

BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
Washington, D.C.

DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
OF THE STATE OF CALIFORNIA

In the Matter of

SILVERGATE CAPITAL CORPORATION
La Jolla, California

and

SILVERGATE BANK
La Jolla, California

Docket No. 23-003-B-HC
23-003-B-SM

Order to Cease and Desist Issued
Upon Consent Pursuant to the
Federal Deposit Insurance Act, as
Amended, and the California
Financial Code

WHEREAS, Silvergate Capital Corporation (the “Company”), La Jolla, California, is a registered bank holding company that owns and controls Silvergate Bank (the “Bank”), La Jolla, California, a state-chartered bank that is a member of the Federal Reserve System (collectively, “Silvergate”);

WHEREAS, the Board of Governors of the Federal Reserve System (“Board of Governors”) is the appropriate federal banking agency and supervisor of Silvergate, and the Department of Financial Protection and Innovation of the State of California (“DFPI”) is the chartering authority and state supervisor of Silvergate;

WHEREAS, since at least 2013, Silvergate has pursued a business strategy focused on providing banking and other financial services, including deposit and cash management services, to the crypto-asset industry, both domestically and internationally;

WHEREAS, a central component of Silvergate’s business strategy was the provision and operation of a near real-time payments network within the Bank, known as the Silvergate

Exchange Network (“SEN”), to be used by the Bank’s crypto-asset-related commercial customers to transfer U.S. dollars to those SEN accounts held at the Bank by other similarly situated users;

WHEREAS, the most recent examinations of Silvergate conducted by the Federal Reserve Bank of San Francisco (“Reserve Bank”) and the DFPI (collectively, the “Supervisors”) identified numerous deficiencies, including with respect to both safety and soundness and compliance with banking laws and regulations;

WHEREAS, beginning in the fourth quarter of 2022, the Bank experienced significant declines in deposits by its crypto-asset-related customers, triggered in part by the collapse of the crypto-asset exchange FTX Trading Ltd. and its affiliated proprietary trading firm Alameda Research LLC (collectively, “FTX/Alameda”), which has resulted in funding and liquidity stress on the Bank and a decline in activities that were key sources of revenue;

WHEREAS, on March 1, 2023, the Company announced the delayed filing of its Annual Report on Form 10-K for the fiscal year ended December 31, 2022, disclosing (a) the failure to obtain year-end audited financial statements, (b) that the Company was evaluating its ability to continue as a going concern, and (c) that the Company was in the process of reevaluating its businesses and strategies in light of the business and regulatory challenges it faces;

WHEREAS, on March 7, 2023, the board of directors of the Bank voted to authorize the voluntary liquidation of the Bank, and has thereby stated its intention to wind down operations and voluntarily liquidate the Bank in accordance with applicable regulatory processes outside of a receivership by the Federal Deposit Insurance Corporation (“FDIC”);

WHEREAS, the Company has represented that the wind down and liquidation plan would include full repayment of all deposits at the Bank;

WHEREAS, it is the common goal of the Board of Governors, DFPI, and Silvergate for Silvergate to voluntarily liquidate in a safe and sound manner and in compliance with all applicable federal and state laws, rules, and regulations;

WHEREAS, the Board of Governors, DFPI, and Silvergate have mutually agreed to enter into this Cease and Desist Order (the “Order”); and

WHEREAS, the boards of directors of Silvergate, at duly constituted meetings, adopted resolutions authorizing and directing the undersigned to enter into this Order on behalf of Silvergate, and consenting to compliance with each and every provision of this Order by Silvergate, and waiving all rights that Silvergate may have pursuant to section 8 of the Federal Deposit Insurance Act, as amended (the “FDI Act”) (12 U.S.C. § 1818), and California Financial Code § 580, including, but not limited to: (i) the issuance of a notice of charges on any and all matters set forth in this Order; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Order; (iii) judicial review of this Order; and (iv) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Order or any provision hereof.

NOW, THEREFORE, it is hereby ordered that, before the filing of any notices, or taking any testimony or adjudication of or finding on any issues of fact or law, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, pursuant to sections 8(b)(1) and (b)(3) of the FDI Act (12 U.S.C. §§ 1818(b)(1) and 1818(b)(3)) and California Financial Code § 580, Silvergate and its institution-affiliated parties, as defined in section 3(u) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(3)), shall cease and desist and take affirmative action as follows:

Source of Strength

1. The board of directors of the Company shall take appropriate steps to fully utilize the Company's financial and managerial resources, pursuant to section 38A of the FDI Act (12 U.S.C. § 1831o-1) and section 225.4(a) of Regulation Y of the Board of Governors (12 C.F.R. § 225.4(a)), to serve as a source of strength to the Bank, including, but not limited to, taking steps to ensure that the Bank complies with any supervisory action taken by its federal or state regulators.

