitted its Annual Report, which was due on
26 March 15, 2021, 33 business days late. Pursuant to Financial Code Section 22715, the penalty that
27 may be imposed for filing 33 business days late is \$14,500.00 (\$100 per business day for the first
28 five business days and \$500 per business day thereafter up to a maximum of \$25,000).

1 P. In connection with these proceedings, Respondent represented to the Commissioner
2 that it had taken no new applications under its license after Respondent became aware of the
3 Summary Revocation Order.

4 Q. The Commissioner finds that entering into this Consent Order is in the public interest
5 and consistent with the purposes fairly intended by the policies and provisions of the CFL.

6 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
7 forth herein, the parties agree as follows:

8 **II.**

9 **TERMS AND CONDITIONS**

10 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy
11 and expediency and without the uncertainty and expense of a hearing or other litigation.

12 2. Order Rescinding Penalty Order. The Commissioner hereby rescinds the Order
13 Summary Revoking California Finance Lenders License which had been issued on April 16, 2021.

14 3. Administrative Penalty. Respondent shall pay an administrative penalty of
15 \$14,500.00 no later than 30 days after the effective date of this Consent Order as defined in
16 paragraph 25. The penalty must be made payable in the form of a cashier’s check or Automated
17 Clearing House deposit to the Department of Financial Protection and Innovation and transmitted to
18 the attention of Accounting – Litigation, Department of Financial Protection and Innovation, 2101
19 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to
20 Noah M. Bean, Senior Counsel, Department of Financial Protection and Innovation, 2101 Arena
21 Boulevard, Sacramento, California 95834.

22 4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
23 3, the Commissioner may summarily suspend Respondent from engaging in business under its
24 license until it provides evidence of compliance to the Commissioner’s satisfaction. Respondent
25 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,
26 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any
27 other provision of law to contest the summary suspension contemplated by this paragraph.
28

1 5. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready,
2 willing, and able to proceed with the filing of an administrative enforcement action on the charges
3 contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any
4 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
5 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
6 provision of law. Respondent further expressly waives any requirement for the filing of an
7 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,
8 Respondent effectively consents to this Consent Order and the Order Rescinding the Penalty Order
9 becoming final.

10 6. Full and Final Resolution. The parties hereby acknowledge and agree that this
11 Consent Order is intended to constitute a full and final resolution of the violations described herein,
12 and that no further proceedings or actions will be brought by the Commissioner in connection with
13 these matters except under the CFL or any other provision of law, or excepting therefrom any
14 proceeding to enforce compliance with the terms of this Consent Order.

15 7. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
16 with the terms of this Consent Order, the Commissioner may, in addition to all other available
17 remedies it may invoke under the CFL, summarily suspend/revoke the CFL license of Respondent
18 until Respondent is in compliance. Respondent waives any notice and hearing rights to contest such
19 summary suspensions/revocations which may be afforded under the CFL, the California
20 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
21 in connection therewith.

22 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
23 revoked, and the Commissioner may pursue any and all remedies available under law against
24 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
25 misrepresented information used for and relied upon in this Consent Order.

26 9. Future Actions by Commissioner. If Respondent fails to comply with the terms of the
27 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
28 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions

1 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees or
2 successors for any and all unknown violations of this CFL.

3 10. Assisting Other Agencies. Nothing in this Consent Order limits the
4 Commissioner’s ability to assist any other government agency (city, county, state or federal) with
5 any prosecution, administrative, civil or criminal action brought by that agency against Respondent
6 or any other person based on any of the activities alleged in this matter or otherwise.

7 11. No Presumption Against Drafter. Each party acknowledges that it has had the
8 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
9 intend no presumption for or against the drafting party will apply in construing any part of this
10 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
11 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
12 language of a contract should be interpreted most strongly against the party who caused the
13 uncertainty to exist.

14 12. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
15 has received independent advice from its attorney(s) and/or representatives with respect to the
16 advisability of executing this Consent Order.

17 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
18 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
19 the provisions hereof.

20 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
21 interest.

22 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this
23 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal
24 counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent
25 Order it has placed no reliance on any statement, representation, or promise of any other party, or
26 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
27 person or entity to make any statement, representation, or disclosure of anything whatsoever. The
28 parties have included this clause: (1) to preclude any claim that any party was in any way

1 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
2 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

3 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
4 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
5 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
6 provision. No waiver by either party of any breach of, or of compliance with, any condition or
7 provision of this Consent Order by the other party will be considered a waiver of any other condition
8 or provision or of the same condition or provision at another time.

9 17. Full Integration. This Consent Order is the final written expression and the complete
10 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
11 between the parties with respect to the subject matter hereof, and supersedes all prior or
12 contemporaneous agreements, negotiations, representations, understandings, and discussions
13 between and among the parties, their respective representatives, and any other person or entity, with
14 respect to the subject matter covered hereby.

15 18. Governing Law. This Consent Order will be governed by and construed in
16 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
17 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
18 forum to the maintenance of such action or proceeding in such court.

19 19. Counterparts. This Consent Order may be executed in one or more separate
20 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
21 together constitute a single document.

22 20. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
23 qualification under the Commissioner’s current jurisdiction, or are the subject of any future action by
24 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
25 the purpose of such application(s) or enforcement proceeding(s).

26 21. Voluntary Agreement. Respondent hereby enters into this Consent Order voluntarily
27 and without coercion and acknowledges that no promises, threats, or assurances have been made by
28 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each

1 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily
2 and without any duress or undue influence of any kind from any source.

3 22. Notice. Any notice required under this Consent Order shall be provided to each party
4 at the following addresses:

5 To Counsel for Respondent: ALDRICH & BONNEFIN, PLC
6 Attn: Joel Cook
7 18500 Von Karman Avenue, Suite 300
8 Irvine, California 92612
9 jcook@ablawyers.com

10 To the Commissioner: Noah M. Bean, Senior Counsel
11 Department of Financial Protection and Innovation
12 2101 Arena Boulevard
13 Sacramento, California 95834
14 Noah.Bean@dfpi.ca.gov

15 23. Signatures. A fax or electronic mail signature shall be deemed the same as an
16 original signature.

17 24. Public Record. Respondent hereby acknowledges that the Consent Order is and will
18 be a matter of public record.

19 25. Effective Date. This Consent Order shall become final and effective when signed by
20 all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following
21 email address: jcook@ablawyers.com.

22 26. Authority to Sign. Each signatory hereto covenants that he/she possesses all
23 necessary capacity and authority to sign and enter into this Consent Order and undertake the
24 obligations set forth herein.

25 Dated: May 6, 2021

26 MANUEL P. ALVAREZ
27 Commissioner of Financial Protection and Innovation



28 By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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Dated: May 5, 2021

SVB INNOVATION CREDIT FUND VIII, L.P., FORMERLY
KNOWN AS WESTRIVER INNOVATION LENDING
FUND VIII, L.P.

By _____
Andrew Olson
Chief Financial Officer
SVB Innovation Credit Partners VIII, LLC as General
Partner of SVB Innovation Credit Fund VIII, L.P.