EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: KSERVICING WIND DOWN CORP., *et al.*,[1] Post-Confirmation Debtors.	Chapter 11 Case No. 22-10951 (CTG) (Jointly Administered)
KSERVICING WIND DOWN CORP. (f/k/a Kabbage, Inc.), Plaintiff, v. ROBERT FROHWEIN, *et al.*, Defendants.	Adv. Pro. No. 25-52372 (CTG)

JOINT DECLARATION ON BEHALF OF ALL DEFENDANTS[2]

Lena Konanova, Daniel A. Mason, Rebecca L. Butcher, Barry J. Pollack, and Ani-Rae Lovell, attorneys duly admitted to practice law before this Court, declare the following under pen-alty of perjury:

[1] The post-confirmation Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable are: KServicing Wind Down Corp. (f/k/a Kabbage, Inc. d/b/a KServicing) (3937); KServicing Wind Down Canada Holdings LLC (f/k/a Kabbage Canada Holdings, LLC) (N/A); KServicing Wind Down Asset Securitization LLC (f/k/a Kabbage Asset Securitization LLC) (N/A); KServicing Wind Down Asset Funding 2017-A LLC (f/k/a Kabbage Asset Funding 2017-A LLC) (4803); KServicing Wind Down Asset Funding 2019-A LLC (f/k/a Kabbage Asset Funding 2019-A LLC) (8973); and KServicing Wind Down Diameter LLC (f/k/a Kabbage Diameter, LLC) (N/A). The Debtors' mailing and service address is KServicing Wind Down Corp. c/o Resolute Commercial Services, 6750 E. Camelback Road, Suite 103, Scottsdale, AZ 85251.

[2] The term "All Defendants" refers to all defendants named in the Complaint [Adv. D.I. 1] and includes Bennu Holdings Limited Co., Blue Run Ventures IV, LP, BRV Opportunities Fund, L.P., Curieux Limited Co., The Frohwein Family 2015 Trust, MDV IX, L.P., Raymond James & Associates, Inc. CSDN FBO Robert Frohwein RIRA U/A/D 5/27/16 A/C 2867A298, Thomvest

1. Lena Konanova is a partner of the law firm Selendy Gay PLLC, counsel for the D&O and Shareholder Defendants. She makes this Declaration based on her personal knowledge and avers that the exhibits listed below which are cited in the *D&O and Shareholder Defendants' Memorandum of Law in Support of Motion to Dismiss* are true and correct.

2. Daniel Mason is a partner of the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel for the Reverence Defendants. Rebecca L. Butcher is a partner of the law firm Landis Rath & Cobb LLP, counsel for the SoftBank Defendants. They make this Declaration based on their personal knowledge and aver that the exhibits listed below which are cited in the *Memorandum of Law in Support of Certain Defendants' Motion to Dismiss Counts IV, VI, and VII* and the *Memorandum of Law in Support of Motion to Dismiss of Non-Management Director Defendants Ioannis Pipilis and Alex Chulack* are true and correct.

3. Barry J. Pollack is a partner of the law firm Harris St. Laurent LLP, counsel for L. Scott Askins. He makes this Declaration based on his personal knowledge and avers that the exhibits listed below which are cited in the *Memorandum of Law of L. Scott Askins in Support of Her Motion to Dismiss the Complaint* are true and correct.

4. Lisa Hertzer Schertler is a partner of the law firm Schertler Onorato Mead Sears & Manning, counsel for Spencer Robinson. She makes this Declaration based on her personal knowledge and avers that the exhibits listed below which are cited in *Defendant Spencer Robinson's Memorandum in Support of Motion to Dismiss* are true and correct.

Ventures Ltd., Donald Butler, Jonathan Ebinger, Robert Frohwein, Kathryn Petralia, and Bryan Stolle (the "D&O and Shareholder Defendants"); Alex Chulack, Reverence Capital Partners Opportunities Fund I, L.P., Reverence Capital Partners Opportunities Fund I (Cayman), L.P., RCP Kicker Co-Invest, L.P., and Reverence Capital Partners Opportunities Fund I (AI), L.P. (the "Reverence Defendants"); Ioannis Pipilis, SoftBank Vision Fund (AIV M2) L.P., and SoftBank PrinceVille Investments, L.P. (the "SoftBank Defendants"); Leslie Scott Askins; Spencer Robinson; and Laurie Simon Hodrick.

5. Ani-Rae Lovell is counsel at the law firm Ropes & Gray LLP, counsel for Laurie Hodrick. She makes this Declaration based on her personal knowledge and avers that the exhibits listed below which are cited in the *Opening Brief in Support of the Motion to Dismiss of Laurie Simon Hodrick* are true and correct.

6. Attached in the *Joint Appendix for All Defendants* as **Exhibit 2** is a copy of the Sixth Amended and Restated Certificate of Incorporation of Kabbage, Inc., dated September 7, 2017, the contents of which are subject to judicial notice.

7. Attached in the Joint Appendix as **Exhibit 3** is a copy of an Independent BSA/AML Audit of Kabbage, Inc. conducted by Treliant LLC, dated October 9, 2018, and incorporated by reference by paragraphs 87 and 88 of the Complaint [Adv. D.I. 1].

8. Attached in the Joint Appendix as **Exhibit 4** is a copy of an Enterprise Bank Secrecy Act / Anti-Money Laundering and Office of Foreign Assets Control Policy adopted by Kabbage, Inc., dated July 24, 2019, and incorporated by reference by paragraphs 82–86 of the Complaint.

9. Attached in the Joint Appendix as **Exhibit 5** is a copy of an Independent Enterprise BSA/AML and OFAC Audit Report conducted by Treliant LLC, dated November 4, 2019, and incorporated by reference by paragraphs 19, 88–92, and 126 of the Complaint.

10. Attached in the Joint Appendix as **Exhibit 6** is a Board of Directors Update dated March 25, 2020, and incorporated by reference by paragraph 71 of the Complaint.

11. Attached in the Joint Appendix as **Exhibit 7** is a copy of a letter from Senators Marco Rubio, Benjamin Cardin, Susan Collins, and Jeanne Shaheen to Steven Mnuchin and Jovita Carranza, dated March 30, 2020, which is available to the public at

https://www.shaheen.senate.gov/imo/media/doc/8EF8F376311973C53773AEC96F534D79.3.30.20-final-cares-act-implementation-letter.pdf [https://perma.cc/NRY8-SRJD] and subject to judicial notice.

12. Attached in the Joint Appendix as **Exhibit 8** is a copy of a guidance document issued by the Small Business Administration titled "Paycheck Protection Program (PPP) Information Sheet: Borrowers," dated March 31, 2020, which is available to the public at https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf [https://perma.cc/9ARW-WVFV] and subject to judicial notice.

13. Attached in the Joint Appendix as **Exhibit 9** is a copy of a guidance document issued by the Small Business Administration titled "Paycheck Protection Program (PPP) Information Sheet: Lenders," published March 31, 2020, which is available to the public at https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf [https://perma.cc/Z5H5-YBWW] and subject to judicial notice.

14. Attached in the Joint Appendix as **Exhibit 10** is a copy of the Small Business Administration's Archived News Release 20-29, titled "With $349 Billion in Emergency Small Business Capital Cleared, SBA and Treasury Begin Unprecedented Public-Private Mobilization Effort to Distribute Funds," dated April 2, 2020, which is available to the public at https://www.sba.gov/article/2020/apr/02/349-billion-emergency-small-business-capital-cleared-sba-treasury-begin-unprecedented-public-private-0 [https://perma.cc/A4W8-UZ2N] and subject to judicial notice.

15. Attached in the Joint Appendix as **Exhibit 11** is a copy of the Small Business Administration's Form 2484, which took effect on April 3, 2020 and is subject to judicial notice.

16. Attached in the Joint Appendix as **Exhibit 12** is a copy of an email sent by A. Habib to C. Brooks on April 4, 2020, which is incorporated by reference by and quoted in paragraphs 97, 98, and 129 of the Complaint.

17. Attached in the Joint Appendix as **Exhibit 13** is a copy of the Small Business Administration's Archived News Release 20-30, titled "SBA's Paycheck Protection Program for Small Businesses Affected by the Coronavirus Pandemic Launches" and dated April 3, 2020, which is available to the public at https://www.sba.gov/article/2020/apr/03/sbas-paycheck-protection-program-small-businesses-affected-coronavirus-pandemic-launches [https://perma.cc/QXC5-BSTN] and is subject to judicial notice.

18. Attached in the Joint Appendix as **Exhibit 14** is a copy of a guidance document issued by the Department of the Treasury and the Small Business Administration titled "Paycheck Protection Program Loans Frequently Asked Questions (FAQs)," as it appeared on April 6, 2020. This document is available to the public at https://www.sba.gov/sites/default/files/2023-03/Final%20PPP%20FAQs.pdf [https://perma.cc/ELZ6-K5BX] and is subject to judicial notice.

19. Attached in the Joint Appendix as **Exhibit 15** is a copy of a guidance document issued by the Department of the Treasury and the Small Business Administration titled "Paycheck Protection Program Loans Frequently Asked Questions (FAQs)," as it appeared on April 7, 2020. This document is available to the public at https://www.sba.gov/sites/default/files/2023-03/Final%20PPP%20FAQs%204-7-20.pdf [https://perma.cc/R3SC-F3CS] and is subject to judicial notice.

20. Attached in the Joint Appendix as **Exhibit 16** is a copy of an instant message conversation between S. Robinson and N. Goel dated April 8, 2020 that is incorporated by reference by and quoted in paragraph 120 of the Complaint.

21. Attached in the Joint Appendix as **Exhibit 17** is a copy of Small Business Administration Form 3507, as filled out on behalf of Kabbage, Inc. on April 9, 2020 and incorporated by reference by and quoted in paragraph 100 of the Complaint.

22. Attached in the Joint Appendix as **Exhibit 18** is a copy of an instant message conversation between S. Robinson and others dated April 12, 2020 that is incorporated by reference by and quoted in paragraph 115 of the Complaint.

23. Attached in the Joint Appendix as **Exhibit 19** is a copy of an Interim Final Rule titled "Business Loan Program Temporary Changes; Paycheck Protection Program," published by the Small Business Administration on April 15, 2020. The Interim Final Rule is available to the public at 85 Fed. Reg. 20811 and is subject to judicial notice.

24. Attached in the Joint Appendix as **Exhibit 20** is a copy of a guidance document issued by the Department of the Treasury and the Small Business Administration titled "Paycheck Protection Program Loans Frequently Asked Questions (FAQs)," as it appeared on April 23, 2020. This document is available to the public at https://www.sba.gov/sites/default/files/2023-03/Paycheck-Protection-Program-Frequently-Asked-Questions_04%2023%2020.pdf [https://perma.cc/PS47-CJCS] and is subject to judicial notice.

25. Attached in the Joint Appendix as **Exhibit 21** is a copy of a text message thread between R. Frohwein, K. Petralia, and others dated April 24, 2020. The thread is incorporated by reference by and quoted in paragraph 115 of the Complaint.

26. Attached in the Joint Appendix as **Exhibit 22** is a copy of Report R46325 of the Congressional Research Service, titled "Fourth COVID-19 Relief Package (P.L. 116-139): In Brief" and dated April 24, 2020. The report is available to the public at https://www.congress.gov/crs_external_products/R/PDF/R46325/R46325.2.pdf

[https://web.archive.org/web/20260208034852/https:/www.congress.gov/crs_external_products/R/PDF/R46325/R46325.2.pdf] and is subject to judicial notice.

27. Attached in the Joint Appendix as **Exhibit 23** is a copy of a press release by the Department of the Treasury titled "Joint Statement by Treasury Secretary Steven T. Mnuchin and SBA Administrator Jovita Carranza on the Resumption of the Paycheck Protection Program" and dated April 24, 2020. The press release is available to the public at https://home.treasury.gov/news/press-releases/sm988 [https://perma.cc/M4ZR-KLKY] and is subject to judicial notice.

28. Attached in the Joint Appendix as **Exhibit 24** is a copy of an email from N. Goel to S. Robinson dated April 28, 2020 that is incorporated by reference by and quoted in paragraph 118 of the Complaint.

29. Attached in the Joint Appendix as **Exhibit 25** is a copy of an email from A. Habib to A. Kesarwani and others dated April 28, 2020 that is incorporated by reference by and quoted in paragraphs 127, 128, and 129 of the Complaint.

30. Attached in the Joint Appendix as **Exhibit 26** is a copy of a guidance document issued by the Department of the Treasury and the Small Business Administration titled "Paycheck Protection Program Loans Frequently Asked Questions (FAQs)," as it appeared on April 29, 2020. This document is available to the public at https://www.sba.gov/sites/default/files/2023-03/Paycheck-Protection-Program-Frequently-Asked-Questions_04%2029%2020.pdf [https://perma.cc/NR7S-HRTQ] and is subject to judicial notice.

31. Attached in the Joint Appendix as **Exhibit 27** is a copy of an instant message conversation between A. Kesarwani and S. Shah on May 1, 2020. The conversation is incorporated by reference by and quoted in paragraph 210 of the Complaint.

32. Attached in the Joint Appendix as **Exhibit 28** is a copy of an email from A. Kesarwani to J. Sce dated May 22, 2020 that is incorporated by reference by and quoted in paragraph 173 of the Complaint.

33. Attached in the Joint Appendix as **Exhibit 29** is a copy of the Small Business Administration's Form 2483, as revised in June 2020, which is available to the public at https://home.treasury.gov/system/files/136/PPP-Borrower-Application-Form-Revised-June-2020.pdf [https://perma.cc/73TQ-A6V7] and subject to judicial notice.

34. Attached in the Joint Appendix as **Exhibit 30** is a copy of a report prepared by Alvarez & Marsal titled "Paycheck Protection Program Assessment" and dated June 11, 2020. The report is quoted in paragraphs 176 and 177 and incorporated by reference by paragraphs 21, 23, 176, and 177 of the Complaint.

35. Attached in the Joint Appendix as **Exhibit 31** is a copy of an instant message conversation between B. Simpson, E. Blackburn, and others dated July 16, 2020. The thread is incorporated by reference by and quoted in paragraphs 12, 149, and 150 of the Complaint.

36. Attached in the Joint Appendix as **Exhibit 32** is a copy of a text message thread between R. Frohwein and S. Robinson dated July 17, 2020. The thread is incorporated by reference by and quoted in paragraphs 12, 221, and 222 of Complaint.

37. Attached in the Joint Appendix as **Exhibit 33** is a copy of a text message thread between R. Frohwein, S. Robinson, and S. Taussig dated July 23, 2020. The thread is incorporated by reference by and quoted in paragraphs 25, 193, and 199 of the Complaint.

38. Attached in the Joint Appendix as **Exhibit 34** is a copy of an email from O. Bhambani to L. Chu dated July 26, 2020 that is incorporated by reference by and quoted in paragraph 225 of the Complaint.

39. Attached in the Joint Appendix as **Exhibit 35** is a copy of an Enterprise Bank Secrecy Act / Anti-Money Laundering and Office of Foreign Assets Control Policy adopted by Kabbage, Inc., dated July 29, 2020, and incorporated by reference by paragraphs 82–86 of the Complaint.

40. Attached in the Joint Appendix as **Exhibit 36** is a copy of an email from R. Frohwein to N. Hagler and others dated August 4, 2020 that is incorporated by reference by and quoted in paragraph 226 of the Complaint.

41. Attached in the Joint Appendix as **Exhibit 37** is a copy of an email from O. Bhambani to R. Frohwein, K. Petralia, and others dated August 10, 2020 that is incorporated by reference by and quoted in paragraph 242 of the Complaint.

42. Attached in the Joint Appendix as **Exhibit 38** is a copy of an email from S. Askins to O. Bhambani dated August 11, 2020 that is incorporated by reference by and quoted in paragraph 244 of the Complaint.

43. Attached in the Joint Appendix as **Exhibit 39** is a copy of a report prepared by Duff & Phelps titled "Solvency Analysis Related to Proposed Distribution" and dated August 11, 2020. The report is incorporated by reference, quoted, and reproduced in paragraphs 246 and 247 of the Complaint.

44. Attached in the Joint Appendix as **Exhibit 40** is a copy of a guidance document issued by the Department of the Treasury and the Small Business Administration titled "Paycheck Protection Program Loans Frequently Asked Questions (FAQs)," as it appeared on August 11, 2020. This document is available to the public at https://www.sba.gov/sites/default/files/2020-08/Final%20PPP%20FAQs%20%28August%2011%2C%202020%29-508.pdf [https://perma.cc/ETJ4-UPNK] and is subject to judicial notice.

45. Attached in the Joint Appendix as **Exhibit 41** is a copy of an email from S. Askins to O. Bhambani dated August 12, 2020 that is incorporated by reference by and quoted in paragraph 245 of the Complaint.

46. Attached in the Joint Appendix as **Exhibit 42** is a copy of an Agreement and Plan of Merger between American Express Travel Related Services Company, Inc.; Green Acquisition Merger Sub, Inc.; Kabbage, Inc.; Alpha Kabbage, Inc.; and Fortis Advisors LLC dated August 16, 2020 and incorporated by reference by paragraphs 250–55 of the Complaint.

47. Attached in the Joint Appendix as **Exhibit 43** is a copy of Report GAO-21-117T of the Government Accountability Office containing a statement by William B. Shear titled "COVID-19 Loans Lack Controls and Are Susceptible to Fraud" dated October 1, 2020. The report is available to the public at https://www.gao.gov/assets/gao-21-117t.pdf [https://web.archive.org/web/20260407222221/https://www.gao.gov/assets/gao-21-117t.pdf] and is subject to judicial notice.