Voluntary Self-Liquidation Plan

2. Within 10 days of this Order, the Company and the Bank shall submit a plan acceptable to the Supervisors that provides for the implementation of the Bank's voluntary decision to self-liquidate and the orderly wind down of its operations (the "Self-Liquidation Plan"), and that complies with all federal and state legal requirements, including California Financial Code § 720. After the Self-Liquidation Plan is approved by the Supervisors, the Company and the Bank shall take all necessary steps to ensure that the Self-Liquidation Plan is fully implemented and may not amend, alter, or revoke the plan without the express written consent of the Supervisors. The Self-Liquidation Plan shall be designed to protect the Bank's depositors and the Deposit Insurance Fund to the fullest extent possible, and, at a minimum, ensure that Silvergate continues to:

(a) maintain sufficient staffing and operational resources during the self-liquidation process that, among other things, ensures the Bank's depositors can be adequately served and the Bank can continue to timely cooperate with the Board of Governors and DFPI;

(b) monetize and recover on its loans, securities, and other assets in a manner that prioritizes and protects depositors' funds;

- (c) reduce its liabilities and provide payment or provision to creditors in an orderly manner and in accordance with applicable law;
 - (d) ensure that the books and records of the Bank are adequately maintained;
- and
- (e) otherwise protect customers and ensure the Bank is able to comply with any and all administrative or judicial orders or other agreements with regulatory authorities.

Capital Conservation

3. Effective immediately, the Company and the Bank shall not declare or pay dividends, engage in share repurchases, or make any other capital distribution in respect of common shares, preferred shares, or other capital instruments, including, without limitation, any interest payments due on subordinated debentures or trust preferred securities, without the prior written approval of the Supervisors and the Director of Supervision and Regulation of the Board of Governors. All requests for prior approval shall be received in writing at least 14 days prior to the earlier of the proposed declaration, payment, or distribution date, or required notice of deferral, and shall contain, at a minimum, current and projected information, as appropriate, on the Company's and the Bank's respective capital, earnings, and cash flows; the Bank's asset quality and allowance for loan and lease losses; and identification of the source(s) of funding for the proposed payment or distribution.

Preservation of Cash Assets

4. Effective immediately, the Company and the Bank shall preserve their respective cash assets and shall not dissipate those assets, including with respect to executive compensation and severance payments, without prior written approval from the Supervisors, except those that:

- (i) are in accordance with the provisions of this Order, including the Self-Liquidation Plan; and

(ii) involve payment of normal and customary expenses necessary for operation of the Company and/or the Bank.

Brokered Deposits

5. (a) Effective immediately, the Bank shall not acquire additional brokered deposits, as defined in 12 C.F.R. § 337.6, without the prior approval of the Supervisors.

(b) Within 30 days of receiving written notification from the Supervisors, the Bank shall submit an acceptable written plan to the Supervisors that details the current composition of the Bank's brokered deposits by maturity and explain the means by which such deposits will be paid at maturity.

6. The Bank shall comply with the provisions of section 29 of the FDI Act (12 U.S.C. § 1831f) and the accompanying regulations of the FDIC at 12 C.F.R. Part 337 that are or become applicable to the Bank. The Bank shall provide written notice to the Supervisors if the Bank requests any waiver of the restrictions imposed by section 29 from the FDIC and shall notify the Supervisors of the FDIC's disposition of any request for such a waiver.

Prior Approval for New Business

7. Effective immediately, the Bank shall not engage in any expansionary activities, new lines of business, or establish any new branches or other offices of the Bank, without the prior written approval of the Supervisors.

Officer and Director Approval and Golden Parachutes

8. (a) In appointing any new director or senior executive officer, or changing the responsibilities of any senior executive officer so that the officer would assume a different senior executive officer position, the Company and the Bank shall comply with the notice provisions of section 32 of the FDI Act (12 U.S.C. § 1831i) and Subpart H of Regulation Y of the Board of

Governors (12 C.F.R. § 225.71 et seq.), and the Bank shall request and obtain a non-disapproval from the DFPI prior to the appointment or change.

(b) The Company and the Bank shall comply with the restrictions on indemnification and golden parachute payments of section 18(k) of the FDI Act (12 U.S.C. § 1828(k)) and the FDIC's accompanying regulations at 12 C.F.R. Part 359.

Records Preservation

9. Silvergate shall immediately take affirmative steps to preserve records and to suspend deletion, overwriting, modification, or other destruction of paper documents, electronic documents and metadata (in their current form), physical items, and data under the Bank's control. Documents include but are not limited to physical and electronic correspondence, handwritten and electronically stored notes, telephone logs, voicemails, emails, text messages, instant messages, ephemeral messaging applications, calendars, recordings of conference calls and videoconferences, spreadsheets, files stored as Word, PDF, JPEG, or other formats, databases, cloud-based storage, workplace collaboration tools, temporary internet files, cookies, .ZIP files, and any and all other forms of electronic or physical information, wherever it resides, including the Internet.

