

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 35331 / September 23, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22158**

**In the Matter of**  
  
**SuRo Capital Corp.**  
  
**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against SuRo Capital Corp. (“SuRo” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds that:

## **Summary**

1. These proceedings arise out of SuRo’s failure to properly custody securities in compliance with the custody provisions of Section 17(f) of the Investment Company Act and the rules thereunder. SuRo elected to have a qualified bank to serve as the custodian of its assets under Section 17(f) of the Investment Company Act but, from at least July 2019 through June 2022 (the “Relevant Period”), certain of SuRo’s assets were not held by its qualified custodian bank and were not otherwise maintained in accordance with Section 17(f) of the Investment Company Act and the rules thereunder. During the same period, SuRo failed to implement policies and procedures reasonably designed to prevent violations of the federal securities laws with respect to the custody of its assets, in violation of Rule 38a-1 of the Investment Company Act.

## **Respondent**

2. SuRo, formerly known under the names Sutter Rock Capital Corp., GSV Capital Corp., and NeXt Innovation Corp., is a publicly traded, non-diversified closed-end management investment company that, in April 2011, elected to be regulated as a business development company (“BDC”) under the Investment Company Act. SuRo has been internally managed since March 12, 2019. SuRo is incorporated in Maryland and is headquartered in New York, New York. SuRo’s common stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 and trades on the NASDAQ Global Select Market under the ticker symbol SSSS.

## **Background**

3. Pursuant to Section 54(a) of the Investment Company Act, certain closed-end funds may elect to become BDCs and to be subject to the provisions of Sections 55 through 65 of the Investment Company Act. On April 27, 2011, SuRo filed a Form N-54A with the Commission making such an election. Section 59 of the Investment Company Act makes Section 17(f) of the Investment Company Act and the rules thereunder applicable to BDCs. Under Section 17(f) of the Investment Company Act, a registered investment company, or a closed-end company that has elected to be regulated as a BDC, must place and maintain its securities and similar investments in the custody of (A) a bank meeting the qualifications set forth in Section 26(a) of the Investment Company Act (a “qualified bank”); (B) a member of a national securities exchange (“broker-dealer”); or (C) itself (“self-custody”).

4. SuRo elected in its policies and procedures “to place and maintain its securities and similar investments” in the custody of a qualified bank (“Custodian Bank”) in accordance with Section 17(f)(1) of the Investment Company Act. SuRo’s predecessor, NeXt Innovation Corp., entered into a custody agreement with the Custodian Bank in April 2011 (“Custody Agreement”), which remained in place through the Relevant Period.

### **SuRo's Failure to Properly Custody Certain of its Securities**

5. SuRo acquires securities through direct investments in prospective portfolio companies, secondary marketplaces for private companies, and negotiations with selling stockholders. Many of these investments are equity investments pursuant to private placements, the ownership of which may not be represented by a physical stock certificate and are recorded on the books of the issuer. SuRo also acquires securities by making loans to companies.

6. SuRo elected to place and maintain all of its securities and similar investments, including privately offered securities, loans, and other securities not represented by a physical certificate ("Uncertificated Securities") with a qualified bank, and, with the approval of its Board, engaged the Custodian Bank pursuant to the Custody Agreement.

7. During the Relevant Period, the Custody Agreement defined "securities" to include "equity investments, including investments in partnership and limited liability companies" and outlined procedures for SuRo to custody Uncertificated Securities at the Custodian Bank. The Custody Agreement provided that SuRo would transmit the necessary documentation such that the Custodian Bank "shall maintain a register (in book-entry form or in such other form as it shall deem necessary or desirable)" of such Uncertificated Securities. The Custody Agreement detailed the documentation required by the Custodian Bank to custody the Uncertificated Securities. The Custody Agreement was silent as to loans, although, as noted below, SuRo's written policies and procedures required all assets be held by a Board-approved custodian.