48. Attached in the Joint Appendix as **Exhibit 44** is a copy of a Transition Services Agreement between Alpha Kabbage, Inc. and Kabbage, Inc. dated October 16, 2020 and that is part of an integrated and interrelated group of contracts that effectuated the Agreement and Plan of Merger incorporated by reference by paragraphs 250–55 of the Complaint, and thereby also incorporated by reference.

49. Attached in the Joint Appendix as **Exhibit 45** is a copy of an Interim Final Rule titled "Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rule," published by the Small Business Administration on October 19, 2020. The Interim Final Rule is available to the public at 85 Fed. Reg. 66214 and is subject to judicial notice.

50. Attached in the Joint Appendix as **Exhibit 46** is a copy of a Letter Agreement between American Express Kabbage Inc. and Kabbage, Inc., titled "Re: Amendment 2 to the Transition Services Agreement." The Letter Agreement is dated February 10, 2021 and is part of an integrated and interrelated group of contracts that effectuated the Agreement and Plan of Merger incorporated by reference by paragraphs 250–55 of the Complaint, and thereby also incorporated by reference.

51. Attached in the Joint Appendix as **Exhibit 47** is a copy of a press release by the Department of Justice titled "First-Ever False Claims Act Settlement Received From Paycheck Protection Program Lender" and dated September 13, 2022. The press release is available to the public at https://www.justice.gov/usao-sdtx/pr/first-ever-false-claims-act-settlement-received-paycheck-protection-program-lender [https://perma.cc/93ZA-7EP7] and is subject to judicial notice.

52. Attached in the Joint Appendix as **Exhibit 48** is a copy of a letter sent by Representative Beth Van Duyne to Isabella Castillas Guzman dated April 19, 2023, which is available to the public at https://smallbusiness.house.gov/uploadedfiles/04.19.2023_-_letter_from_bvd_to_admin._guzman_re_covid_fraud_pdf.pdf [https://perma.cc/S2PB-UCYQ] and is subject to judicial notice.

53. Attached in the Joint Appendix as **Exhibit 49** is a copy of a Congressional hearing titled "Where Do We Go From Here? Examining A Path Forward to Assess Agencies' Efforts to Prevent Improper Payments and Fraud" and held on September 10, 2024. The record of the hearing is available to the public at https://www.congress.gov/118/meeting/house/117616/documents/HHRG-118-GO24-Transcript-20240910.pdf [https://perma.cc/T74D-LG7X] and is subject to judicial notice.

54. Attached in the Joint Appendix as **Exhibit 50** is a copy of an order staying discovery entered in *United States ex rel. Pietschner v. Petralia*, Civil No. 4:21-CV-110 (E.D. Tex. Mar. 19, 2026) as ECF No. 109.

55. The signatories aver that each foregoing copy, *supra* ¶¶ 6–54, is true and correct only to the extent that it is cited in each signatory's respective brief(s), *supra* ¶¶ 1–5.

Dated: April 9, 2026

/s/ *Lena Konanova*
Lena Konanova

/s/ *Daniel A. Mason*
Daniel A. Mason

/s/ *Rebecca L. Butcher*
Rebecca L. Butcher

/s/ *Barry J. Pollack*
Barry J. Pollack

/s/ *Lisa Hertzer Schertler*
Lisa Hertzer Schertler

/s/ *Ani-Rae Lovell*
Ani-Rae Lovell

EXHIBIT 2

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "KABBAGE, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF SEPTEMBER, A.D. 2017, AT 6:47 O`CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

Jeffrey W. Bullock, Secretary of State

4917464 8100
SR# 20176066817

Authentication: 203185176
Date: 09-07-17

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:47 PM 09/07/2017
FILED 06:47 PM 09/07/2017
SR 20176066817 - File Number 4917464

SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF KABBAGE, INC.

Kabbage, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is Kabbage, Inc.

2. The corporation was incorporated in Delaware pursuant to a Certificate of Incorporation filed with the Secretary of State of the State of Delaware on December 22, 2010.

3. This Sixth Amended and Restated Certificate of Incorporation restates, integrates and amends the Fifth Amended and Restated Certificate of Incorporation of the corporation as herein set forth in full:

ARTICLE I

The name of the corporation is Kabbage, Inc. (hereinafter, the "***Corporation***").

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 160 Greentree Dr., Ste. 101, in the City of Dover County of Kent, 19904. The name of the registered agent at such address is National Registered Agents, Inc.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

ARTICLE IV

The Corporation is authorized to issue two classes of stock, designated "***Common Stock***" and "***Preferred Stock***," each with a par value of $0.001 per share. The total number of shares of Common Stock that the Corporation is authorized to issue is 60,120,168 shares. The total number of shares of Preferred Stock that the Corporation is authorized to issue is 43,203,706 shares.

A. COMMON STOCK

1. **General.** The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. **Voting.** The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); *provided, however*, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of

Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law of Delaware. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

B. PREFERRED STOCK

The Preferred Stock may be issued from time to time in one or more series. The first series of Preferred Stock shall consist of 7,661,705 shares and shall be designated "***Series A Preferred Stock.***" The second series of Preferred Stock shall consist of 5,478,461 shares and shall be designated "***Series B Preferred Stock.***" The third series of Preferred Stock shall consist of 6,165,455 shares and shall be designated "***Series C Preferred Stock.***" The fourth series of Preferred Stock shall consist of 6,702,413 shares and shall be designated "***Series D Preferred Stock.***" The fifth series of Preferred Stock shall consist of 8,960,983 shares and shall be designated "***Series E Preferred Stock.***" The sixth series of Preferred Stock shall consist of 8,234,689 shares and shall be designated "***Series F Preferred Stock.***" As used herein, the term "***Junior Preferred Stock***" without designation shall refer to shares of the Corporation's Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock collectively, and the term "***Preferred Stock***" without designation shall refer to shares of the Corporation's Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock collectively.

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Preferred Stock are as follows:

1. **Dividends.** The holders of the then outstanding Series F Preferred Stock shall be entitled to receive, on a pari passu basis with Series E Preferred Stock, when, if and as declared by the Board of Directors, out of assets legally available therefor, prior and in preference to any declaration or payment of any dividend on any other series of Junior Preferred Stock and the Common Stock (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock), dividends at the annual rate of $1.56552 per share of Series F Preferred Stock, as adjusted for any stock splits, reverse stock splits, stock dividends and similar recapitalization events (each a "***Recapitalization Event***"). The holders of the then outstanding Series E Preferred Stock shall be entitled to receive, on a pari passu basis with Series F Preferred Stock, when, if and as declared by the Board of Directors, out of assets legally available therefor, prior and in preference to any declaration or payment of any dividend on any other series of Junior Preferred Stock and the Common Stock (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock), dividends at the annual rate of $1.481168 per share of Series E Preferred Stock, as adjusted for any Recapitalization Events. Subject to the dividend rights of the holders of Series F Preferred Stock and Series E Preferred Stock as set

forth in this Section 1, the holders of the then outstanding Series D Preferred Stock shall be entitled to receive, when, if and as declared by the Board of Directors, out of assets legally available therefor, prior and in preference to any declaration or payment of any dividend on any other series of Junior Preferred Stock and the Common Stock (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock), dividends at the annual rate of $0.4476 per share of Series D Preferred Stock, as adjusted for any Recapitalization Events. Subject to the dividend rights of the holders of Series F Preferred Stock, Series E Preferred Stock and Series D Preferred Stock as set forth in this Section 1, the holders of the then outstanding Series C Preferred Stock shall be entitled to receive, when, if and as declared by the Board of Directors, out of assets legally available therefor, prior and in preference to any declaration or payment of any dividend on any other series of Junior Preferred Stock and the Common Stock (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock), dividends at the annual rate of $0.297 per share of Series C Preferred Stock, as adjusted for any Recapitalization Events. Subject to the dividend rights of the holders of Series F Preferred Stock, Series E Preferred Stock, Series D Preferred Stock and Series C Preferred Stock as set forth in this Section 1, the holders of the then outstanding Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, when, if and as declared by the Board of Directors, out of assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock), dividends at the annual rate of $0.0732 per share of Series A Preferred Stock and $0.195 per share of Series B Preferred Stock, in each case as adjusted for any Recapitalization Events. In addition, no dividends shall be paid on any share of Common Stock unless a dividend (including the amount of any dividends paid pursuant to the above provisions of this Section 1) is paid with respect to all outstanding shares of Preferred Stock in an amount for each such share of Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Preferred Stock could then be converted. The right to dividends on shares of Preferred Stock shall not be cumulative, and no right shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared in any period, nor shall any undeclared or unpaid dividend bear or accrue interest.

2. Liquidation Preference. In the event of a Liquidation Event (as defined below), the assets and funds of the Corporation available for distribution to stockholders shall be distributed as follows:

(a) First, the holders of shares of Series F Preferred Stock then outstanding shall be entitled to receive, out of the assets of the Corporation legally available for distribution to its stockholders, before any payment or distribution of such assets shall be made in respect of the Corporation's Junior Preferred Stock or Common Stock, an amount equal to $19.569 per share of Series F Preferred Stock, as adjusted for any Recapitalization Events (the "***Original Series F Price***"), plus all declared and unpaid dividends on such share to the date fixed for such distribution (the "***Series F Liquidation Preference***"). If, upon the occurrence of such Liquidation Event the remaining assets of the Corporation legally available for distribution are insufficient to permit the payment to the holders of Series F Preferred Stock of the full Series F Liquidation Preference, then the remaining assets legally available for distribution to stockholders shall be distributed to the holders of the Series F Preferred Stock ratably in proportion to the full Series F Liquidation Preference which they would be entitled to receive pursuant to the preceding sentence of this Section 2(a).

(b) After the full Series F Liquidation Preference has been paid or set aside in accordance with Section 2(a), the holders of shares of Series E Preferred Stock then outstanding shall be entitled to receive, out of the assets of the Corporation legally available for distribution to its stockholders, before any payment or distribution of such assets shall be made in respect of the Corporation's Junior Preferred Stock or Common Stock, an amount equal to $18.5146 per share of Series E Preferred Stock, as adjusted for any Recapitalization Events (the "***Original Series E Price***"), plus all declared and unpaid dividends on such share to the date fixed for such distribution (the "***Series E Liquidation Preference***"). If, upon the occurrence of such Liquidation Event, but after the full Series F Liquidation Preference has been paid or set aside in accordance with Section 2(a), the remaining assets of the Corporation legally available for distribution are insufficient to permit the payment to the holders of Series E Preferred Stock of the full Series E Liquidation Preference, then the remaining assets legally available for distribution to stockholders shall be distributed to the holders of the Series E Preferred Stock ratably in proportion to the full Series E Liquidation Preference which they would be entitled to receive pursuant to the preceding sentence of this Section 2(b).

(c) After the full Series E Liquidation Preference has been paid or set aside in accordance with Section 2(b), the holders of shares of Series D Preferred Stock then outstanding shall be entitled to receive, out of the remaining assets of the Corporation legally available for distribution to its stockholders, if any, before any payment or distribution of such assets shall be made in respect of the Corporation's Series C Preferred Stock, Series 13 Preferred Stock, Series A Preferred Stock or Common Stock, an amount equal to $7.46 per share of Series D Preferred Stock, as adjusted for any Recapitalization Events (the "***Original Series D Price***"), plus all declared and unpaid dividends on such share to the date fixed for such distribution (the "***Series D Liquidation Preference***"). If, upon the occurrence of such Liquidation Event, but after the full Series F Liquidation Preference and Series E Liquidation Preference has been paid or set aside in accordance with Sections 2(a) and 2(b), respectively, the remaining assets of the Corporation legally available for distribution are insufficient to permit the payment to the holders of Series D Preferred Stock of the full Series D Liquidation Preference, then the remaining assets legally available for distribution to stockholders shall be distributed to the holders of the Series D Preferred Stock ratably in proportion to the full Series D Liquidation Preference which they would be entitled to receive pursuant to the preceding sentence of this Section 2(c).

(d) After the full Series D Liquidation Preference has been paid or set aside in accordance with Section 2(c), the holders of shares of Series C Preferred Stock then outstanding shall be entitled to receive, out of the remaining assets of the Corporation legally available for distribution to its stockholders, if any, before any payment or distribution of such assets shall be made in respect of the Corporation's Series A Preferred Stock, Series B Preferred Stock or Common Stock, an amount equal to $4.95 per share of Series C Preferred Stock, as adjusted for any Recapitalization Events (the "***Original Series C Price***"), plus all declared and unpaid dividends on such share to the date fixed for such distribution (the "***Series C Liquidation Preference***"). If, upon the occurrence of such Liquidation Event, but after the full Series F Liquidation Preference, Series E Liquidation Preference and Series D Liquidation Preference has been paid or set aside in accordance with Sections 2(a), 2(b) and 2(c), respectively, the remaining assets of the Corporation legally available for distribution are insufficient to permit the payment to the holders of Series C Preferred Stock of the full Series C Liquidation Preference, then the remaining assets legally available for distribution to stockholders shall be distributed to the holders of the Series C Preferred Stock ratably in proportion to the full Series C Liquidation Preference which they would be entitled to receive pursuant to the preceding sentence of this Section 2(d).

(e) After the full Series C Liquidation Preference has been paid or set aside in accordance with Section 2(d), the holders of shares of Series A Preferred Stock and Series B Preferred Stock then outstanding shall be entitled to receive, out of the remaining assets of the Corporation legally available for distribution to its stockholders, if any, before any payment or distribution of such assets shall be made in respect of the Corporation's Common Stock, an amount equal to $1.22 per share of Series A Preferred Stock, as adjusted for any Recapitalization Events (the "***Original Series A Price***") and $3.25 per share of Series B Preferred Stock, as adjusted for any Recapitalization Events (the "***Original Series B Price***"), plus all declared and unpaid dividends on such share to the date fixed for such distribution (the "***Junior Liquidation Preference***"). If, upon the occurrence of such Liquidation Event, but after the full Series F Liquidation Preference, Series E Liquidation Preference, Series D Liquidation Preference and Series C Liquidation Preference has been paid or set aside in accordance with Sections 2(a), 2(b), 2(c) and 2(d), respectively, the remaining assets of the Corporation legally available for distribution are insufficient to permit the payment to the holders of Series B Preferred Stock and Series A Preferred Stock of the full Junior Liquidation Preference, then the remaining assets legally available for distribution to stockholders shall be distributed to the holders of Series B Preferred Stock and Series A Preferred Stock ratably in proportion to the full Junior Liquidation Preference which they would be entitled to receive pursuant to the preceding sentence of this Section 2(e).

(f) After the full Series F Liquidation Preference, Series E Liquidation Preference, Series D Liquidation Preference, Series C Liquidation Preference and Junior Liquidation Preference have been paid or set aside in accordance with Sections 2(a), 2(b), 2(c), 2(d) and 2(e), respectively, the remaining assets of the Corporation legally available for distribution to its stockholders, if any, shall be distributed to the holders of Common Stock ratably in proportion to the number of shares of Common Stock then held by each holder.

(g) Notwithstanding the foregoing, upon any Liquidation Event, each holder of Preferred Stock shall be entitled to receive, for each share of Preferred Stock then held, out of the proceeds available for distribution, the greater of (i) the amount of cash, securities or other property to which such holder would be entitled to receive with respect to such shares in a Liquidation Event pursuant to Sections 2(a), 2(b), 2(c), 2(d) and 2(e), respectively (without giving effect to this Section 2(g)), or (ii) the amount of cash, securities or other property to which such holder would be entitled to receive in a Liquidation Event with respect to such shares if such shares had been converted to Common Stock immediately prior to such Liquidation Event.

(h) Each of the following events shall be deemed to be a "***Liquidation Event***" as that term is used in this Amended and Restated Certificate of Incorporation: (i) the liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, (ii) a merger or consolidation of the Corporation or a subsidiary of the Corporation into or with another entity after which the stockholders of the Corporation immediately prior to such transaction do not own, immediately following the consummation of the transaction by virtue of their shares in the Corporation or securities received in exchange for such shares in connection with the transaction, a majority of the voting power of the surviving entity in proportions substantially similar to those that existed immediately prior to such transaction, (iii) the sale, transfer or issuance by the Corporation, or the sale or transfer by the Corporation's stockholders other than a sale or transfer by the stockholders to existing stockholders of the Corporation or affiliated parties of such existing stockholders, in either case, of more than 50% of the voting power of the Corporation (which for clarity shall be calculated assuming full conversion of all Preferred Stock) in a transaction or series of related transactions, and (iv) the sale, transfer, exclusive irrevocable license or other disposition (but not including a pledge or mortgage to a bona fide lender) of all or substantially all of the assets or intellectual property of the Corporation (other than to a wholly-owned subsidiary). Notwithstanding the foregoing, a merger effected exclusively for the purpose of changing the domicile of the Corporation shall not be deemed a Liquidation Event.

