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9

10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CFL LICENSE NO.:_ 60DBO-106136
13)
14 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
PROTECTION AND INNOVATION,)
15)
16 Complainant,)
17 v.)
18 BOWHEAD IMC LP,)
19 Respondent.)
20)

21 This Consent Order is entered into between the Commissioner of Financial Protection and
22 Innovation (Complainant or Commissioner) and Respondent Bowhead IMC LP (Respondent) and is
23 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 750 Pandora
2 Avenue, Victoria, British Columbia, V8W 0E4, Canada.

3 C. Respondent is licensed as a finance lender under the CFL with main license number
4 60DBO-106136.

5 D. Respondent operates no branch offices in California.

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

8 F. On January 5, 2022, the Commissioner again notified CFL licensees of the March 15,
9 2022 deadline to file their annual reports by sending notice to the email address each CFL licensee
10 must establish for communications from the Commissioner (designated email address) pursuant to
11 the Commissioner's Order on Electronic Communications, dated November 22, 2013. The
12 notification again warned that the Commissioner could assess monetary penalties for untimely filing
13 or failing to file pursuant to Financial Code section 22715(b).

14 G. On February 17, 2022, the Commissioner again notified CFL licensees of the March
15 15, 2022 deadline to file their annual reports by sending notice to the email address each CFL
16 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
17 November 22, 2013. The notification warned that the Commissioner could assess penalties and
18 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section
19 22715.

20 H. On March 2, 2022, the Commissioner again notified CFL licensees of the March 15,
21 2022 deadline to file their annual reports by sending notice to the email address each CFL licensee
22 established pursuant to the Commissioner's Order on Electronic Communications, dated November
23 22, 2013. The notification warned that the Commissioner could assess penalties and summarily
24 revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

25 I. As of March 15, 2022, Respondent had not filed its Annual Report with the
26 Commissioner. As a result, the Commissioner issued a notice on March 18, 2022 to Respondent to
27 Respondent's email address established pursuant to the Commissioner's Order on Electronic
28 Communications, dated November 22, 2013, advising Respondent that it should file its annual report

1 by or before March 30, 2022 or else its license would be summarily revoked pursuant to Financial
2 Code section 22715 (Notice email).

3 J. As of March 30, 2022, Respondent had not filed its Annual Report with the
4 Commissioner as directed in the Notice Letter. As a result, on April 19, 2022, the Commissioner
5 issued an Order Summarily Revoking California Finance Lenders License and/or Broker license
6 pursuant to Financial Code Section 22715 for CFL License Number 60DBO-106136 (Summary
7 Revocation Order).

8 K. Upon receiving the Summary Revocation Order(s), Respondent timely notified the
9 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order(s).

10 L. On May 4, 2022, Respondent submitted its Annual Report, which was due on March
11 15, 2022, 35 business days late. Pursuant to Financial Code Section 22715, the maximum penalty
12 that may be imposed for filing 35 business days late is \$15,500.00 (\$100 per business day for the
13 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

14 M. In connection with these proceedings, Respondent represented to the Commissioner
15 that it had taken no new applications under its license.

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

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

20 **II.**

21 **TERMS AND CONDITIONS**

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

24 2. Order Rescinding Revocation Order. The Commissioner hereby rescinds the
25 Summary Revocation Order which had been issued on April 19, 2022 (Summary Revocation Order).

26 3. Administrative Penalty. Respondent shall pay an administrative penalty of
27 \$10,000.00 no later than 30 days after the effective date of this Consent Order as defined in
28 paragraph 25. The penalty must be made payable in the form of a cashier's check or Automated

1 Clearing House deposit to the Department of Financial Protection and Innovation and transmitted to
2 the attention of Accounting – Litigation, Department of Financial Protection and Innovation, 2101
3 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to
4 Paul Yee, Senior Counsel, Department of Financial Protection and Innovation, One Sansome Street,
5 Suite 600, San Francisco, California 94104.

6 4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
7 3, the Commissioner may summarily suspend Respondent from engaging in business under its
8 license until it provides evidence of compliance to the Commissioner’s satisfaction. Respondent
9 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,
10 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any
11 other provision of law to contest the summary suspension contemplated by this paragraph.

12 5. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready,
13 willing, and able to proceed with a hearing on the Summary Revocation Order on the charges
14 contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any
15 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
16 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
17 provision of law. Respondent further expressly waives any requirement for the filing of an
18 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,
19 Respondent effectively consents to this Consent Order and the Order Rescinding the Revocation
20 Order becoming final.

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

26 7. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
27 with the terms of this Consent Order, the Commissioner may, in addition to all other available
28 remedies it may invoke under the CFL, summarily suspend/revoke the CFL license of Respondent

1 until Respondent is in compliance. Respondent waives any notice and hearing rights to contest such
2 summary suspensions/revocations which may be afforded under the CFL, the California
3 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
4 in connection therewith.

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

9 9. Future Actions by Commissioner. If Respondent fails to comply with the terms of the
10 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
11 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
12 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees or
13 successors for any and all unknown violations of this CFL.

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

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

25 12. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
26 has had the opportunity to receive independent advice from an attorney(s) and/or representatives
27 with respect to the advisability of executing this Consent Order.
28

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

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

6 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this
7 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal
8 counsel, if represented. Each of the parties further represents, warrants, and agrees that in executing
9 this Consent Order it has placed no reliance on any statement, representation, or promise of any
10 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
11 party or any other person or entity to make any statement, representation, or disclosure of anything
12 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
13 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of
14 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

27 18. Governing Law. This Consent Order will be governed by and construed in
28 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court

1 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
2 forum to the maintenance of such action or proceeding in such court.

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

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

10 21. Voluntary Agreement. Respondent hereby enters into this Consent Order voluntarily
11 and without coercion and acknowledges that no promises, threats, or assurances have been made by
12 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each
13 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily
14 and without any duress or undue influence of any kind from any source.

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

17 To (Respondent Bowhead IMC LP): Jonathan D. Jaffee
18 Mayer Brown
19 575 Market Street, Suite 2500
20 San Francisco, CA 94105
jjaffee@mayerbrown.com

21 To the Commissioner: Paul Yee, Senior Counsel
22 Department of Financial Protection and Innovation
23 One Sansome Street, Suite 600
San Francisco, California 94104-4448
Paul.Yee@dfpi.ca.gov

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

26 24. Public Record. Respondent hereby acknowledges that the Consent Order is and will
27 be a matter of public record.
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25. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following email address: jjaffee@mayerbrown.com.

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

Dated: May 11, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: May 11, 2022

BOWHEAD IMC LP

By _____
KENTON FREITAG
President of the General Partner