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10 Attorneys for Complainant

11
12 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
13 OF THE STATE OF CALIFORNIA

14 In the Matter of:) Banking License No, 1824
15 THE COMMISSIONER OF FINANCIAL)
16 PROTECTION AND INNOVATION,) CONSENT ORDER
17 Complainant,)
18 v.)
19 SILVERGATE CAPITAL CORPORATION)
20 and SILVERGATE BANK,)
21 Respondents.)
22 _____)

23 This Consent Order is entered into between the Commissioner of Financial Protection and
24 Innovation (“Commissioner”) of the Department of Financial Protection and Innovation
25 (“Department”) and Respondents Silvergate Capital Corporation (“Holding Company”) and
26 Silvergate Bank (“Bank”), (collectively, “Silvergate” and together with the Commissioner and the
27 Department, the “Parties”) and is made with respect to the following:
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I.

RECITALS

A. Silvergate Capital Corporation of La Jolla, California, is a bank holding company under sections 550, 553, and 1280 of the California Financial Code. The Holding Company owns and controls Silvergate Bank of La Jolla, California, a state-chartered bank formed under Division 1.1 of the California Financial Code and a licensee of the Department under section 329(a)(2) of the California Financial Code.

B. The Department of Financial Protection and Innovation of the State of California is the chartering authority and state supervisor of the Bank.

C. Silvergate is required to comply with all applicable federal laws, rules, and regulations relating to anti-money laundering (“AML”) compliance, including the Bank Secrecy Act (“BSA”) (31 U.S.C. § 5311 et seq.), the rules and regulations issued thereunder by the U.S. Department of the Treasury (31 C.F.R. Chapter X), and the requirements of Regulation H of the Board of Governors of the Federal Reserve System (“Board of Governors”) to report suspicious activity and to maintain an adequate BSA/AML compliance program (12 C.F.R. §§ 208.62-63) (collectively, the “BSA/AML Requirements”).

D. Silvergate is required to comply with all applicable state laws related to banking under the Financial Institutions Law (Cal. Fin. Code §§ 99-819, specifically including Cal. Fin. Code §§ 456, 580(a), 580(b)(3), and 582(a)) and the Banking Law (Cal. Fin. Code §§ 1000-1910).

1 E. From approximately 2014 through March 2023, Silvergate focused on providing
2 banking and financial services to foreign and domestic companies engaged in, among other things,
3 buying and selling crypto-assets.¹

4 F. In 2017, to facilitate U.S. dollar-denominated internal Bank transfers among
5 Silvergate customers engaged in buying and selling crypto-assets, Silvergate launched the Silvergate
6 Exchange Network (“SEN”), an internal payments platform that permitted Bank customers
7 participating in the SEN to make and receive, in near-real-time, internal Bank transfers of U.S.
8 dollars to and from other Bank customers participating in the SEN.

9 G. An investigation by the Department identified deficiencies with respect to
10 Silvergate’s monitoring of internal transactions.

11 H. On May 23, 2023, the Commissioner, the Board of Governors, and Silvergate
12 mutually agreed to enter a cease-and-desist order that requires Silvergate to implement the Bank’s
13 self-liquidation and cessation of operations in a safe and sound manner to protect the Bank’s
14 depositors and the Deposit Insurance Fund (the “May 2023 Cease and Desist Order”).

15 I. On June 4, 2024, Silvergate and the Board of Governors agreed to an Order of
16 Assessment of Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance
17 Act, as Amended, reflecting a civil money penalty of Forty-Three Million Dollars (\$43,000,000.00).

18 J. Silvergate represents that it has taken appropriate steps to liquidate and wind down
19 the operations of the Bank in an orderly manner as required under Financial Code section 720 and
20 the May 2023 Cease and Desist Order.
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28 ¹ The term “crypto-asset” used in this order is particular to California law. For clarity, “crypto-asset” is analogous to the term “Convertible Virtual Currency” (“CVC”) as used in federal BSA/AML guidance.