(i) In the event of any Liquidation Event of the Corporation involving the distribution of assets other than cash to the stockholders of the Corporation, the value of the assets to be distributed shall be determined as follows:

(i) In the case of securities that are not subject to investment letter or other similar restrictions on free tradability,

(A) if traded on a national securities exchange or through the Nasdaq Global Market, the value shall be deemed to be the average of the closing prices of the securities over the 10 day period ending three days prior to the closing;

(B) if actively traded over-the-counter, the value shall be deemed to be the average of (i) the average of the last bid and ask prices or (ii) the closing sale prices (whichever is applicable) over the 30 day period ending three days prior to the closing; and

(C) if there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(ii) In the case of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate), the value shall be based on an appropriate discount from the market value determined as above in Section 2(g)(i) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(iii) In the case of any other property, the value shall be equal to the property's fair market value, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(iv) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event may be superseded by any determination of such value set forth in the definitive agreements governing such Liquidation Event.

(j) The Corporation does not have the power to effect any transaction constituting a Liquidation Event pursuant to Sections 2(g)(ii), (iii) or (iv) above unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2(a), 2(b), 2(c), 2(d), 2(e) and 2(f) above.

(k) Following the occurrence of any Liquidation Event, the Corporation shall, to the extent that the Corporation has control over, or title to, the proceeds from such Liquidation Event, use commercially reasonable efforts to distribute such proceeds as promptly as practicable in accordance with Sections 2(a), 2(b), 2(c), 2(d), 2(e), 2(f) and 2(g) above, taking into account the terms and conditions of the Liquidation Event, including but not limited to, any earn-out or escrow provisions. Prior to the distribution in accordance with this Section 2(k), the Corporation shall not expend or dissipate the consideration received for such Liquidation Event, except in a manner consistent with the agreement providing for such Liquidation Event, including but not limited to, payment for the fees and expenses, if any, of bankers, accountants or lawyers for the Corporation.

(l) The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived with respect to all series of Preferred Stock only with the vote or written consent of the holders of at least a majority of the voting power represented by the then outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis); *provided, however,* that the treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived with respect to (i) the Series F Preferred Stock only with the vote or written consent of the holders of at least a majority of the outstanding shares of Series F Preferred Stock (voting as a separate series) and (ii) the Series E Preferred Stock only with the vote or written consent of the holders of at least a majority of the outstanding shares of Series E Preferred Stock (voting as a separate series).

3. Conversion. The holders of the Preferred Stock shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock, into Common Stock. The number of shares of fully paid and nonassessable Common Stock into which each share of Series A Preferred Stock may be converted shall equal the Original Series A Price divided by the Series A Conversion Price in effect at the time of conversion (the "***Series A Conversion Rate***"). The number of shares of fully paid and nonassessable Common Stock into which each share of Series B Preferred Stock may be converted shall equal the Original Series B Price divided by the Series B Conversion Price in effect at the time of the conversion (the "***Series B Conversion Rate***"). The number of shares of fully paid and nonassessable Common Stock into which each share of Series C Preferred Stock may be converted shall equal the Original Series C Price divided by the Series C Conversion Price in effect at the time of the conversion (the "***Series C Conversion Rate***"). The number of shares of fully paid and nonassessable Common Stock into which each share of Series D Preferred Stock may be converted shall equal the Original Series D Price divided by the Series D Conversion Price in effect at the time of the conversion (the "***Series D Conversion Rate***"). The number of shares of fully paid and nonassessable Common Stock into which each share of Series E Preferred Stock may be converted shall equal the Original Series E Price divided by the Series E Conversion Price in effect at the time of the conversion (the "***Series E Conversion Rate***"). The number of shares of fully paid and nonassessable Common Stock into which each share of Series F Preferred Stock may be converted shall equal the Original Series F Price divided by the Series F Conversion

Price in effect at the time of the conversion (the "***Series F Conversion Rate***"). The "***Series A Conversion Price***" shall initially be $1.22, the "***Series B Conversion Price***" shall initially be $3.25, the "***Series C Conversion Price***" shall initially be $4.95, the "Series D Conversion Price" shall initially be $7.46, the "***Series E Conversion Price***" shall initially be $18.5146, the "***Series F Conversion Price***" shall initially be $19.569 and each shall be subject to adjustment as provided in Section 3(d) below. The Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series E Conversion Price and Series F Conversion Price shall each be referred to herein as a "***Conversion Price***" and the Series A Conversion Rate, Series B Conversion Rate, Series C Conversion Rate, Series D Conversion Rate, Series E Conversion Rate and Series F Conversion Rate shall each be referred to herein as a "***Conversion Rate***,"

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, at the then effective applicable Conversion Rate, upon (i) the vote or written consent of the holders of at least a majority of the voting power represented by the then outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis); *provided, however,* that no shares of Series F Preferred Stock shall automatically be converted into shares of Common Stock pursuant to clause (i) of this Section 3(b) except upon the vote or written consent of the holders of at least a majority of the outstanding shares of Series F Preferred Stock (voting as a separate series); *provided, further,* that no shares of Series E Preferred Stock shall automatically be converted into shares of Common Stock pursuant to clause (i) of this Section 3(b) except upon the vote or written consent of the holders of at least a majority of the outstanding shares of Series E Preferred Stock (voting as a separate series), or (ii) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock that (A) occurs prior to the third anniversary of the Original Issue Date (as defined below) at an offering price per share of at least two times (2x) the Original Series F Price as adjusted for any Recapitalization Events or (B) occurs on or after the third anniversary of Original Issue Date at an offering price which reflects a pre-offering valuation of the Corporation at an amount approved by the Board of Directors in the good faith exercise of its reasonable judgment, and, in the case of either clause (A) or (B), with aggregate proceeds to the Corporation (net of underwriters' discounts, commissions and other expenses) of not less than $100,000,000 (a "***Qualified IPO***").

(c) **Mechanics of Conversion.** Except as provided in Section 3(b) above, before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefore (or a reasonably acceptable affidavit and indemnity undertaking in the case of a lost, stolen or destroyed certificate), duly endorsed, at the headquarters of the Corporation or of any transfer agent for the Corporation and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which he, she or it shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. Upon the occurrence of either of the events specified in Section 3(b) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however,* that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation against any loss incurred by it in connection with such certificates.

(d) **Adjustments to Conversion Price for Dilutive Issuances.**

(i) **Special Definitions.** For purposes of this Section 3(d), the following definitions shall apply:

(A) "***Original Issue Date***" shall mean, with respect to any series of Preferred Stock, the date on which shares of Series F Preferred Stock are first issued by the Corporation.

(B) "***Additional Shares of Common Stock***" shall mean all shares of Common Stock issued (or, pursuant to Section 3(d)(ii) below, deemed to be issued) by the Corporation after the Original Issue Date other than:

(1) shares of Common Stock issued or issuable (whether before, on or after the Original Issue Date) to officers, directors or employees of, or consultants to, the Corporation pursuant to an equity incentive plan approved by the Board of Directors;

(2) shares of Common Stock issued in connection with any Recapitalization Event or for which an adjustment is otherwise made pursuant to Section 3(d)(v);

(3) shares of Common Stock issued upon conversion of Preferred Stock;

(4) shares of Common Stock issued in connection with the acquisition by the Corporation of voting control or all or substantially all of the assets of another business entity in a transaction approved by the Board of Directors, including the vote of each of the directors designated by the holders of Preferred Stock;

(5) shares issued or issuable pursuant to strategic transactions entered into for primarily non-equity financing purposes and approved by the Board of Directors including the vote of two (or, the in case of clause (IV) of the following proviso, one) of the directors designated by the holders of Preferred Stock (provided, that if the price for the Additional Shares of Common Stock is (I) in excess of the Series A Conversion Price, the vote of the Series A Director shall be disregarded, (II) in excess of the Series B Conversion Price, the vote of the Series A Director and the Series B Director shall be disregarded, (III) in excess of the Series C Conversion Price, the vote of the Series A Director, the Series B Director

and the Series C Director shall be disregarded and (IV) in excess of the Series D Conversion Price, the vote of the Series A Director, the Series B Director and the Series C Director shall be disregarded);

(6) shares issued or issuable pursuant to equipment lease financings or bank credit arrangements entered into for primarily non-equity financing purposes and approved by the Board of Directors, including the vote of two (or, the in case of clause (IV) of the following proviso, one) of the directors designated by the holders of Preferred Stock (provided, that if the price for the Additional Shares of Common Stock is (I) in excess of the Series A Conversion Price, the vote of the Series A Director shall be disregarded, (II) in excess of the Series B Conversion Price, the vote of the Series A Director and the Series B Director shall be disregarded, (III) in excess of the Series C Conversion Price, the vote of the Series A Director, the Series B Director and the Series C Director shall be disregarded and (IV) in excess of the Series D Conversion Price, the vote of the Series A Director, the Series B Director and the Series C Director shall be disregarded); and

(7) warrants to acquire up to 166,008 shares of Common Stock that are outstanding as of the date hereof.

(C) "***Options***" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (as defined below).

(D) "***Convertible Securities***" shall mean any evidences of indebtedness, shares of Preferred Stock or other securities convertible into or exchangeable for Common Stock.

(ii) **Deemed Issue of Additional Shares of Common Stock.** In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the following provisions shall apply:

(A) The maximum number of shares (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchange but without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities shall be deemed to have been issued as of the time of the issuance of such Option or Convertible Security or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) Except as provided in paragraphs (C) and (D) below, no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(C) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change resulting from the antidilution provisions of such Options or Convertible Securities), the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; *provided, however,* that such recomputed Conversion Price shall not exceed the Conversion Price that would have been in effect had the original issuance of Options or Convertible Securities not been deemed to constitute an issuance of Additional Shares of Common Stock.

(D) Upon the expiration of any such Options or Convertible Securities, the Conversion Price, to the extent in any way affected by or computed using such Options or Convertible Securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock actually issued upon the exercise of such Options or Convertible Securities.

(iii) **Adjustment of Conversion Price for Dilutive Issuances.** In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(ii)) after the Original Issue Date without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to such issuance, then and in each such event the Conversion Price for such series shall be reduced to a price (rounded to the nearest one tenth of one cent) equal to such Conversion Price multiplied by a fraction:

(A) the numerator of which is equal to the number of shares of Common Stock outstanding or deemed to be outstanding immediately prior to such issuance plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price in effect immediately prior to such issuance; and

(B) the denominator of which is equal to the number of shares of Common Stock outstanding or deemed to be outstanding immediately prior to such issuance plus the number of Additional Shares of Common Stock so issued.

For the purposes of this Section 3(d)(iii), the number of shares of Common Stock deemed to be outstanding shall be deemed to include the Common Stock issuable upon full exercise and conversion of all then outstanding Options and Convertible Securities.

(iv) **Determination of Consideration.** For purposes of this Section 3(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) **Cash and Property.** Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof;

(2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and

(3) in the event Additional Shares of Common Stock are issued together with other securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment.

(B) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(d) relating to Options and Convertible Securities shall be equal to:

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issuance of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, divided by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(v) **Other Adjustments to Conversion Price.**

(A) **Subdivisions, Combinations or Consolidations of Common Stock.** In the event the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by stock split, reverse stock split or similar event, into a greater or lesser number of shares of Common Stock after the Original Issue Date, the Conversion Price for such series in effect immediately prior to such subdivision, combination or consolidation shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

(B) **Common Stock Dividends and Distributions.** If, after the Original Issue Date, the Corporation at any time or from time to time issues, or fixes a record date for determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then in each such event, as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, the Conversion Price for such series that is then in effect shall be decreased by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which is the number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (y) the denominator of which is the number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however*, that if such record date is fixed and such dividend or distribution is not paid in full on the date fixed therefor, each Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each Conversion Price shall be adjusted pursuant to this Section 3(d)(v)(B) to reflect the actual payment of such dividend or distribution.

(C) **Other Distributions.** In case the Corporation shall distribute to holders of its Common Stock shares of its capital stock (other than shares of Common Stock and other than as otherwise subject to adjustment pursuant to this Section 3(d)), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock), or shall fix a record date for determination of holders of Common Stock entitled to receive such a distribution, then, in each such case, provision shall be made so that the holders of Preferred Stock shall be entitled to receive, upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the distribution of securities of the Corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event (or on the record date with respect thereto, if such record date is fixed) and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such distribution receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 3 with respect to the rights of the holders of the Preferred Stock.

(D) **Recapitalizations and Reorganizations.** In the case of any capital recapitalization or reorganization (other than a subdivision, combination or other recapitalization provided for elsewhere in this Section 3 or a Liquidation Event provided for in Section 2), or the fixing of any record date for determination of holders of Common Stock affected by such recapitalization or reorganization, provision shall be made so that the holders of Preferred Stock shall be entitled to receive, upon conversion thereof, the type and number of shares of stock or other securities or property of the Corporation or otherwise that they would have received had their Preferred Stock been converted into Common Stock on the date of such event (or on the record date with respect thereto, if such record date is fixed) and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such shares of stock or other securities or property receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 3 with respect to the rights of the holders of the Preferred Stock. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 to the end that the provisions of this Section 3 shall be applicable after the recapitalization or reorganization to the greatest extent practicable.

(e) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Prices pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of a share of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based including the consideration received for any Additional Shares of Common Stock issued. The Corporation shall, upon the written request at any time of any holder of a Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect for the series of Preferred Stock held by such holder and (iii) the number of shares of Common Stock and the type and amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(f) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of shares of Preferred Stock. In lieu of any fractional shares to which the holder of Preferred Stock would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined by the Board of Directors. The number of whole shares issuable to each holder of a series of Preferred Stock upon such conversion shall be determined on the basis of the number of shares of Common Stock issuable upon conversion of the total number of shares of such series being converted into Common Stock by such holder at that time.

(g) **Notices of Record Date.** In the event (i) the Corporation shall take a record of the holders of its capital stock for the purpose of entitling them to receive a dividend or other distribution (other than a cash dividend), (ii) of any capital reorganization, reclassification or recapitalization (other than a subdivision or combination of its outstanding shares of Common Stock), or (iii) of a Liquidation Event, then, and in any such case, the Corporation shall cause to be mailed to each holder of record of the Preferred Stock at the address of record of such stockholder as set forth on the Corporation's books, at least 20 days prior to the earliest date hereinafter specified, a notice stating the material terms of the proposed transaction and the date on which (x) a record is to be taken for the purpose of such dividend or distribution or (y) such reorganization, reclassification, recapitalization or Liquidation Event is to take place and the date, if any is to be fixed, as of which holders of capital stock of record shall be entitled to exchange their shares of capital stock for securities or other property deliverable upon such reorganization, reclassification, recapitalization or Liquidation Event; *provided, however,* that such notice period may be shortened upon the written consent of holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock (voting together as a single class on a converted basis). If any material change in the facts set forth in the written notice shall occur, the Corporation shall promptly give written notice of such material change to each holder of shares of Preferred Stock.

(h) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(i) **Waiver of Adjustment to Conversion Prices.** Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of such series of Preferred Stock (voting as separate series); *provided,* that any downward adjustment of the Conversion Price of the Series C Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, only by the consent or vote of the holders of at least 62% of the outstanding shares of Series C Preferred Stock (voting as a separate series). Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(j) **Special Default Conversion.** Each share of Series E Preferred Stock held by a Defaulting Purchaser (as defined in that certain Series E Stock Purchase Agreement dated on June 16, 2015 by and among the Corporation and the Purchasers specified therein (the "***Series E Stock Purchase Agreement***")) shall automatically be converted into one-third of a share of Common Stock effective as of the Split Closing Deadline (as defined in the Series E Stock Purchase Agreement).

4. Voting Rights.

(a) **General.** Each holder of Preferred Stock shall be entitled to a number of votes equal to the number of whole shares of Common Stock into which such holder's shares of Preferred Stock could then be converted and, except as otherwise required by law or as set forth herein, shall have voting rights and powers equal to the voting rights and powers of the Common Stock. Each holder of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and shall be entitled to vote with the holders of Common Stock with respect to any matter upon which holders of Common Stock have the right to vote, except as otherwise provided herein or those matters required by law to be submitted to a class vote.

(b) **Election of Directors.** At each election of directors of the Corporation, (i) for so long as at least 5,000,000 shares of Series A Preferred Stock (as adjusted for any Recapitalization Event) remain outstanding, the holders of Series A Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director (the "***Series A Director***"), (ii) for so long as at least 3,400,000 shares of Series B Preferred Stock (as adjusted for any Recapitalization Event) remain outstanding, the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director (the "***Series B Director***"), (iii) for so long as at least 1,900,000 shares of Series C Preferred Stock (as adjusted for any Recapitalization Event) remain outstanding, the holders of Series C Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director (the "***Series C Director***"), (iv) for so long as at least 25% of the shares of Series E Preferred Stock actually issued pursuant to the Series E Stock Purchase Agreement (as adjusted for any Recapitalization Event) remain outstanding, the holders of Series E Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director (the "***Series E Director***"), (v) for so long as at least 25% of the shares of Series F Preferred Stock actually issued pursuant to the Series F Stock Purchase Agreement (as adjusted for any Recapitalization Event) remain outstanding, the holders of Series F Preferred Stock, voting as a separate class, shall be entitled to elect two (2) directors (the "***Series F Directors***"), (vi) the holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) director and (vii) the holders of Preferred Stock and Common Stock, voting together as a single class on an as-converted basis, shall be entitled to elect the remaining directors of the Corporation. Any director elected as provided in the preceding sentence may be removed with or without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders.