The above preservation order extends to relevant data stored on external media, including but not limited to hard drives, USBs, personal home computers, laptops, and mobile devices including smart phones and tablets.

Approval, Implementation, and Progress Reports

10. (a) The Company and the Bank, as applicable, shall submit a Self-Liquidation Plan acceptable to the Supervisors within the applicable time periods set forth in paragraph 2 of this Order.

(b) Within 10 days of approval by the Supervisors, the Company and the Bank, as applicable, shall adopt the Self-Liquidation Plan. Upon adoption, the Company and the Bank, as applicable, shall promptly implement the Self-Liquidation Plan, and thereafter fully comply with the plan.

(c) During the term of this Order, the Self-Liquidation Plan shall not be amended or rescinded without the prior written approval of the Supervisors.

11. Within 10 days after the end of each quarter following the date of this Order, the Company and the Bank, as applicable, shall submit to the Supervisors written progress reports detailing the form and manner of all actions taken to secure compliance with this Order, a timetable and schedule to implement specific remedial actions to be taken, and the results thereof. The Supervisors may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

Continuing Cooperation

12. Silvergate shall continue to fully cooperate with and provide substantial assistance to the Board of Governors and DFPI, including, but not limited to, the provision of information, testimony, documents, records, and other tangible evidence and the performance of analysis as directed by the Board of Governors and DFPI in connection with the Board of Governors' and DFPI's ongoing investigation into Silvergate's relationship with FTX/Alameda and SEN transactions. For purposes of clarity and not limitation, substantial assistance as used in this Order means Silvergate will use its best efforts, as determined by the Board of Governors and DFPI, to make available for interviews or testimony, as requested by the Board of Governors and DFPI, present or former officers, directors, employees, agents, and consultants of Silvergate. This obligation includes, but is not limited to, sworn testimony pursuant to administrative

subpoena as well as interviews with regulatory authorities. Cooperation under this paragraph shall also include identification of witnesses who, to the knowledge of Silvergate, may have material information regarding the matters under investigation.

Communications

13. All communications regarding this Order shall be sent to:
 - (a) Richard M. Ashton
Deputy General Counsel
Jason A. Gonzalez
Assistant General Counsel
Board of Governors of the Federal Reserve System
20th & C Streets, N.W.
Washington, D.C. 20551
 - (b) Mongkha Pavlick
Senior Vice President
Federal Reserve Bank of San Francisco
950 South Grand Avenue
Los Angeles, CA 90015
 - (c) Catherine Nahnsen-Robison
Regional Deputy Commissioner
Department of Financial Protection and Innovation
300 South Spring Street, Suite 15513
Los Angeles, CA 90013
 - (d) John Buretta
Partner
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019-7475
 - (e) Will Giles
Of Counsel
Cravath, Swaine & Moore LLP
1601 K Street NW
Washington, DC 20006-1682

- (f) Michael N. Levy
Principal
Ellerman Enzinna Levy PLLC
1050 30th Street NW
Washington, DC 20007

- (g) Alan Lane
Chief Executive Officer
Silvergate Capital Corporation
Silvergate Bank
4250 Executive Square, Suite 300
San Diego, CA 92037

Miscellaneous

14. Notwithstanding any provision of this Order to the contrary, the Supervisors may, in their sole discretion, grant written extensions of time to the Company and the Bank to comply with this Order. The Company and the Bank must submit a written request to the Supervisors for any extensions of time.

15. The provisions of this Order shall be binding on the Company and the Bank, and each of their institution-affiliated parties, in their capacities as such, and their successors and assigns.

16. Each provision of this Order shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Board of Governors and DFPI.

17. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, the Reserve Bank, DFPI, or any other federal or state agency from taking any other action affecting the Company, the Bank, any of their subsidiaries, or any of their current or former institution-affiliated parties and their successors and assigns.

By Order of the Board of Governors of the Federal Reserve System and the Department of Financial Protection and Innovation of the State of California, effective this 23rd day of May 2023.

SILVERGATE CAPITAL
CORPORATION

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: /s/ Alan Lane
Alan Lane
Chief Executive Officer

By: /s/ Ann E. Misback
Ann E. Misback
Secretary of the Board

SILVERGATE BANK

DEPARTMENT OF FINANCIAL
PROTECTION AND INNOVATION OF
THE STATE OF CALIFORNIA

By: /s/ Alan Lane
Alan Lane
Chief Executive Officer

By: /s/ Aaron Prosperi
Aaron Prosperi
Deputy Commissioner