1 NOW, THEREFORE, before the adjudication of or finding on any issues of fact or law
2 herein, without Silvergate admitting or denying any allegations made or implied by the Department
3 in connection herewith, the Parties intend to enter this Consent Order to resolve this matter solely for
4 the purposes of judicial economy and expediency, and without the uncertainty and expense of a
5 hearing or other litigation.
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7 **II.**

8 **TERMS AND CONDITIONS**

9 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth
10 above in a manner that avoids the expense of a hearing and other possible court proceedings,
11 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
12 provisions of the Financial Institutions Law.
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14 2. Penalty. Silvergate agrees to provide a relief package with a total value of Sixty-
15 Three Million Dollars (\$63,000,000.00) for the practices described above. This amount shall consist
16 of a payment of Twenty Million Dollars (\$20,000,000.00) (“Department Penalty”) to be paid to the
17 Department for a monetary penalty, and a payment of Forty-Three Million Dollars
18 (\$43,000,000.00), which Silvergate has separately consented to pay to the Board of Governors as a
19 civil money penalty.
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21 3. Payment. Silvergate agrees to pay the Department Penalty on the date (“Self-
22 Liquidation Date”) on which the Commissioner accepts the Bank’s surrender of its authorization to
23 transact business as a bank (“the Charter”). The Department Penalty payment must be made in the
24 form of a cashier’s check or Automated Clearing House deposit payable to the “Department of
25 Financial Protection and Innovation” and transmitted to the attention of “Accounting – Litigation” at
26 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
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1 95834-2036. Notice of the Department Penalty payment shall be concurrently sent to Louis T.
2 Laverone, Senior Counsel, at the e-mail address noted in Paragraph 22. Silvergate shall relinquish all
3 dominion, control, and title to the Department Penalty to the fullest extent permitted by law and no
4 part of the Department Penalty may be returned to Silvergate.
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6 4. Data Retention. The Holding Company agrees to ensure that the Bank’s records are
7 preserved and maintained in a form accessible by the Commissioner, the Board of Governors, law
8 enforcement, and other state and federal regulators (collectively, “Relevant Authorities”) after
9 liquidation. These records will be maintained at the Holding Company’s expense for a period of at
10 least seven years from the Self-Liquidation Date. The Holding Company has identified the following
11 point of contact to support access by Relevant Authorities: Michael Levy, Ellerman Enzinna Levy
12 PLLC, 1050 30th Street NW, Washington, District of Columbia 20007 (MLevy@eellaw.com).
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14 5. Charter. The Commissioner agrees that, assuming Silvergate timely fulfills and
15 completes all duties and obligations under the Silvergate Bank Self-Liquidation Plan approved by
16 the Commissioner on October 2, 2023 (the “Self-Liquidation Plan”), the Commissioner will accept
17 the surrender of the Charter. Nothing in this Consent Order relieves the Commissioner’s legal
18 obligations to evaluate the release of the Charter as provided under the Self-Liquidation Plan and
19 under Financial Code section 720 and other applicable law, as required in the usual and normal
20 course of the Commissioner’s duties. All of Silvergate’s obligations to the Department under the
21 May 2023 Cease and Desist Order are terminated as of the Self-Liquidation Date.
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23 6. Full and Final Settlement. The Parties hereby acknowledge and agree that this
24 Consent Order is intended to constitute a full, final, and complete resolution of this matter, and that
25 no further proceedings or actions will be brought by the Commissioner against the Holding
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1 Company or the Bank in connection with Paragraph G above, excepting therefrom any proceeding to
2 enforce compliance with the terms of this Consent Order.

3 7. Waiver of Hearing Rights. Silvergate hereby waives the right to any hearings, and to
4 any reconsideration, appeal, or other right to review which may be afforded pursuant to the Financial
5 Institutions Law, the Banking Law, the California Administrative Procedure Act, the California
6 Code of Civil Procedure, or any other provision of law in connection with these matters. Silvergate
7 further expressly waives any requirement for the filing of an Accusation pursuant to Government
8 Code section 11415.60, subdivision (b). By waiving such rights, Silvergate effectively consents to
9 this Consent Order becoming final.
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11 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
12 rescinded, and the Commissioner may pursue any and all remedies available under the law against
13 the Holding Company or the Bank if the Commissioner discovers that the Holding Company or the
14 Bank knowingly or willfully withheld or misrepresented information used for and relied upon in this
15 Consent Order.
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17 9. Future Actions by Commissioner. If the Holding Company or the Bank fails to
18 comply with any terms of this Consent Order, the Commissioner may institute proceedings for any
19 and all violations resolved under this Consent Order. The Commissioner reserves the right to bring
20 any future actions against the Holding Company, the Bank, or any of Silvergate’s partners, owners,
21 officers, shareholders, directors, employees or successors for any and all violations of this Consent
22 Order.
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24 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
25 ability to assist a government agency (whether city, county, state, or federal) with any
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1 administrative, civil, or criminal prosecutions brought by that agency against the Holding Company,
2 the Bank, or any other person based upon any of the activities alleged in this matter or otherwise.