(c) **Vote Blocker**. If a holder of Common Stock or Preferred Stock, together with any of its Affiliates, at any time holds shares of capital stock of the Corporation, which on an individually converted basis and in the aggregate, constitute more than 4.99% of a class of voting stock of the Corporation and such holder elects to be treated as an Electing Stockholder pursuant to this Section 4(c) (such shares, the "***Excess Securities***"), then any Excess Securities shall not be entitled to vote or consent to any matter pursuant to this Certificate of Incorporation, and such Excess Securities shall not be entitled to vote or to be counted for purposes of determining whether any vote required under this Certificate of Incorporation has been approved by the requisite percentage of voting stock or to be counted towards any approval threshold required pursuant to this Certificate of Incorporation. No other rights attaching to the Excess Securities shall be amended, reduced, waived or otherwise varied pursuant to this Section 4(c). Excess Securities shall only be entitled to the full voting rights set forth for such shares of capital stock pursuant to this Certificate of Incorporation following the transfer of the Excess Securities to: (i) the Corporation; (ii) a transferee in a widespread public distribution of the voting stock of the Corporation; (iii) a transferee in transfers in which no transferee (or group of associated transferees) would receive 2% or more of any class of voting stock of the Corporation; or (iv) a transferee if such transferee would control more than 50% of the voting stock of the Corporation without any transfer of Excess Securities. For the purposes of this Section (c) only, an "Affiliate" shall have the meaning set forth in the U.S. Bank Holding Company Act of 1956, as amended, and the Federal Reserve Board's implementing Regulation Y thereunder and an "***Electing Stockholder***" means any holder of capital stock of the Company that has provided written notice to the Company of its election to be treated as an "***Electing Stockholder***" for purposes of this Section 4(c), which notice shall be irrevocable.

5. Protective Provisions.

(a) So long as at least 10,800,927 shares of Preferred Stock are outstanding (as adjusted for any Recapitalization Event), the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the voting power represented by the then outstanding shares of Preferred Stock, voting together as a separate class on an as-converted basis, take any of the following actions (whether by amendment, merger or otherwise) and any such act or transaction entered into without such consent or vote shall be null and void *ab initio,* and of no force or effect:

(i) authorize or issue, or create an obligation to authorize or issue, any equity security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Series F Preferred Stock or Series E Preferred Stock, or increase the authorized number of shares of Preferred Stock;

(ii) reclassify any outstanding share of Preferred Stock or Common Stock into shares having rights, preferences or privileges senior to or on parity with the Series F Preferred Stock or the Series E Preferred Stock;

(iii) effect any transaction between the Corporation and any officer or director of the Corporation other than in the ordinary course of business on arms-length terms or as otherwise approved by a majority of the disinterested members of the Board of Directors;

(iv) make any material change in the line of business of the Corporation;

(v) purchase or redeem or pay any dividend on any capital stock of the Corporation prior to the Series F Preferred Stock and Series E Preferred Stock (other than a dividend payable solely in shares of Common Stock or repurchases of stock from former employees or consultants in connection with the cessation of their employment or services on behalf of the Corporation, at cost or the exercise of contractual rights of first refusal approved by a majority of the Board of Directors);

(vi) consummate any liquidation, dissolution or winding up of the Corporation or a Liquidation Event;

(vii) change the authorized number of directors of the Corporation; or

(viii) without the unanimous approval of the Board of Directors, create or hold capital stock in any subsidiary that is not a wholly-owned subsidiary of the Corporation or dispose of the stock of any subsidiary or all or substantially all of the assets any subsidiary.

(b) So long as at least 25% of the shares of Series E Preferred Stock actually issued pursuant to the Series E Stock Purchase Agreement are outstanding (as adjusted for any Recapitalization Event), the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the Series E Preferred Stock, voting together as a separate class on an as-converted basis), take any of the following actions (whether by amendment, merger or otherwise) and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect: (i) prior to the third anniversary of the Original Issue Date, liquidate, dissolve or wind-up the affairs of the Corporation, or effect any Liquidation Event if such Liquidation Event would result in a cash distribution with respect to any share of Series E Preferred Stock of an amount less than $37.03 (as adjusted for any Recapitalization Event); (ii) create, authorize or issue, or create an obligation to create, authorize or issue, any class of capital stock (or other security convertible into or exercisable for capital stock) having rights, preferences or privileges senior to or on parity with the Series E Preferred Stock (including the issuance of any additional shares of Series E Preferred Stock); (iii) reclassify any outstanding shares of capital stock (including, for clarity, any Common Stock or Preferred Stock) into shares of capital stock having rights, preferences or privileges senior to or on parity with the Series E Preferred Stock; (iv) effect any amendment to the Corporation's Certificate of Incorporation that alters the rights, preferences, powers and privileges of the Series E Preferred Stock (including any repeal or modification of Article IX and the adoption of any provision of the Certificate of Incorporation inconsistent with this section) (*provided, however*, the issuance of a class of capital stock having preferences senior to or on parity with the Series E Preferred Stock shall not be deemed to alter such rights, preferences, powers and privileges if such issuance was approved under clause (ii) above); (v) redeem or repurchase or declare or pay a dividend on any shares of capital stock of the Corporation (other than (A) a dividend payable solely in shares of capital stock, (B) the repurchase of Common Stock at the original purchase price from employees, officers, directors, consultants or other service providers pursuant to agreements providing for such repurchase upon termination of service to the Corporation or (C) the exercise of a contractual right of first refusal entitling the Corporation to purchase such shares upon substantially the same terms offered by a third party) or (vi) increase the size of the Board of Directors to more than ten (10) directors or decrease the size of the Board of Directors.

(c) So long as at least 25% of the shares of Series F Preferred Stock actually issued pursuant to the Series F Stock Purchase Agreement dated as of August 1, 2017 between the Corporation and the Purchaser specified therein are outstanding (as adjusted for any Recapitalization Event), the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the Series F Preferred Stock, voting together as a separate class on an as-converted basis), take any of the following actions (whether by amendment, merger or otherwise) and any such act or transaction entered into without such consent or vote shall be null and void *ab initio,* and of no force or effect: (i) prior to the third anniversary of the Original Issue Date, liquidate, dissolve or wind-up the affairs of the Corporation, or effect any Liquidation Event if such Liquidation Event would result in a cash distribution with respect to any share of Series F Preferred Stock of an amount less than two times (2x) the Series F Original Issue Price (as adjusted for any Recapitalization Event); (ii) create, authorize or issue, or create an obligation to create, authorize or issue, any class of capital stock (or other security convertible into or exercisable for capital stock) having rights, preferences or privileges senior to or on parity with the Series F Preferred Stock (including the issuance of any additional shares of Series F Preferred Stock); (iii) reclassify any outstanding shares of capital stock (including, for clarity, any Common Stock or Preferred Stock) into shares of capital stock having rights, preferences or privileges senior to or on parity with the Series F Preferred Stock; (iv) effect any amendment to the Corporation's Certificate of Incorporation that alters the rights, preferences, powers and privileges of the Series F Preferred Stock (including any repeal or modification of Article IX and the adoption of any provision of the Certificate of Incorporation inconsistent with this section) (*provided*, *however*, the issuance of a class of capital stock having preferences senior to or on parity with the Series F Preferred Stock shall not be deemed to alter such rights, preferences, powers and privileges if such issuance was approved under clause (ii) above); (v) redeem or repurchase or declare or pay a dividend on any shares of capital stock of the Corporation (other than (A) a dividend payable solely in shares of capital stock, (B) the repurchase of Common Stock at the original purchase price from employees, officers, directors, consultants or other service providers pursuant to agreements providing for such repurchase upon termination of service to the Corporation or (C) the exercise of a contractual right of first refusal entitling the Corporation to purchase such shares upon substantially the same terms offered by a third party); (vi) increase the size of the Board of Directors to more than ten (10) directors or decrease the size of the Board of Directors; (vii) cause or allow any subsidiary of the Corporation to incur any debt, other than (A) debt of any such subsidiary that is an off-balance sheet obligation for the Corporation and all of its subsidiaries, (B) any debt for securitizations, (C) debt warehouse facilities and (D) any intercompany debt between or among such subsidiary and the Corporation; (viii) facilitate the sale or issuance of any equity security of the Corporation (or security convertible into or exercisable for any equity security of the Corporation) for consideration per share less than $15.00 per share of Common Stock; $15.75 per share of Series A Preferred Stock; $15.88 per share of Series B Preferred Stock; $16.67 per share of Series C Preferred Stock; and $17.09 per share of Series D Preferred Stock, within 12 months of the Original Issue Date (other than issuances of any equity security of the Corporation excluded from the definition of Additional Shares of Common Stock pursuant to pursuant to Section 3(d)(i)(B) hereof); (ix) acquire or dispose of the Corporation's or any of its subsidiaries' assets valued at the greater of (A) $125,000,000 (on a consolidated basis) and (B) 15% of the Corporation's consolidated total assets, as set out in the most recent consolidated audited accounts; or (x) issue in excess of 7,440,270 additional shares of Common Stock (or other securities exercisable for or convertible into Common Stock) to officers, directors or employees of, or consultants to, the Corporation pursuant to an equity incentive plan or inducement award (not including awards outstanding as of the date of this Certificate of Incorporation).

(d) If at least 8,234,689 shares of Series F Preferred Stock are outstanding at any time (as adjusted for any Recapitalization Event), then for so long as at least 25% of the shares of Series F Preferred Stock actually issued pursuant to the Series F Stock Purchase Agreement dated as of August 1, 2017 between the Corporation and the Purchaser specified therein are outstanding (as adjusted for any Recapitalization Event), the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the Series F Preferred Stock, voting together as a separate class on an as-converted basis), take any of the following actions (whether by amendment, merger or otherwise) and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect: (i) incur any debt (which, for purposes of clarification only, includes guarantees by the Corporation of indebtedness of other persons other than any of its subsidiaries) other than debt of the Corporation with aggregate obligations that do not exceed at any time outstanding the greater of (A) $50,000,000 and (B) 10% of the Corporation's consolidated total assets, as set out in the most recent consolidated audited accounts, excluding any intercompany debt between or among the Corporation and any of its subsidiaries; or (ii) make loans or advances to any person or entity other than those made to any officer, employee or director of the Corporation that are (A) in an amount less than or equal to $50,000 or (B) otherwise in the ordinary course of business of the Corporation and in connection with travel advances or the payment of salary.

6. **Status of Converted or Redeemed Stock.** In the event any shares of Preferred Stock shall be converted or acquired pursuant to Section 3 hereof, or otherwise acquired by the Corporation, the shares so converted or acquired shall be canceled and shall not be issuable by the Corporation, and the Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

7. **Redemption.** The Preferred Stock is not redeemable at the option of the holder thereof.

ARTICLE V

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation. Election of directors need not be by written ballot, unless the Bylaws of the Corporation so provide. Except as otherwise provided in this Amended and Restated Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

ARTICLE VI

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors is authorized to make, adopt, amend, alter or repeal the Bylaws of the Corporation. Except as otherwise provided in this Certificate of Incorporation, the stockholders shall also have power to make, adopt, amend, alter or repeal the Bylaws of the Corporation.

ARTICLE VII

To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or modification of the foregoing provisions of this Article VII, or the adoption of any provision of the Certificate of Incorporation inconsistent with this Article VII, shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions occurring prior to, such repeal or modification.

ARTICLE VIII

To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended, the Corporation shall provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which the Delaware General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, the affirmative vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others.

Any repeal or modification of the foregoing provisions of this Article VIII, or the adoption of any provision of the Certificate of Incorporation inconsistent with this Article VIII, shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director, officer, agent or other person with respect to any acts or omissions of such director, officer, agent or other person occurring prior to, such repeal or modification.

ARTICLE IX

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "***Excluded Opportunity***" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "***Covered Persons***"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

ARTICLE X

The Corporation reserves the right to amend or repeal any of the provisions contained in this Amended and Restated Certificate of Incorporation in any manner now or hereafter permitted by law and by this Amended and Restated Certificate of Incorporation, and the rights conferred upon the stockholders of the Corporation herein are granted subject to this reservation.

* * *

4. This Amended and Restated Certificate of Incorporation has been duly adopted by the board of directors and stockholders of the Corporation in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned has executed this Sixth Amended and Restated Certificate of Incorporation on this September 7, 2017.

KABBAGE, INC.

By:
Name: L. Scott Askins
Title: Secretary

EXHIBIT 3

Treliant

Independent BSA/AML Audit
Kabbage, Inc.

October 9, 2018

Treliant, LLC:

Constandino Papagiannis, Principal
Prasad Chintamaneni, Senior Advisor
Efren Alba, Director
Kenneth Will, Director
Brian Veber, Consultant
Naila Eisa, Senior Consultant

This page is intentionally left blank

Treliant

Contents

Treliant

Executive Summary

Background

Kabbage, Inc. (the “Company”) is an online financial technology company based in Atlanta, Georgia. The Company provides access to funding to small businesses through an automated lending platform, using a technology driven underwriting methodology, drawing decision-making metrics from non-traditional data sources.

The Company retained the services of Treliant, LLC to conduct a risk-based audit of the design and effectiveness of its Bank Secrecy Act (“BSA”)/Anti-Money Laundering (“AML”) and Office of Foreign Assets Control (“OFAC”) Compliance Program (“BSA/AML Program”) in connection with the *Kabbage*® Small Business Loan Program, with specific focus on how the Federal Financial Institutions Examination Council (“FFIEC”) and OFAC requirements and guidance impact the BSA/AML Program at the Company relative to regulatory requirements and expectations.

Performing an independent audit, either through an internal audit function or external auditors/consultants, is a key component of a BSA/AML and OFAC compliance framework. Independent audit provides assurance on the design of the BSA/AML Program and effectiveness of internal controls through a risk-based approach, and evaluates the quality of risk management for all banking operations. The Company conducts the independent BSA/AML Program audit annually.

The results of this independent audit are to be submitted to the Bank’s BSA/AML Officer. Treliant performed this independent BSA/AML Program, the scope of which is defined below.

Objectives and Scope

Treliant assessed whether the Company’s BSA/AML and OFAC Program was functioning effectively through a review of its (i) policies and procedures and their implementation; and (ii)evaluation of the design and operating effectiveness of internal controls within the BSA/AML and OFAC Program. This included an assessment of staff awareness and their ability to articulate, understand and demonstrate compliance with BSA/AML and OFAC requirements. The review encompassed a risk-based assessment of the Company’s compliance with BSA/AML and OFAC regulation by focusing on the internal control environment.

Treliant conducted on-site interviews and walk-throughs during the audit planning phase, which provided information on the Company’s control activities. Information gathered during the planning phase established the audit scope. Planning activities also involved analysis of the Company’s BSA/AML Program documents, including the Company’s risk assessment, and a review of prior issues from both internal and external sources.

The scope of the audit was based on multiple factors, including a review of the Company’s most recent risk assessment in order to develop an understanding of the Company’s size, complexity, scope of activities, and risk profile; information obtained in the planning phase; operational risk factors; and industry standards and leading practices.

The following BSA/AML Program elements were included in this audit:

- Program Governance
- Risk Assessment
- Issue Remediation
- Training
- Know Your Customer
- Questionable Activity Reporting
- Office of Foreign Assets Control
- Quality Assurance
- Section 314(a) and External Requests
- Transaction Monitoring

Overview of BSA/AML and OFAC Control Environment

The Company's core product offering consists of providing access to funding for domestic U.S. small- and medium-sized businesses ("SMBs") through the *Kabbage*® Small Business Loan Program ("*Kabbage* Program"). Access to such funding is provided through an online platform ("Platform"), which serves as the application, underwriting, and servicing platform.

The *Kabbage* Program is supported by a partnership with Celtic Bank, a Utah-chartered, privately owned industrial bank. Celtic Bank serves as lender for the *Kabbage* Program, while the Company serves as "Program Manager" responsible for marketing, servicing, and collections. The Company's partnership with Celtic Bank is governed by a Program Management Agreement ("PMA") detailing the Company's responsibilities to Celtic Bank as the Program Manager. Although the Company does not have any legal or regulatory requirement to put in place a robust BSA/AML and OFAC control environment, Celtic has placed responsibility with the Company for a number of compliance-related controls.

The Company is exposed to moderate money laundering inherent risk within the *Kabbage* Program through two primary channels: customer risk and geographical risk. Its customer risk stems from having a proportion of accounts from higher risk entity and industry types, account onboarding being completed through an online process, and expected growth within the overall customer base. The Company also has a number of customers operating in geographic areas with known higher risks related to money laundering and forms of illegal trafficking[1]. Inherent product risk is relatively low due to the single product offering currently in place. The Company's transaction risk is reduced as it does not accept cash or cross-border payments and loan repayments are typically conducted as domestic Automated Clearing House ("ACH") transactions from U.S. financial institutions, commonly as recurring auto-debits.

A key component of the Company's BSA/AML and OFAC control framework, as required by Celtic Bank, is a robust screening program. The Company screens potential customers during onboarding, including OFAC screening, as well as periodically as changes are made to customer accounts and to screening lists. Initial enhanced due diligence ("EDD") is performed on all client accounts deemed high risk by the Company. The Company also conducts transaction monitoring on loan repayments using a set of defined

[1] High Intensity Drug Trafficking Areas (HIDTA) and High Intensity Financial Crime Areas (HIFCAs).

rules. Any matches or potentially suspicious activity identified by the Company is required to be reported to Celtic Bank in the form of a Questionable Activity Report ("QAR"). Celtic Bank will complete any required investigation and file a Suspicious Activity Report ('SAR") with the Financial Crimes Enforcement Network ("FinCEN"), if needed.