8. During the Relevant Period, SuRo did not ensure that its Uncertificated Securities were placed and maintained with the Custodian Bank. Specifically, SuRo did not follow the provisions of the Custody Agreement requiring delivery to the Custodian Bank of certain documents evidencing SuRo's acquisition of Uncertificated Securities or otherwise provide notice of portfolio holdings in its Uncertificated Securities or changes in those holdings to its Custodian Bank. Rather, during the Relevant Period, SuRo's Uncertificated Securities were variously held with brokers, transfer agents, and in self-custody without complying with Section 17(f) of the Investment Company Act and the rules thereunder. Although SuRo's policy was to custody its Uncertificated Securities with a qualified bank, it failed to do so, and did not otherwise comply with Section 17(f) of the Investment Company Act and the rules thereunder with respect to those securities.

9. An examination by the staff of the Commission's Division of Examinations in 2022 identified that SuRo was failing to maintain certain of its Uncertificated Securities with the Custodian Bank, or otherwise in accordance with Section 17(f) of the Investment Company Act and the rules thereunder.

10. In June 2022, following the examination, SuRo transitioned all Uncertificated Securities to its Custodian Bank.

### **SuRo Failed to Implement its Written Policies and Procedures**

11. Rule 38a-1(a)(1) under the Investment Company Act requires registered investment companies and BDCs to adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws by the BDC.

12. During the Relevant Period, SuRo adopted written policies and procedures to help ensure its compliance with the requirements of Section 17(f) of the Investment Company Act and the rules thereunder. According to its policies and procedures, upon making an investment in a portfolio company, SuRo was responsible for confirming “that all Company portfolio securities and other assets are held in the custody of a Board-approved custodian” and for “periodically conduct[ing] sample tests to determine compliance” with its custody procedures, including that “all fully completed and executed documentation” evidencing an investment in a portfolio company is “promptly sent by [the] portfolio company to the appropriate office of the Custodian.”

13. SuRo’s written policies and procedures further stated that it was its policy “to acquaint appropriate personnel with the terms of the negotiated custody agreement regarding maintenance of assets and to require strict adherence to those procedures.” It was also the policy of SuRo to review its custodial arrangements annually.

14. According to its policies and procedures, SuRo “should also engage in custody reconciliation by obtaining custodial statements from the custodian and comparing the custodial statements with its internal records.”

15. SuRo failed to implement any of these policies and procedures with respect to Uncertificated Securities. As a result of the failure to implement its compliance policies and procedures, SuRo failed to place and maintain custody of its Uncertificated Securities with the Custodian Bank.

### **Violations**

16. As a result of the conduct described above, SuRo violated Section 17(f) of the Investment Company Act, which requires a BDC to place and maintain its securities and similar investments in the custody of bank, a broker-dealer, or its own custody, subject to certain rules prescribed by the Commission.

17. As a result of the conduct described above, SuRo violated Rule 38a-1 under the Investment Company Act, which requires a BDC to adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws.

### **SuRo’s Remedial Efforts**

18. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent. In October 2022, SuRo updated its written policies and procedures with respect to the custody of Uncertificated Securities, including requiring that, within two business days of making an investment in a portfolio company, SuRo send all executed documentation of an investment in a portfolio company to its Custodian Bank. Also in

October 2022, SuRo entered into an updated custody agreement with a Custodian Bank which, among things, explicitly defined Uncertificated Securities to include loans and set out requirements for the custody of such Uncertificated Securities by the Custodian Bank. SuRo further added policies and procedures requiring it to conduct a reconciliation on a weekly basis to confirm that its portfolio securities and other assets are held in the custody of a Board-approved custodian and that any transfers or withdrawals of such securities or other assets are made only in accordance with the custody agreement with its Custodian Bank.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent SuRo's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent SuRo cease and desist from committing or causing any violations and any future violations of Section 17(f) of the Investment Company Act and Rule 38a-1 thereunder.

By the Commission.

Vanessa A. Countryman  
Secretary