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

6 12. Binding. This Consent Order is binding on all heirs, assigns, or successors in interest.

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

16 14. No Presumption Against Drafting Party. Each party acknowledges that it has had the
17 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
18 intend that no presumption for or against the drafting party will apply in construing any part of this
19 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
20 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
21 language of a contract should be interpreted most strongly against the party that caused the
22 uncertainty to exist.
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1 15. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
2 has received independent advice from its attorney(s) or representatives with respect to the
3 advisability of executing this Consent Order.
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5 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
6 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
7 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
8 provision. No waiver by either party of any breach of, or of compliance with, any condition or
9 provision of this Consent Order by the other party will be considered a waiver of any other condition
10 or provision or of the same condition or provision at another time.
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12 17. Full Integration. This Consent Order is the final written expression and the complete
13 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
14 between the parties with respect to the subject matter hereof, and supersedes all prior or
15 contemporaneous agreements, negotiations, representations, understandings, and discussions
16 between and among the parties, their respective representatives, and any other person or entity, with
17 respect to the subject matter covered hereby.
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19 18. Governing Law. This Consent Order shall be construed and enforced in accordance
20 with and governed by California law. Each of the parties hereto consents to the jurisdiction of such
21 court in California, administrative or otherwise, best suited to handle any action or proceeding under
22 this Consent Order, and hereby irrevocably waives, to the fullest extent permitted by law, the
23 defense of an inconvenient forum to the maintenance of such action or proceeding in such court.
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25 19. Counterparts. This Consent Order may be executed in one or more separate
26 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
27 together constitute a single document.
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1 20. Effect Upon Future Proceedings. If the Holding Company, the Bank, or any other
2 entity controlled by the Holding Company is the subject of any future action by the Commissioner to
3 enforce this Consent Order, then the subject matter hereof shall be admitted for the purpose of such
4 proceeding(s). Notwithstanding the foregoing, if the Holding Company, the Bank, or any other entity
5 controlled by the Holding Company applies to the Commissioner for a license, permit or
6 qualification, the Commissioner shall not deny such license, permit or qualification solely due to the
7 existence of this Consent Order or the findings contained therein.
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9 21. Voluntary Agreement. Silvergate enters this Consent Order voluntarily and without
10 coercion and acknowledges that no promises, threats or assurances have been made by the
11 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
12 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
13 without any duress or undue influence of any kind from any source.
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15 22. Notice. Any notice required under this Consent Order shall be provided to each party
16 at the following addresses:
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- 19 i. To the Commissioner:
20 Louis Laverone
21 Senior Counsel
22 Department of Financial Protection and Innovation
23 320 West Fourth Street, Suite 750
24 Los Angeles, California 90013-2344
25 Louis.Laverone@dfpi.ca.gov

 - 26 ii. To Silvergate Capital Corporation and Silvergate Bank:
27 Michael Levy
28 Principal
 Ellerman Enzinna Levy PLLC
 1050 30th Street NW
 Washington, District of Columbia 20007
 MLEvy@eellaw.com

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John Buretta
Partner
Cravath, Swaine & Moore LLP
375 Ninth Avenue
New York, New York 10001
JBuretta@cravath.com

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

24. Public Record. Silvergate hereby acknowledges that this Consent Order is and will be a matter of public record.

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 Silvergate’s counsel at MLevy@eellaw.com and JBuretta@cravath.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: June 26, 2024

DEPARTMENT OF FINANCIAL PROTECTION
AND INNOVATION

By _____
CLOTHILDE V. HEWLETT
Commissioner

Dated: June 26, 2024

SILVERGATE CAPITAL CORPORATION

By _____
ANDREW SURRY
Chief Accounting Officer

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Dated: June 26, 2024

SILVERGATE BANK

By _____
ANDREW SURRY
Chief Accounting Officer