The Company's overall BSA/AML and OFAC compliance framework is governed by a BSA/AML Policy and a BSA/AML Program Manual. Both documents were created in cooperation with Celtic Bank based on its own related policies, with approval by Celtic Bank required for the BSA/AML Policy on an annual basis. The Policy and Program Manual are supported by a set of evolving procedures covering the Company's customer and transaction screening processes. Effective implementation of the system of internal controls and governing documentation is the responsibility of the Company's Board-appointed BSA/AML Officer.

BSA/AML Program Elements: Summary, Observations, and Issues

Risk Assessment

➢ Risk Assessment

The Company outsourced its annual BSA/AML and OFAC risk assessment to an independent, third party provider[2]. The 2017 risk assessment, which covered the period from December 31, 2016 to December 31, 2017, was the inaugural risk assessment for the BSA/AML and OFAC Compliance Program. The process for the risk assessment is defined by the BSA/AML Policy, and the results of the risk assessment are provided by the BSA/AML Officer to the Audit Committee of the Board of Directors of Kabbage for review.

The risk assessment methodology focuses on the inherent money laundering and OFAC-related risks presented by three areas – customers, products and services, and geographies. The 2017 assessment concluded that the overall inherent risk rating was **Moderate**, the control effectiveness was **Needs Improvement**, and the residual risk rating was **High** but **Decreasing**.

Treliant reviewed the 2017 risk assessment, BSA/AML Policy, and formal approval of the risk assessment by the Board of Directors. Treliant found the ultimate output of the risk assessment to be reasonable and aligned to the risk profile of the Company.

Program Governance

[2] Promontory Inc.

➢ Program Governance

Oversight of the Company's BSA/AML and OFAC Compliance Program ultimately falls under the responsibilities of the Company's Board of Directors (the "Board"). While compliance reporting is provided directly to the full Board, the charter for the Board's Audit Committee was amended in March 2018 to delegate the risk and compliance oversight function to the Audit Committee.

The Company's Board designates a BSA/AML Officer who is responsible for day-to-day management of the BSA/AML and OFAC Compliance Program, as well as the Chief Compliance Officer ("CCO"). The Board also approves the Company's BSA/AML Policy on an annual basis, reviews the results of annual independent testing of the BSA/AML and OFAC Compliance Program, and addresses any compliance issues raised internally or by Celtic Bank.

Treliant reviewed a sample of Board and committee meeting minutes, formal approval documentation of key BSA/AML documents, formal approval of the BSA/AML Officer and CCO, professional qualifications of the BSA/AML Officer, BSA/AML and OFAC Compliance Program reporting to the Board, and the amended charter for the Audit Committee and did not find any material concerns or issues.

➢ Issue Remediation

The Company maintains a "*Kabbage* Issue Tracker" to catalogue identified issues related to its Compliance Program, including BSA/AML and OFAC compliance. The Issue Tracker includes the source of each issue (e.g., self-identified, external audit, partner bank reviews), a description of the issue, commentary on remediation work related to the issue, and a "latest status" update for each issue. The Company shares the Issue Tracker with Celtic Bank to help ensure its overall compliance program, including BSA/AML and OFAC compliance, meets Celtic Bank's compliance management standards. Material issues are also escalated to the Company management and the Board of Directors for review and resolution.

Treliant reviewed *Kabbage's* Issue Tracker, as well as guidance in the BSA/AML Policy on Board and Management responsibilities for resolving compliance-related issues. While overall tracking appears to be quite thorough, Treliant found that improvements could be made in detailing the risk and priority of issues listed in the Tracker, as well as a clearer identification of owner(s) for each identified issue. Additionally, formal guidance, e.g., issue management procedures, could be added to the Company's governing documentation, including specific parameters for the types of issues requiring formal tracking.

System of Internal Controls

➢ Know Your Customer ("KYC") / Know Your Business ("KYB")

The Company collects and verifies the identity of all Program customers at the time of onboarding and periodically, if changes are made to the customer account, through automated non-documentary verification via Lexis Nexis. If the identity of an applicant cannot be authenticated or if the applicant information appears to present fraud or money laundering risk, the Company's Risk Operations Team will perform an investigation and either place the application in a pending resolution queue, request additional information, and/or recommend that a QAR be completed. Enhanced due diligence is performed on all client accounts deemed high risk by the Company based on the Company's Customer Risk Rating ("CRR") Methodology.

Treliant evaluated the design of the KYC Program, and also conducted sample testing on manually verified KYC/KYB alerts and high risk customers to assess the effectiveness of internal controls.

Observation: KYC and CRR Documentation and Recordkeeping: Treliant found that although the KYC and CRR written procedures provide some information about specific steps for the compliance analysts ("Analysts") to follow to verify customer identity, they do not specify the level of detail required for Analyst commentary or documentation within the system of record (Salesforce). In the samples provided, Analyst comments did not indicate what steps were taken to verify the true identity of the customer in question, which could lead to inconsistent execution of processes, the inability to perform quality assurance to ensure control effectiveness, and inadequate record-keeping. Treliant confirmed, through walkthroughs with the Risk Operations Team, that the process for clearing flags is well-designed and that the issue is primarily related to documentation and recordkeeping.

➢ Office of Foreign Assets Control (OFAC)

The Company has implemented GIACT, a third party screening tool, to perform OFAC screening for applicants, customers, employees and vendors. Screening is performed during onboarding, on a monthly recurring basis for existing customers and when changes are made to customer accounts. Due to the nature of the origination/disbursement flow, the Company does not perform screening on transactions. Potential true matches are escalated to Celtic Bank and confirmed true matches are reported to FinCEN and the Board.

Treliant assessed the design of OFAC Name Screening, and also conducted sample testing on OFAC high and exact matches to assess the effectiveness of internal controls.

Observation: OFAC Documentation and Recordkeeping: Treliant found that although the procedures currently in place for OFAC Name Screening provide some specific steps for Analysts to follow, they do not specify the level of detail required for Analyst commentary within the system of record. As a result, in general, the Analyst did not provide consistent detailed commentary or review documentation for the dispositioning of OFAC hits. As a result of incomplete record-keeping, third parties are unable to fully confirm the correctness or justification for the resolution of OFAC hits.

Observation: OFAC Screening Tool: The Company investigates only exact and high matches and

Treliant

effectively auto-closes conditional matches. Based on testing results, Treliant found that GIACT may treat exact Specially Designated National ("SDN") strong alias names as conditional matches instead of exact or high matches, by stripping special characters such as apostrophes from entity names. As a result, the Company may not be able to identify all sanctioned entities in its OFAC screening. Treliant confirmed, through conversations with the Company, that GIACT is updating its platform to accommodate special characters by Wednesday, August 29th 2018.

Additional Considerations: Screening Merchants Involved in Transactions: The *Kabbage* Line of Credit under the Alibaba.com Pay Later Program allows only U.S. buyers to take a loan at point of sale on Alibaba.com. Payments are routed through Citibank to U.S. subsidiary of Alibaba who is responsible for sending those payments to the suppliers (US and non-US) on the Alibaba.com platform. Supplier names and order numbers from Alibaba transactions are stored within the Company's systems. While there may be no regulatory requirement on screening Alibaba suppliers, Treliant recommends that the Company consider screening supplier names, involved in transactions, to eliminate the possibility of a SDN name in the set of supplier names captured within the Company's infrastructure. Note that the Company's screening tool (GIACT) only screens the US names from the OFAC list.

Additional Considerations: Screening Third Parties who make Loan Payments: Third parties making loan payments are not systematically screened. Treliant recommends that all parties (customers and non-customers) making payments be screened.

➢ Transaction Monitoring ("TM")

The Company conducts automated transaction monitoring on loan repayments greater than $5,000 using a set of defined rules. Each TM alert automatically creates a ticket which is reviewed and decisioned by the Risk Operations Team. Any unresolved tickets are escalated to the BSA/AML Officer and the Compliance Manager. The Company does not allow currency (i.e., cash) transactions, which mitigates transaction monitoring risk and eliminates the need to file currency transaction reports ("CTRs").

Treliant evaluated the design for transaction monitoring and conducted sample testing on cleared alerts to assess the effectiveness of internal controls.

Observation: TM Documentation and Recordkeeping: Treliant found that although the transaction monitoring procedures provide steps for Analysts to follow based on the rule triggered, they do not specify the level of detail required for Analyst commentary within the system of record. As a result, in the samples reviewed, Analyst comments did not indicate why an alert was cleared (i.e., why or how the funds in question were verified and risk accepted, or what steps, if any, were taken to perform their review). During on-site meetings between the Company and Treliant, the Company's personnel acknowledged the lack of more complete commentary, and further indicated that the review process would be enhanced to incorporate more detail.

➢ Questionable Activity Reporting ("QAR")

Any OFAC matches or potentially suspicious activity identified by the Company during customer onboarding and ongoing monitoring is required to be reported to Celtic Bank in the form of a QAR. The Compliance Operations Manager is responsible for this process and for evaluating whether to close accounts on which it completes multiple QARs. The Company may also close an account at the request of Celtic Bank. Following the receipt of a QAR, Celtic Bank will complete any required further investigation and file a Suspicious Activity Report ("SAR"), if needed.

Treliant evaluated the design of the suspicious activity process, the interaction between the Company and Celtic Bank, and also conducted sample testing on QARs filed by the Company in an effort to assess the effectiveness of internal controls. No exceptions were identified, and the process was found to be sufficient.

The Company maintains records for customer account information for the five-year time period consistent with BSA record-keeping requirements. The BSA/AML Program Manual provides specifies creation of a QAR within 30 days of the identification of potentially suspicious activity.

➢ Section 314(a) and External Requests

Section 314(a) of the USA Patriot Act requires a financial institution to conduct a one-time search of its customer and transaction databases upon request by law enforcement in order to identify matches to subjects on the circulated lists, and to provide a response to FinCEN within 14 days of the notification date.

The Company's Compliance Operations Manager is responsible for ensuring compliance with 314(a) information-sharing requests from Celtic Bank and liaising with the Bank regarding all requests and results within the timelines prescribed in the BSA/AML Program Manual. Celtic Bank will make the final determination to FinCEN and file a response.

Treliant evaluated the process by which the Company receives, searches, and responds to 314(a) and other external requests from Celtic Bank. No exceptions were identified.

➢ Quality Assurance ("QA")

Currently, the Company maintains a limited QA process. On a quarterly basis, the Company's Compliance Operations Manager completes compliance checks on processes included in the Program's BSA/AML and OFAC control framework (e.g., Customer Identification Program). The Compliance Operations Manager also performs monthly reviews of OFAC screening results in response to a request made by Celtic Bank. Any results of such checks are incorporated into compliance reporting provided to management and the Company's Board, as well as regular reporting provided to Celtic Bank on screening outcomes.

Treliant confirmed through interviews with key the Company Compliance personnel that expanded QA checks are being considered for both screening/monitoring and vendor management aspects of the overall Compliance Program as the Program continues to develop and evolve.

Observation: Formal Quality Assurance/Quality Control Framework: The Company's limited QA process is not formally documented in any of the existing policy or procedural documents, and the process is currently completed by one individual within the Compliance Department. The lack of formal documentation of The Company's existing checks on internal controls can lead to inconsistent or incomplete checks, as well as the inability to properly scale such checks as resources or controls expand.

Training

➢ Training

The Company currently uses OnCourse (formerly Banker's Edge) online training as the primary method of providing training to its staff. Previously, the Company only provided online BSA/AML and OFAC training to employees with related responsibilities, but such training is now required for all the Company employees starting in 2018. Training content is appropriate given the Program's inherent risk profile. Online training is supplemented with department-specific and on-the-job targeted training as needed, including a BSA/AML-focused training annually for employees with front-line BSA/AML responsibilities. Additionally, the Company provides annual BSA/AML and OFAC training to its Board of Directors.

Employee online training is tracked through OnCourse's reporting to ensure all employees complete training on a timely basis; however, Treliant found that tracking non-online training, such as one-time, role-specific training courses can be improved through a comprehensive training log that combines the OnCourse online training report and manually entered line items for non-online training.

Treliant assessed the design of the BSA/AML training program, and also conducted testing using training data to ensure employees completed training as required and in a timely manner and that content delivered was comprehensive and effective. No exceptions were identified.

Treliant

Overall Rating and Rationale

Treliant conducted an assessment of the adequacy and effectiveness of the BSA/AML Program. The results of this review indicate that the design and/or operating effectiveness of controls provide limited assurance to mitigate the identified key risks for the activities covered within the scope of this review.

The overall rating for the BSA/AML control environment is Limited Assurance

Treliant considers that the incomplete operational review process documentation is an important weakness that requires prioritization by the Company to allow for robust independent review of control effectiveness and ongoing Quality Assurance. Without adequate review documentation, the quality of execution of the control cannot be fully tested. This weakness affects testing of CIP, EDD, OFAC and transaction monitoring controls and is considered a systemic gap.

The following table supports the rationale for the overall rating by evaluating each of the BSA/AML Program elements and describes the degree of assurance that can be placed on the current key controls to effectively mitigate BSA/AML risk.

Assessment Key[3]	
Green	Reasonable assurance can be placed on the effectiveness of the controls to mitigate the identified risk.
Yellow	Limited assurance can be placed on the effectiveness of the controls to mitigate the identified risk.
Grey	Insufficient assurance can be placed on the effectiveness of the controls to mitigate the identified risk.

BSA/AML Program Element	Assessment	Summary of Testing Completed
Program Governance	Green	No exceptions were noted regarding the Program Governance of the BSA/AML and OFAC Compliance Program. The Company's Board of Directors maintains sufficient oversight of the BSA/AML Program through the Audit Committee of the Board, including regular reporting on key Compliance items and receiving escalation of material issues.
Risk Assessment	Green	No exceptions were noted regarding the risk assessment process. The annual risk assessment, which started with the 2017 Program review and is completed by an independent third party, is comprehensive and sufficient for the *Kabbage* Program.
KYC/KYB/CRR	Yellow	One exception was noted for the KYC & CRR processes: 1) Analysts do not provide consistent detailed commentary and documentation in the system of record to indicate what steps were taken to verify the true identity of the customer in question.

Version: Final
Revised Release Date: October 9, 2018
Classification: Treliant, LLC - Highly Confidential

A00047

BSA/AML Program Element	Assessment	Summary of Testing Completed
OFAC		Two exceptions were noted regarding the OFAC name screening process: 1) Analysts do not provide consistent detailed commentary and documentation in the system of record for the dispositioning of OFAC alerts, 2) the Company may not be able to identify all sanctioned individuals in its OFAC screening due to platform limitations of their screening tool, GIACT.
Transaction Monitoring		One exception was noted regarding the Transaction Monitoring process: 1) Analysts do not provide consistent detailed commentary and documentation in the system of record for the dispositioning of TM alerts.
Questionable Activity Reporting		No exceptions were noted regarding the questionable activity reporting process. The process is well-designed, and the interaction between the Company and Celtic Bank is appropriate. Sample testing of QARs filed by the Company revealed no material errors which would require correction/amendment.
Section 314(a)		No exceptions were noted in the design or operating effectiveness of controls related to 314(a)
Issue Management		No exceptions were noted regarding the issue management process. All issues related to the BSA/AML and OFAC Compliance Program, including all issues relating to meeting Celtic Bank's compliance standards, were tracked and managed by the Company's Compliance personnel. Issues are escalated to the Board and Celtic Bank, as required.
Quality Assurance		Quality Assurance on the Company's overall screening and monitoring processes and output is limited, as no formal QA process within Compliance is currently in place.
Training		The Bank utilizes OnCourse for training materials for its employees, which the audit team determined was appropriate given the Bank's risk profile. There were no detected instances in which a training was not provided to employees as intended.

Treliant would like to extend our appreciation to the Company's Risk and Compliance teams for their assistance and cooperation during this Review.

Detailed Findings

Documentation and Record-keeping for Internal Controls

Control Category: *KYC/CRR, OFAC, TM* **Issue Rating**: *Medium Risk*	**Issue Description** The audit review for the BSA/AML Program found that although Procedures provide some steps for Analysts to follow to verify customer identity and clear alerts, they do not specify the level of detail required for Analyst commentary and documentation within the system of record. As a result, in most of the samples reviewed for KYC/KYB, OFAC Screening, TM, and CRR, the Analyst comments did not indicate why an OFAC or TM alert was cleared or why a KYC/KYB or CRR flagged customer was verified and what steps were taken to perform their review. Inadequate record-keeping measures may lead to inconsistent and inaccurate execution of processes and a reduced ability to perform independent assessment and quality assurance to ensure control effectiveness. Treliant confirmed, through walkthroughs with the Risk Operations Team, that the process for clearing flags is well-designed and that the issue is primarily related to documentation and recordkeeping.
Company Remediation Efforts	During on-site meetings between the Company and Treliant on July ___, 2018, the Company personnel acknowledged the lack of more complete commentary, and further indicated that the review process would be altered to incorporate more detail.

OFAC Name Screening Tool

Control Category: *OFAC Screening* **Issue Rating**: *Medium Risk*	**Issue Description** The audit team performed testing on OFAC Name Screening and found four exact SDN strong alias names that were not alerted for review per the BSA/AML Policy. Based on testing results, Treliant found that GIACT, the third party name screening tool used for the *Kabbage* Program, may treat exact SDN strong alias names as conditional matches instead of exact or high matches, by stripping special characters such as apostrophes from party names. As a result, the Company may not be able to identify all sanctioned individuals in its OFAC screening as the Company investigates only exact and high matches and effectively auto-closes conditional matches.
Company Remediation Efforts	Treliant confirmed, through conversations with the Company, that GIACT updated its platform to accommodate special characters on September 10, 2018.

Formal Quality Assurance/Quality Control Framework

Control Category: *Quality Assurance* **Issue Rating**: *Low Risk*	**Issue Description** The audit review for the s BSA/AML Program found that a formal QA/QC framework is not yet in place across all monitoring and screening processes. Although the Manager, Compliance Operations currently performs periodic checks on compliance control outputs, including a check on OFAC screening decisions, these checks are not yet formalized through documented procedures and a defined QA/QC function across the entire BSA/AML and OFAC Compliance Program.
Company Remediation Efforts	During on-site meetings between the Company and Treliant in July 2018, the Company personnel acknowledged the lack of a complete formal QA framework, and further indicated that they expected the current compliance checks related to BSA/AML and OFAC compliance to evolve as the BSA/AML Program matures.

Appendix A: List of Documents Reviewed

Treliant

#	Document Name
1	1. Customer Risk Rating Procedures (FINAL 7.20.18).docx
2	1. Customer_Risk_Rating_Procedures (FINAL 6.22.18).docx
3	10-17 DRAFT Kabbage BSA AML Program Manual (AH Draft 6.28.18).docx
4	19 Compliance Training Policy Notes Rev 20180627.docx
5	1-Kabbage - 2017 BSA AML and OFAC Risk Assessment (FINAL)(March 2018).docx
6	2. Transaction_Monitoring_Procedures (FINAL 6.22.18).docx
7	2. Transaction_Monitoring_Procedures (FINAL 6.23.18).docx
8	21 Banker's Edge Course Summary 20171226 Final.xls
9	22 Training Course Catalog.docx
10	23 Board - Compliance Training (FINAL 11.6.17).pptx
11	24 26 Compliance Enhancements Project (6.26.18).xlsx
12	24 26 Kabbage Issues Report 20180625.xlsx
13	2-BSA-AML Policy 20160720.docx
14	3. Know Your Customer Procedures (FINAL 7.20.18).docx
15	4 BSA Org Chart.docx
16	4 BSA_AML Reporting Structure for Risk.xls
17	4. OFAC Screen Procedures (FINAL 8.13.18).docx
18	5 Kabbage Board Minutes Credit Committee 2-7-18.pdf
19	6 Kabbage - 2017 BSA AML and OFAC Risk Assessment Exec Summary (FINAL)(March 2018).docx
20	6 Kabbage - 2017 ID Theft Red Flags Risk Assessment Executive Summary (FINAL)(March 2018).pptx
21	6 Kabbage - Board Consent (Regulatory Policies Risk Assessments) (FINAL)(March 2018)[1].pdf
22	6 Legal Compliance Policy Board Deck (April 2018)(FINAL).pptx
23	7-20 Test File for Auditors.xlsx
24	Board of Directors Meeting Attendance Sheet 11-15-2017 (1).docx
25	Compliance Issues Log 2018 Treliant.xlsx
26	Compliance Reporting Slide for 7.25.18 Board Meeting.pptx
27	Compliance excerpts from Program Management Agreement with Celtic.docx
28	confirmation of july meeting minutes.pdf
29	CRR Screenshots for Treliant 09.11.2018 (1).docx
30	CRR_Accounts_2018.xlsx
31	Desktop Procedures for Know Your Customer (7.18.18).docx
32	IDVerified in June (1).xlsx
33	Kabbage - BSA AML Policy KBG Board Approved 20180406 (002).docx
34	Kabbage - Code of Conduct KBG Board Approved 20180406.pdf
35	Kabbage - Proposed Resolutions of Board - July 26, 2017_Redacted.pdf
36	Kabbage AML Training Discussion Deck (as of 11-30-17)[1].pdf
37	KBGQuals 201806.xlsx
38	KYB_KYC Procedures.docx
39	KYBKYC - Step by Step Salesforce Instructions for working URS Team Queue[1].docx
40	KYC_ KYB 7-62 Treliant 8.29.2018.docx

Treliant

#	Document Name
41	KYC_ KYB screenshots #63- 107 Treliant 08.29.2018.docx
42	Loan Funding Flowchart.pdf
43	OFAC Screenshots for Treliant 09.12.2018.docx
44	On Course AML for Customer Service Representatives.pdf
45	On Course Bank Secrecy Act for Customer Service Representatives.pdf
46	Re KYCKYB Initial Questions - Kabbage.msg
47	Request#8 08.16.2018.docx
48	Securitization Structure for Treliant.docx
49	Suspicious Activity Template.xlsx
50	TM screenshots for treliant (1).docx
51	TM screenshots for treliant UPDATED.docx
52	Transaction Monitoring 08.21.2018 (1).xlsx
53	Transaction Testing - CRR Template (FINAL 7.20.18).docx
54	Treliant Follow-up Questions (SH 8.8.18).docx
55	Treliant Preliminary Observations (AH Draft 8.30.18).docx
56	Updated App Screenshots.docx
57	Clinton Thorson v.2.xlsx
58	Clinton Thorson.xlsx
59	ClintonT Affidavit.pdf
60	ClintonT Police.pdf
61	Herb Bennett QAR.xlsx
62	Larry Sandlin v.2.xlsx
63	Larry Sandlin.xlsx
64	LarryS Affidavit.pdf
65	LarryS Police.pdf
66	policereport - herb QAR.pdf
67	QAR-Larry Clark P&A.PDF
68	QAR-Larry Clark.xlsx
69	Robert Makhani v.2.xlsx
70	Robert Makhani.xlsx
71	RobertM Affidavit.pdf
72	RobertM Police.pdf
73	William Barnes Affidavit and Police Report.pdf
74	William Barnes QAR 20180606.xlsx
75	2017-07-03 FinCEN 314a Business List.csv
76	2017-07-03 FinCEN 314a Business List.xls
77	2017-07-03 FinCEN 314a Personal List.csv
78	2017-07-03 FinCEN 314a Personal List.xls
79	2017-07-18 FinCEN 314a Business List.csv

Treliant

#	Document Name
80	2017-07-18 FinCEN 314a Business List.xls
81	2017-07-18 FinCEN 314a Personal List.csv
82	2017-07-18 FinCEN 314a Personal List.xls
83	2017-08-01 FinCEN 314a Business List.csv
84	2017-08-01 FinCEN 314a Business List.xls
85	2017-08-01 FinCEN 314a Personal List.csv
86	2017-08-01 FinCEN 314a Personal List.xls
87	2017-08-15 FinCEN 314a Business List.csv
88	2017-08-15 FinCEN 314a Business List.xls
89	2017-08-15 FinCEN 314a Personal List.csv
90	2017-08-15 FinCEN 314a Personal List.xls
91	2017-08-29 FinCEN 314a Business List.csv
92	2017-08-29 FinCEN 314a Business List.xlsx
93	2017-08-29 FinCEN 314a Personal List.csv
94	2017-08-29 FinCEN 314a Personal List.xls
95	2017-09-12 FinCEN 314a Business List.csv
96	2017-09-12 FinCEN 314a Business List.xls
97	2017-09-12 FinCEN 314a Personal List.csv
98	2017-09-12 FinCEN 314a Personal List.xls
99	2017-09-26 FinCEN 314a Business List.csv
100	2017-09-26 FinCEN 314a Business List.xls
101	2017-09-26 FinCEN 314a Personal List.csv
102	2017-09-26 FinCEN 314a Personal List.xls
103	2017-10-10 FinCEN 314a Both Lists.csv
104	2017-10-10 FinCEN 314a Both Lists.xls
105	2017-10-24 FinCEN 314a Business List - PROCESSED 2017-10-31.csv
106	2017-10-24 FinCEN 314a Personal List - PROCESSED 2017-10-31.csv
107	2017-11-07 FinCEN 314a Business List - PROCESSED 2017-11-16.xls
108	2017-11-07 FinCEN 314a Personal List - PROCESSED 2017-11-16.xls
109	2017-11-21 FinCEN 314a Business List - PROCESSED 2017-11-28.csv
110	2017-11-21 FinCEN 314a Personal List - PROCESSED 2017-11-28.csv
111	2017-12-05 FinCEN 314a Business List - PROCESSED 2017-12-08.csv
112	2017-12-05 FinCEN 314a Personal List - PROCESSED 2017-12-08.csv
113	2017-12-19 FinCEN 314a Business List - PROCESSED 2017-12-20.csv
114	2017-12-19 FinCEN 314a Personal List - PROCESSED 2017-12-20.csv
115	2018-01-02 FinCEN 314a Business List - PROCESSED 2018-01-10.csv
116	2018-01-02 FinCEN 314a Personal List - PROCESSED 2018-01-10.csv
117	2018-01-16 FinCEN 314a Business List - PROCESSED 2018-01-19.csv
118	2018-01-16 FinCEN 314a Personal List - PROCESSED 2018-01-19.csv

#	Document Name
119	2018-01-30 FinCEN 314a Business List - PROCESSED 2018-02-06.xlsx
120	2018-01-30 FinCEN 314a Personal List - PROCESSED 2018-02-06.xlsx
121	2018-02-13 FinCEN 314a Business List - PROCESSED 2018-02-14.csv
122	2018-02-13 FinCEN 314a Business List - PROCESSED 2018-02-14.xlsx
123	2018-02-13 FinCEN 314a Personal List - PROCESSED 2018-02-14.csv
124	2018-02-27 FinCEN 314a Business List - PROCESSED 2018-03-19.csv
125	2018-02-27 FinCEN 314a Business List - PROCESSED 2018-03-19.xlsx
126	2018-02-27 FinCEN 314a Personal List - PROCESSED 2018-03-19.csv
127	2018-02-27 FinCEN 314a Personal List - PROCESSED 2018-03-19.xlsx
128	2018-03-27 FinCEN 314a Business List - PROCESSED 2018-03-29.xlsx
129	2018-03-27 FinCEN 314a Personal List - PROCESSED 2018-03-29.xlsx
130	2018-04-10 FinCEN 314a Business List - PROCESSED 2018-04-11.xls
131	2018-04-10 FinCEN 314a Personal List - PROCESSED 2018-04-11.xlsx
132	2018-04-24 FinCEN 314a Business List - PROCESSED 2018-04-25.xlsx
133	2018-04-24 FinCEN 314a Business List - PROCESSED 2018-04-26.xls
134	2018-04-24 FinCEN 314a Personal List - PROCESSED 2018-04-26.xlsx
135	2018-05-08 FinCEN 314a Business List - PROCESSED 2018-05-17.xlsx
136	2018-05-08 FinCEN 314a Personal List - PROCESSED 2018-05-17.xlsx
137	2018-06-05 FinCEN 314a Business List - PROCESSED 2018-06-11.xlsx
138	2018-06-05 FinCEN 314a Personal List - PROCESSED 2018-06-11.xlsx
139	2018-06-19 FinCEN 314a Business List - PROCESSED 2018-06-20.xlsx
140	2018-06-19 FinCEN 314a Personal List - PROCESSED 2018-06-20.xlsx
141	Re- Kabbage - SPECIAL POST FinCEN 314a list for 03-19-2018.eml
142	Amazon CloudFront Service Level Agreement.docx
143	Amazon Compute Service Level Agreement.docx
144	Amazon DynamoDB Service Level Agreement.docx
145	Amazon RDS Service Level Agreement.docx
146	Amazon Route 53 Service Level Agreement.docx
147	Amazon S3 Service Level Agreement.docx
148	AWS Shield Advanced Service Level Agreement.docx
149	CoreCard SLA.pdf
150	GIACT SLA.pdf
151	MARQETA SLA.pdf
152	Socure SLA.jpg
153	Threatmetrix SLA.pdf
154	URS SLA - Fraud Investigation.pdf
155	URS SLA - Industry Code Verification.png
156	URS SLA - Manual Underwriting.docx
157	Vendors without SLA on File.docx

Treliant

Appendix B: List of Meetings and Walkthroughs

#	Date of Meeting	Meeting Details
1	7/16/2018	**Product Demo** **Azba Habib**, BSA/AML Officer; **Sunita Hall**, Compliance Analyst; **Amanda Hurtt**, Business Development Project Manager
2	7/16/2018	**Cash Flow Walkthrough** **Nan Siler**, Head of Financial Operations
3	7/16/2018	**Compliance Program** **Scott Askins**, Chief Compliance Officer
4	7/16/2018	**KYC/KYB/EDD/Transaction Monitoring** **Brad Elsinger**, Risk Analyst
5	7/16/2018	**Compliance Operations Walkthrough** **Kristina Nelson**, Manager, Compliance Operations
6	7/16/2018	**Capital Markets** **Deepesh Jain**, Head of Capital Markets
7	7/17/2018	**OFAC Screening** **Michael Gibson**, Risk Analyst
8	7/17/2018	**Fraud and Underwriting Walkthrough** **Yaakov Erlichman**, VP Underwriting and Fraud Strategy
9	7/17/2018	**Screening Ticket Risk Walkthrough** **Azba Habib**, BSA/AML Officer; **Courtney Kirkpatrick**, Risk Analyst
10	7/17/2018	**On-Site Follow-Up** **Azba Habib**, BSA/AML Officer; **Sunita Hall**, Compliance Analyst
11	7/18/2018	**On-Site Follow-Up** **Kristina Nelson**, Manager, Compliance Operations
12	8/14/2018	**Project Status Follow-Up** **Azba Habib**, BSA/AML Officer; **Sunita Hall**, Compliance Analyst
13	8/22/2018	**Testing Population Walkthrough** **Azba Habib**, BSA/AML Officer; **Sunita Hall**, Compliance Analyst
14	9/6/2018	**Transaction Monitoring Walkthrough** **Sunita Hall**, Compliance Analyst; **Courtney Kirkpatrick**, Risk Analyst
15	9/13/2018	**CRR and OFAC Walkthrough** **Sunita Hall**, Compliance Analyst; **Brad Elsinger**, Risk Analyst; **Michael Gibson**, Risk Analyst

EXHIBIT 4

UNITED STATES OF AMERICA
ENTERPRISE BANK SECRECY ACT/ ANTI-MONEY LAUNDERING AND OFFICE OF FOREIGN ASSETS CONTROL POLICY

Approval Date: July 24, 2019

Effective Date: July 24, 2019

Kabbage

Table of Contents

1. Introduction

A. Purpose

Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act"), the Bank Secrecy Act ("BSA"), and Office of Foreign Assets Control ("OFAC") regulations each require compliance with applicable anti-money laundering ("AML") and sanctions regulations.

This document contains the Enterprise BSA/AML and OFAC Policy (the "Policy") for complying with the BSA and all other relevant statutes relating to money laundering and sanctions, as implemented by Kabbage, Inc. and Kabbage Payments, LLC (collectively, "Kabbage" or the "Company") in connection with both (1) Celtic Bank Corporation's ("Celtic Bank") *Kabbage*® small business loan program, and (2) Kabbage's role as a payment facilitator and its offering of payment processing services to its customers through its relationship with Worldpay, LLC ("Processor") and its sponsorship by Fifth Third Bank ("Sponsoring Bank"), (collectively, hereafter the "Offerings"), as well as compliance obligations of Kabbage more generally.

This Policy establishes the enterprise-level policy by which the Offerings comply with applicable BSA/AML, counter-terrorist financing, and sanctions[1] laws and regulations. The Policy sets out how the Offerings meet guidelines developed by regulators and other government agencies to control, monitor, detect, prevent, and report possible money laundering, terrorist financing, and other financial crimes and to screen, prohibit, reject, or block transactions for sanctions violations.

Kabbage is not a "financial institution" (as defined in the BSA at 31 U.S. Code § 5312) and therefore is not required by law to implement a BSA/AML program. However, Kabbage has made a commitment to implement an effective BSA/AML program ("BSA/AML Program") that supports its contractual obligations to comply with regulations as described in its agreements with Celtic Bank, Sponsoring Bank, and Processor, including regulations relating to Know Your Customer/Know Your Business (collectively, "KYC") requirements and Customer Identification Programs ("CIP"), transaction monitoring, referrals of potentially suspicious activity, and a comprehensive sanctions screening process. To operationalize these elements of the BSA/AML Program, Kabbage has developed a separate BSA/AML Program Manual ("BSA/AML Program Manual"). The BSA/AML Program Manual is a living operational document and is periodically revised to reflect the Company's operational procedures.

Kabbage, its management, and its Board of Directors (the "Board") are committed to deterring users and outside parties from using the Offerings as a conduit for illegal activity. This Policy has been designed to provide the framework for effective compliance with BSA/AML laws and regulations, as well as to communicate a clear commitment to creating a strong compliance culture for the Company's employees. The separate BSA/AML Program Manual includes the detailed information related to the specific requirements and procedures outlined in this Policy.

The Board and management recognize that there are sanctions risks associated with the Offerings that may expose Kabbage, Celtic Bank, Sponsoring Bank, and Processor to some inherent BSA/AML compliance risk. As a result, the Board and management recognize that Kabbage needs commensurate BSA/AML controls for the Offerings.

[1] Hereafter collectively referred to as "BSA/AML," for simplicity.

B. Responsibility and Training

This Policy is established to govern the BSA/AML Program upon review by Processor and approval by Celtic Bank and the Board and is reviewed annually by one or more qualified Kabbage compliance professionals ("Compliance") and the Chief Compliance Officer ("CCO") to determine any necessary updates resulting from changes in applicable laws, regulations or rules, industry landscape, product offerings, and/or Kabbage or Celtic Bank processes. In the event there are no material changes to this Policy, Compliance will notify the Board, or a committee to which Board has delegated authority for the Policy ("Board Committee"), that there are no material changes for consideration, in lieu of providing the full Policy document to the Board. However, if there are material changes, Compliance will provide the full policy document reflecting the recommended changes to the Board, or appropriate Board Committee, for approval.

The BSA/AML Officer oversees and administers this Policy and may make recommendations of material changes to the Policy. This responsibility may be transferred to a designated representative to the extent deemed appropriate by the BSA/AML Officer.

Kabbage personnel will be trained on this Policy in accordance with the Compliance Training Policy.

No part of this Policy or its supporting procedures should be interpreted as contravening or superseding other applicable legal and regulatory requirements imposed upon Kabbage or the Offerings. Any conflicts between this Policy and Kabbage's other applicable legal and regulatory requirements must be submitted immediately to the BSA/AML Officer for further evaluation. If necessary, the BSA/AML Officer will consult outside legal counsel.

Any exceptions to this Policy must be approved by the BSA/AML Officer. Questions or suggestions about this Policy should be sent to the BSA/AML Officer, or designee.

C. Scope

This Policy applies to the Offerings and to all Kabbage personnel (i.e., management, Board members, and employees) performing services related to the Offerings.

D. Consequences of Non-Compliance

Non-compliance can expose Kabbage, Celtic Bank, Sponsoring Bank, and Processor to substantial risk. All Kabbage personnel are responsible for understanding this Policy and carrying out any specific BSA/AML responsibilities assigned to them.

Non-compliance with, or violation of, the Policy's requirements may result in:

- Disciplinary action, up to and including termination in appropriate cases; and/or
- Individual and/or company civil and/or criminal penalties.

Willful blindness, or "turning a blind eye," to a potential BSA/AML violation can expose Kabbage, Celtic Bank, Sponsoring Bank, and/or Processor to potential liability.

E. Key Terms

Money laundering is generally defined as the process by which persons attempt to conceal and disguise the true origin and ownership of illegal funds. Money laundering is generally viewed as a three-stage process: placement, layering, and integration:

- **Placement** is the introduction of unlawful proceeds into the financial system without attracting the attention of financial institutions or law enforcement;
- **Layering** is the movement of funds around the financial system to disguise their origin and complicate the paper trail; and
- **Integration** is the incorporation of unlawful proceeds into the financial system to convert illicit funds into apparently legitimate business earnings and acquire wealth.

Terrorist financing is generally defined as the process by which terrorists and/or terrorist organizations raise funds through the abuse of financial products. While money laundering is the process by which funds raised from criminal activities are made to look legitimate for re-

integration into the financial system, terrorist financing differs in that it typically concerns what the funds are to be used for, rather than from where they come.

Sanctions are restrictions against doing business with individuals, entities, or countries. OFAC, as part of the U.S. Department of the Treasury, is responsible for administering and enforcing economic and trade sanctions based on U.S. Government requirements to support foreign policy and national security goals. U.S. persons (a term that includes individuals and entities) are prohibited from engaging in most transactions with these countries and certain individuals and entities ("Specifically Designated Nationals" or "SDNs"). OFAC maintains an up-to-date list of SDNs ("SDN List").

If a U.S. entity receives a payment from, or is asked to make a payment to, any SDN or restricted country, for whatever purpose, the entity is required to stop the payment, block or reject the proceeds, and report the transaction to OFAC within 10 business days.

2. POLICY OBJECTIVES

This Policy seeks to protect the Offerings from being used by individuals and entities engaging in money laundering, terrorist financing, or sanctions avoidance. Specifically, the Policy:

- Defines specific roles and responsibilities for BSA/AML compliance;
- Creates an AML risk assessment process;
- Outlines the BSA/AML internal control process;
- Creates a KYC framework that provides for risk-based customer identification, verification, and due diligence;
- Creates a risk-based transaction monitoring and suspicious activity referral process;
- Establishes a policy of compliance with all USA PATRIOT Act Section 314(a) information sharing requests by Celtic Bank or by the Financial Crimes Enforcement Network ("FinCEN");
- Establishes controls to ensure compliance with OFAC requirements;
- Establishes a process to ensure adherence to all applicable compliance requirements, including filing of reports, responding to information requests, and maintaining records;
- Ensures Kabbage documents efforts to meet its legal and contractual obligations;
- Provides a training program for all personnel;

- Requires periodic compliance quality assurance and independent testing; and
- Requires regular reporting to management and the Board on Kabbage's BSA/AML efforts.

3. Governance, Organizational Structure, and Authority

Kabbage's Board appoints the BSA/AML Officer, who is responsible for the execution of this Policy. The BSA/AML Officer reports directly to the CCO, who is also appointed by the Board. Both the BSA/AML Officer and the CCO have accountability and access to the Board, as needed.

The BSA/AML Officer is responsible for maintaining sufficient staffing, both in numbers and qualifications, to implement this Policy effectively and for requesting additional resources from the Board as needed. Notwithstanding the delegation of the day-to-day activities of BSA/AML compliance to the BSA/AML Officer, the CCO, and the Board remain responsible for ensuring that adequate resources are available for the BSA/AML Officer and for the BSA/AML Program.

Every employee of Kabbage has responsibility for ensuring that he or she implements the BSA/AML Program within his or her sphere of responsibility. The BSA/AML Officer will receive advance notice of all new products or services, as well as changes to existing products or services that might affect BSA/AML risk of the Offerings.

All Kabbage personnel are directly accountable to the Company's BSA/AML Officer for implementation of this Policy and its associated procedures. The BSA/AML Officer and his/her team will have unrestricted access to any business records, IT systems, or any other business locations to which they require access in order to fulfil their responsibilities.

A. BSA/AML Programs for Non-Regulated Institutions

While Kabbage is not a "financial institution" (as defined in the BSA at 31 U.S. Code § 5312) and therefore is not required by law to implement a BSA/AML program, Kabbage has made a commitment to implement an effective BSA/AML program that reflects its contractual obligations as both a service provider and a payment facilitator and is consistent with the contractual and regulatory expectations of Celtic Bank, Sponsoring Bank, and Processor. This commitment is demonstrated through:

- Setting a clear "tone from the top" about the importance of BSA/AML compliance;
- Board and management's ongoing involvement in oversight of the BSA/AML Program, including:
  - Review and, where appropriate, approval of key documents such as the Policy and the BSA/AML risk assessment;
  - Receipt of regular management updates on the performance of the BSA/AML Program;
  - Receipt of the results of the independent review of the BSA/AML Program;
  - Resolution of escalated issues; and
  - Prompt corrective action to remediate systematic errors or control deficiencies.

Kabbage has also developed and implemented internal controls to ensure that it identifies inherent risks within the organization, including those presented by customers, products and services, and geographies.

As a U.S. company, Kabbage understands that it must comply with OFAC requirements. OFAC requirements hold that all U.S. persons[2], including U.S. banks, bank holding companies, and non-bank financial institutions, must comply with OFAC's regulations. The laws and OFAC-issued regulations apply not only to U.S. entities but also to their foreign branches and in certain circumstances, foreign subsidiaries.

B. Roles and Responsibilities

This BSA/AML Policy establishes the following roles and responsibilities:

Responsible Party	Roles & Responsibilities
BSA/AML Officer (Policy Owner)	The BSA/AML Officer owns this Policy and is responsible for: • Developing, implementing and maintaining this Policy's related procedures; • Reviewing and refreshing the Policy at least annually, or when circumstances warrant; • Ensuring Kabbage personnel receive BSA/AML training, and that Kabbage documents training materials and attendance records; • Ensuring adequate BSA/AML staffing to implement the Policy; • Providing guidance and direction to Kabbage personnel about the steps they need to take to institute the Policy in their areas of responsibility; • Conducting an annual risk assessment; • Ensuring the completion of an annual independent test of Kabbage's BSA/AML Program; • Monitoring the effectiveness of BSA/AML compliance and taking corrective action to remedy any deficiencies found; • Reviewing any changes to BSA/AML-related laws, regulations, guidance, or regulatory expectations and ensuring that Kabbage implements processes to remain fully in compliance with the BSA/AML obligations of Celtic Bank, Sponsoring Bank, and Processor; • Reviewing the BSA/AML implications of any new or changed products, services, initiatives, or distribution channels, and advising management and employees on necessary steps to mitigate BSA/AML risk; • Promptly alerting the Board to any material issues of BSA/AML

[2] All U.S. persons must comply with OFAC regulations, including: all U.S. citizens and permanent resident aliens, regardless of where they are located; all persons and entities within the United States; and all U.S. incorporated entities and their foreign branches. In the case of certain programs, such as those regarding Cuba and North Korea, foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply.

	• non-compliance, and instituting and monitoring corrective action; • Providing annual reporting to the Board on the state of BSA/AML compliance and any significant emerging issues; • As needed, liaising with bank partners on BSA/AML issues; and • Seeking outside legal advice on BSA/AML issues as required.
Board of Directors	The Board, or a delegated committee thereof, is responsible for: • Designating a BSA/AML Officer responsible for day-to-day oversight of BSA/AML compliance at Kabbage; • Reviewing and approving this Policy and any subsequent material changes to this Policy; • Reviewing Kabbage's BSA/AML reporting, as appropriate; • Reviewing the annual independent testing of the BSA/AML Program and any plans for corrective action as necessary; • Addressing any BSA/AML issues escalated to the Board; and • As applicable, reviewing feedback from Celtic Bank, Sponsoring Bank, or Processor on the BSA/AML Program and receiving reports on any remedial action necessary.
Chief Compliance Officer	The CCO is responsible for: • Promoting and implementing a strong culture of BSA/AML compliance; • Reviewing the BSA/AML risk assessment for the Offerings; • Reviewing and approving this Policy and any subsequent material changes to the Policy, prior to submitting to the Board for approval; • Reviewing the BSA/AML Officer's periodic reports; • Holding personnel accountable for resolution of BSA/AML corrective actions; • Ensuring that Kabbage has adequate BSA/AML resources; • Overseeing annual, or more frequent as necessary, compliance quality assurance, independent control testing, and review of this Policy and reporting results to the Board; and • As applicable, reviewing feedback from Celtic Bank, Sponsoring Bank, or Processor relating to the BSA/AML Program and receiving reports on any remedial action necessary.
Kabbage Employees	All employees of Kabbage with responsibilities impacting the BSA/AML Program, are responsible for: • Promoting a strong culture of BSA/AML compliance; • Knowing their responsibilities under this Policy including the prohibition on "tipping-off" (i.e., informing the subject of an investigation or a suspicious activity filing of their status as a subject), and ensuring they remain in compliance; • Implementing this Policy and its associated procedures within their areas of responsibility, including designing, implementing

	• and maintaining necessary controls; • Identifying BSA/AML compliance weaknesses and promptly alerting and working with Kabbage's BSA/AML Officer, or designee, to take corrective action; • Maintaining systems, controls, and reports used to support compliance efforts; • Notifying and seeking the approval of the BSA/AML Officer for any new or modified products, services, initiatives, or distribution channels; • Reporting unusual activity to the CCO, BSA/AML Officer, or designee; • Ensuring they complete required BSA/AML training; and • Providing BSA/AML compliance personnel unrestricted access to any business records, systems or locations necessary to fulfil the duties described in this Policy and other applicable compliance policies and procedures.

4. BSA/AML Policy Requirements

This Policy provides a summary of the various procedures and processes Kabbage employs to comply with both legal requirements and its contractual responsibilities, to establish and maintain an effective and compliant BSA/AML Program.

It describes the manner in which Kabbage implements the "five pillars" of AML compliance, namely:

A. Designation of a BSA/AML Officer and BSA governance structure;

B. Policies, procedures, and internal controls, which include:

   I. A BSA/AML risk assessment process;

   II. A risk-based KYC Program, which includes a CIP and customer due diligence ("CDD");

   III. OFAC screening, review, and reporting;

   IV. Transaction monitoring;

   V. Referrals of potentially suspicious activity to Celtic Bank or Processor, as applicable;

   VI. Mechanisms designed to monitor on-going compliance; and

   VII. BSA/AML Program controls related to account opening.

C. On-going personnel training and development;

D. Independent testing of the BSA/AML Program; and

E. Risk-based procedures for conducting ongoing customer due diligence.

A. Designation of BSA/AML Officer and Governance Structure

Kabbage's Board designates the BSA/AML Officer, who has responsibility for day-to-day oversight of BSA/AML compliance for the Offerings. Section 3 describes the responsibilities of the BSA/AML Officer and Kabbage's BSA/AML governance structure.

B. Internal Controls

Kabbage has in place internal BSA/AML controls designed to mitigate risks presented by the Offerings. Kabbage's internal controls include those related to customer onboarding, transaction monitoring, and sanctions screening functions.

I. BSA/AML Risk Assessment

The BSA/AML Officer conducts an annual risk assessment to identify the inherent BSA/AML and OFAC risk of the Offerings and the effectiveness of the existing controls.

Consistent with the regulatory obligations of covered financial institutions, the risk assessment process assigns an inherent risk rating based on an assessment of customers, product and services, and geographic risks. The BSA/AML Officer then assesses the adequacy of the design and implementation of mitigating controls to determine the residual risk.[3]

The BSA/AML risk assessment process forms the foundation of the BSA/AML Program. Using the results of the BSA/AML risk assessment, the BSA/AML Officer:

- Identifies the BSA/AML risk profile of the Offerings;
- Determines the adequacy and effectiveness of BSA/AML controls;
- Evaluates the adequacy and application of BSA/AML resources;
- Identifies the existence of any unmitigated and/or unacceptable BSA/AML risk; and
- If necessary, recommends and implements modifications to Kabbage's activities and/or Policy (or the underlying procedures and processes) to bring the BSA/AML residual risk of the Offerings to an acceptable level.

The BSA/AML Officer reports the results of the BSA/AML risk assessment to the Board, including proposed enhancements to the BSA/AML Program to mitigate any levels of excessive risk or control weaknesses identified in the risk assessment, for review and approval. The BSA/AML Officer makes the assessment available to other functions within the organization, including the business (also referred to as the first line) and any product development functions.

II. Know Your Customer Program

The KYC program (the "KYC Program") is a fundamental control in preventing the Offerings from becoming involved in money laundering, terrorist financing, or sanctions violations. The KYC Program covers all customers.

Customers include any business that (1) qualifies for a line of credit, or (2) opens a merchant account for the purpose of accepting card payments for the sale of products or services (collectively, "Account"). Accounts are currently only available to domestic (U.S.) businesses.

[3] Refer to the BSA/AML Risk Assessment Methodology for additional details on this process.

The risk-based KYC processes for the Offerings encompass:

- A CIP that allows Kabbage to identify and verify the identity of customers with reasonable assurance;
- A risk-based segmentation of customers; and
- A due diligence process that provides a greater depth of insight into certain customers.

Kabbage's policy is to ensure that it has a reasonable belief that it knows the true identity of all customers by collecting customer information at Account opening and collecting additional information, if warranted, depending on customer behavior.

As part of its on-boarding processes, Kabbage is required to collect and verify the identity of its customers, and does so through non-documentary verification. Kabbage has engaged LexisNexis to facilitate this function. Kabbage further uses online triangulation of disparate data sources connected through its unique onboarding process to verify the identity of all customers. The vetting process for new accounts also includes automated data validation, the use of third-party data services and, when necessary, manual investigation.

In the event Kabbage is unable to form a reasonable belief that it knows the true identity of the customer, Kabbage may take the following actions:

- Decline to open the Account;
- Impose terms under which a customer may draw on its approved credit line while Kabbage attempts to verify the customer's identity; or
- Close or suspend an Account after attempts to verify a customer's identity fail.

a. Customer Identification Program

For purposes of CIP regulation, all Accounts are considered to be accounts subject to CIP requirements. Therefore, Kabbage performs CIP on all applicants for an Account. Kabbage collects CIP information (a) at the time of onboarding, (b) at the time a customer initiates a change in his/her information on file, and (c) on an ongoing basis thereafter. Kabbage periodically refreshes CIP information using a risk-based approach. This process is designed to ensure Kabbage is able to form a reasonable belief that it knows the true identity of each customer and is able to mitigate the risk of identity theft, money laundering, terrorist financing, and sanctions violations.

b. Beneficial Ownership Requirements for Legal Entity Customers

In accordance with FinCEN's CDD requirements, Kabbage collects and verifies ultimate beneficial ownership information of legal entity customers at the time a new Account is opened. Legal entity customers include a corporation, limited liability company (LLC), or other entities that are created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States or a foreign country. Legal entity customers do not include sole proprietorships or unincorporated associations. Customers that were Account holders prior to the effective date of FinCEN's CDD rule (May 11, 2018) are not subject to the beneficial ownership verification requirements under the rule.

Kabbage collects, at a minimum, the name, address, date of birth, and social security number (or passport number or other similar information, in the case of foreign persons) for the following individuals, each an ultimate beneficial owner ("UBO"), from the individual opening the Account on behalf of a legal entity customer:

- each individual who, directly or indirectly, owns 25 percent or more of the equity interests of the legal entity customer ("Owner"); and

- an individual who has significant management responsibility for the legal entity customer ("Control Person")

Kabbage collects information for up to four Owners and one Control Person. Kabbage further requires the individual opening the Account on behalf of a legal entity customer to certify as to the accuracy of the UBO information in a manner substantially similar to the Certification Form provided by FinCEN.[4] Kabbage uses a third-party to verify the UBO information and conducts enhanced due diligence as necessary. All records related to the identification and verification of the UBOs are retained consistent with this Policy.

c. Customer Due Diligence

The BSA/AML Program requires that CDD be performed on all customers. CDD may include: information on business and industry type; understanding of the purpose of the loan or transaction; and a Politically Exposed Person ("PEP") check.

The BSA/AML Officer, or designee, will file a referral for potentially suspicious activity if Kabbage identifies such activity in the due diligence processes.

d. High-Risk and Prohibited Customers

Kabbage has identified certain types of businesses that pose a higher risk and as a result, require enhanced due diligence ("EDD"). These include:

- Confirmed PEPs or PEP-controlled entities; and
- Businesses that are risk rated as "High" through the Customer Risk Rating ("CRR") methodology process.

Kabbage has also identified certain types of businesses that pose significant risk and as a result, has determined that they will not be accepted as customers:

- Businesses that are unable to link at least one account from a FinCEN registered money service business ("MSB") or financial institution; and
- Any business for which Kabbage has made three suspicious activity referrals to Celtic Bank or Processor, as applicable;
- Businesses in the following industries: marijuana, firearms, gambling, financial services, lending, or non-profit; and
- Businesses deemed as prohibited or requiring pre-approval for payment processing services by the Processor.

Kabbage does not offer access to consumer loans or payment processing services for personal accounts and therefore, does not have any individual persons as customers.

[4] See Appendix A to 31 § CFR 1010.230 – Certification Regarding Beneficial Owners of Legal Entity Customers.

e. Enhanced Due Diligence for High-Risk Customers

Kabbage utilizes a risk-based methodology to conduct EDD.

Kabbage's EDD process includes non-documentary means, documentary means, direct contact, and/or a combination of the foregoing.

A customer risk rating is assigned at the time of onboarding for the purposes of determining the need for EDD. Once EDD is successfully completed, the relevant documentation is added to the customer's profile but the risk level remains the same.

If after an assessment, it is determined that the Account or relationship may pose additional risks, the Account or relationship will be escalated to the Risk team, and the BSA/AML Officer may be consulted, to determine whether to open or maintain the Account or relationship.

III. OFAC Compliance and Name Screening

As a policy requirement, the BSA/AML Officer ensures that Kabbage complies with the OFAC requirements to enforce economic and trade sanctions based on U.S. foreign policy and national security goals.

Kabbage's policy towards OFAC compliance applies to all parties with which Kabbage does business including, but not limited to customers, third-party vendors, and Kabbage personnel. The systems and controls ensure that Kabbage:

- Fully incorporates OFAC risk within the BSA/AML risk assessment;
- Screens all customers, vendors, and personnel against the SDN List;
- Updates OFAC and other applicable lists in a timely fashion when sanctions programs and/or the SDN List changes and screens existing customers, vendors, and personnel against changes to the list on a recurring basis;
- Blocks internet protocol addresses of countries subject to comprehensive OFAC sanctions, and any countries subject to narrower OFAC sanctions where the BSA/AML Officer or designee deems that internet protocol blocking is necessary to mitigate the risk of a sanctions violation;
- Works with its bank partners, Celtic Bank and Sponsoring Bank, and Processor to resolve any sanctions concerns;
- Prevents all customers under review for a potential OFAC hit from conducting transactions;[5] and
- Documents rationales for clearing all false-positive OFAC hits.

a. OFAC List Name Screening

In order to conduct a timely and orderly screening of customers, Kabbage utilizes GIACT, a third-party service provider, which screens against OFAC and other sanctions lists to ensure adequate coverage and risk mitigation for the OFAC screening process.

[5] With regard to the *Kabbage* Small Business Loan Program, because the Account relationship is between Celtic Bank and the borrower (i.e., Kabbage does not own the Account and therefore cannot block or maintain property), Kabbage does not have reporting requirements to OFAC related to blocked or rejected property. Kabbage would, however, cease from disbursing any additional loan proceeds.

The OFAC screening process includes the following elements:

- Name of customer;
- Name of the business representative; and
- Name of the UBO(s).

For Offerings, names are screened:

- Prior to Account creation; and
- On a recurring monthly basis.

The Compliance Manager will immediately be advised of any OFAC screening matches and will work with the BSA/AML Officer to document and communicate the match to Celtic Bank (for loans) or Processor (for payments). Any true OFAC match will be reported to the Board and maintained as a record on a regular basis.

In addition to escalating any potential true matches to Celtic Bank or Processor (as applicable) and the Board, Kabbage will also report any confirmed true matches directly to OFAC and take the legally mandated actions to manage the Account in accordance with OFAC requirements.

b. USA PATRIOT Act Section 314a – Customer List Screening

Section 314(a) grants FinCEN the authority to require that each financial institution expeditiously search its records to determine whether it maintains or has maintained any accounts for, or engaged in specified transactions with, each individual entity or organization named in FinCEN's request.

The BSA/AML Officer, or designee, is responsible for ensuring compliance with 314(a) information sharing requests from Celtic Bank and ensuring that such requests and responses stay confidential. Upon receipt of a FinCEN 314(a) request from Celtic Bank, Kabbage, in compliance with the requirement, will conduct a one-time search of the *Kabbage* small business loan program records to identify any current Account, or any Account maintained in the last twelve (12) months, for a named suspect.

Positive matches will be provided to Celtic Bank prior to the designated response date and Kabbage will retain all records in association with the review.

IV. Transaction Monitoring

The BSA/AML Program has in place policies, procedures, and processes to identify and monitor unusual activity, as well as a formal process for reviewing that activity, filing referrals of potentially suspicious activity, and managing its systems used to assist in this process.

Transaction monitoring assists in identifying transactional or customer activity that warrants further investigation and possible referral to Celtic Bank (for loans) or Processor (for payments). In addition, Kabbage requires all of its employees to report unusual or potentially suspicious activity to the BSA/AML Officer or designee.

Since all transactions are conducted online and no currency (i.e., cash) is deposited, withdrawn, exchanged, or transferred in connection with the Offerings, Kabbage does not have an obligation to file currency transaction reports ("CTRs").

V. REFERRALS FOR POTENTIALLY SUSPICIOUS ACTIVITY

Under federal law, covered financial institutions must file a Suspicious Activity Report ("SAR") when a transaction is suspicious. While Kabbage is not obligated to file SARs, its relationships with Celtic Bank, Sponsoring Bank, and Processor require that it refer potentially suspicious activities that it observes as part of the customer onboarding and monitoring processes.

Kabbage has implemented procedures for referring potentially suspicious activity to Celtic Bank for loans (i.e., questionable activity reports or "QARs") and to Processor for payments (i.e., unusual activity reports or "UARs") and, consistent with BSA legal requirements, maintains records for customer Account information (including the information obtained during the customer vetting process) for the time period required by federal obligations.

The Risk team works closely with the Compliance and Financial Operations teams to refer any suspicious activities to Celtic Bank (for loans) and Processor (for payments) in the form of QARs and UARs. QARs/UARs are submitted for any activity involving $5,000[6] or more of funds or assets (individually or in the aggregate) once Kabbage knows, suspects, or has reason to suspect the transaction:

- Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- Is designed, whether through structuring or otherwise, to evade any requirements of the BSA regulations;
- Has no apparent lawful purpose or is not the business activity in which the customer would normally be expected to engage, and Kabbage knows, after examining the background, possible purpose of the transaction and other facts, of no reasonable explanation for the transaction; and/or
- Involves the use of the Offerings to facilitate criminal activity.

Information collected by Kabbage for purposes of QARs/UARs submissions may not be discussed with anyone outside the Kabbage organization (except for relevant parties at Celtic Bank and Processor, as applicable). Discussion of such matters within Kabbage should be limited to those who have a need to know. If an inquiry is received from the customer or an outside third party, the inquiry must be promptly referred to the BSA/AML Officer who will consult with Kabbage's CCO to determine the appropriate course of action.

The BSA/AML Officer, or designee, evaluates whether to close accounts on which it files a QAR/UAR. If an account is closed as a result of a QAR/UAR, the BSA/AML Officer is responsible for

[6] Kabbage does not solely base decisions to submit QARs/UARs to Celtic Bank on whether the transaction is above a predefined threshold. Transactions below $5,000 may also result in a UAR submission if determined to be warranted by the BSA/AML Officer.

documenting the basis for the decision. Unless specifically instructed by law enforcement not to close the account, Kabbage will consider the closure of any account on which it files three QARs/UARs and/or at the direction of its bank partners.

VI. Mechanisms to Monitor On-going Compliance

Kabbage has implemented additional mechanisms to monitor on-going compliance as further detailed in the BSA/AML Program Manual and the Kabbage Payments Risk Document.

a. New Products Approval

All new or modified Offerings require approval by the BSA/AML Officer. Any launch decisions for new products or services will appropriately consider AML risks and include plans for additional controls, as needed.

Kabbage currently only provides the Offerings to domestic (U.S.) businesses. Any expansion of the permitted customer base constitutes a new or modified business practice for these purposes.

b. Internal Control Monitoring

The BSA/AML Officer is responsible for developing monitoring processes to identify BSA/AML Program systemic errors and control deficiencies promptly. These processes should facilitate remediation of identified BSA/AML control deficiencies as well as escalation procedures. The BSA/AML Officer or designee will then track the remediation of identified control deficiencies through corrective action plans (e.g., based on recommendations identified by the risk assessment or independent testing). The purpose of ongoing monitoring is to implement a quality control function to ensure day-to-day compliance between full, and comprehensive, testing of the BSA/AML Program.

c. Board Reporting

The BSA/AML Officer provides an annual report on the state of BSA/AML compliance and any significant emerging issues that assists the Board and CCO in evaluating any Policy changes that may be appropriate.

d. Confidential Reporting of Violations

The BSA/AML Officer ensures Kabbage employees can report violations of this Policy anonymously by telephone. The BSA/AML Officer further ensures that this mechanism is well publicized to all employees and takes all possible steps to ensure reports of potential violations remain anonymous and confidential. Kabbage never tolerates retaliation of any type against an employee who reports a potential violation of the Policy. Any employee who commits such retaliation will be subject to disciplinary action up to and including termination.

Internal referrals may not be discussed with anyone outside the organization. Discussion of such matters within Kabbage should be limited to those who have a need to know. If an inquiry is received from the customer or an outside third party, the inquiry must be promptly referred to the BSA/AML Officer, who will consult with Kabbage's CCO to determine the appropriate course of action.

VII. ADDITIONAL BSA/AML PROGRAM CONSIDERATIONS

The process by which Kabbage assesses the BSA/AML risk of a prospective customer is in part incorporated into the existing credit underwriting process for the Offerings. Kabbage assesses the credit risk of a customer using multiple sources, many of which may also serve as indicators of BSA/AML Risk.

Customers are required to link an account from a U.S. financial institution (e.g., a regulated bank or a money service business, such as PayPal), a process that assists both underwriting and customer verification.

C. TRAINING

Kabbage requires that all Kabbage personnel receive BSA/AML training appropriate to their roles and responsibilities at least annually.

New Kabbage employees are required, within 30 days of hire, to participate in an orientation that contains an overview of BSA/AML requirements.

The BSA/AML Officer is responsible for ensuring training is completed in a timely fashion. Kabbage provides training on relevant laws and regulations, including BSA/AML requirements, through an online course provided by a third-party. If deemed necessary by the BSA/AML Officer, additional in-depth training may be provided either directly by the BSA/AML Officer or a third party.

D. INDEPENDENT TESTING

Kabbage's BSA/AML Officer oversees the completion, at least annually, of an independent test of Kabbage's BSA/AML Program to assess the implementation and effectiveness of the BSA/AML Program and the adequacy of its controls over BSA/AML compliance risk.[7]

The BSA/AML Officer, or designee, is responsible for updating the risk assessment for the Offerings in light of any issues raised during the independent testing and taking necessary corrective action to remediate findings.

E. RISK-BASED CONTROLS

Kabbage has in place appropriate risk-based procedures for conducting ongoing customer due diligence which include, but are not limited to:

- understanding the nature and purpose of the customer relationship for the purposes of developing a customer risk profile; and
- conducting ongoing monitoring to identify and report suspicious transactions to Celtic Bank (for loans) and Processor (for payments) and on a risk-basis, to maintain and update customer information.

Kabbage has implemented a CRR methodology which assigns a risk-based rating to customers at the time of on-boarding using the following factors:

- entity type,

7 Celtic Bank is required to conduct an independent review of its BSA/AML program to assess the overall effectiveness and institute practices for monitoring the strength of internal controls. As result, Celtic Bank expects that Kabbage, as service provider to Celtic Bank, will also conduct an independent testing of the BSA/AML Program on an annual basis.

- industry type,
- geographic location (e.g., in HIDTA or HIFCA); and
- marketing channel.

Customers with a high CRR rating are subject to EDD. Suspicious activity monitoring and reporting are also critical internal controls and are addressed under Section 4(B)(IV). Kabbage periodically refreshes both business and individual verification information to ensure it continues to maintain updated customer information.

5. BSA/AML Policy Administration

A. Record Retention and Record Keeping

The Offerings must remain in compliance with Celtic Bank, Sponsoring Bank, and Processor requirements for retaining and being able to provide documentation pertaining to customer and transaction information.

Kabbage maintains all information related to BSA/AML requirements for a period of at least five (5) years from the date of last activity on the Account. This includes, but is not limited to: records of all customer information including, CIP information, purpose of loan information, credit bureau file information, documentary identification information, loan agreements, statements, transaction information, customer correspondence, and customer contact information.

B. Version Control Management

Ver.	Last Revised Date	Edited By	Comments	Celtic Approval Date	Board Approval Date	Last Reviewed Date
1	3/28/18	A. Habib	Revised Policy per feedback from Promontory	3/28/18	4/6/18	3/23/18
2	7/11/19	A. Habib	• Expanded existing Policy to contemplate payment processing services • Addressed findings from 2018 BSA/AML audit • Made clarifications and clean-ups	7/11/19	7/24/19	7/11/19

EXHIBIT 5

Kabbage®

Independent Enterprise BSA/AML and OFAC Audit Report
November 4, 2019

Treliant

1255 23rd St. NW
Suite 500
Washington, DC 20037
Phone: 202.249.7950
Fax: 202.223.3071

Treliant, LLC

Dino Papagiannis, Managing Director

Efren Alba, Engagement Director

Frank Meister, Senior Manager

John Atiyeh, Senior Analyst

Version: DRAFT
Release Date: November 4, 2019
Classification: Treliant Confidential

[This Page Intentionally Left Blank]

Contents

Executive Summary

Background

Kabbage, Inc. ("Kabbage" or the "Company") is an online financial technology and cash flow services company based in Atlanta, Georgia. The Company provides access to funding to small businesses through an automated lending platform using a technology driven underwriting methodology and drawing decision-making metrics from non-traditional data sources. Kabbage is currently expanding its product offerings to include payment processing services for small businesses.

The Company retained the services of Treliant, LLC ("Treliant") to conduct a risk-based audit of the design and effectiveness of the Company's Enterprise Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) and Office of Foreign Assets Control (OFAC) Compliance Program ("BSA/AML Program" or "Program") governing both the *Kabbage*® Small Business Loan Program and the Kabbage payments offering, with specific focus on how the Federal Financial Institutions Examination Council ("FFIEC") and OFAC requirements and guidance impact the BSA/AML Program at the Company relative to regulatory requirements and expectations.

Performing an independent audit, either through an internal audit function or external auditors/consultants, is a key component of a BSA/AML and OFAC compliance framework. Independent audit provides assurance on the design of the BSA/AML Program and effectiveness of internal controls through a risk-based approach, and evaluates the quality of risk management operations. The Company conducts the independent BSA/AML Program audit annually.

The results of this independent audit are to be submitted to the Bank's BSA/AML Officer. Treliant performed this independent BSA/AML audit, the scope of which is defined below. This is Treliant's second consecutive year for conducting the Company's BSA/AML and OFAC compliance Program audit.

Objectives and Scope

Treliant assessed whether the Company's BSA/AML Program was functioning effectively through a review of its (i) policies and procedures and their implementation; and (ii) evaluation of the design and operating effectiveness of internal controls within the BSA/AML Program. This included an assessment of staff awareness and their ability to articulate, understand and demonstrate compliance with BSA/AML and OFAC requirements. The review encompassed a risk-based assessment of the Company's compliance with BSA/AML and OFAC regulation by focusing on the internal control environment.

Treliant conducted on-site interviews and walk-throughs during the audit planning phase, which provided information on the Company's control activities. Information gathered during the planning phase established the audit scope. Planning activities also involved analysis of the Company's BSA/AML Program documents, including the Company's risk assessment, and a review of prior issues from both internal and external sources.

The scope of the audit was based on multiple factors, including a review of the Company's most recent risk assessment in order to develop an understanding of the Company's size, complexity, scope of activities, and risk profile; information obtained in the planning phase; operational risk factors; and industry standards and leading practices.

The following BSA/AML Program elements were included in this audit:

- Program Governance
- Risk Assessment
- Issue Remediation
- Training
- Know Your Customer
- Questionable Activity Reporting

- Office of Foreign Assets Control
- Quality Assurance
- Section 314(a) and External Requests
- Transaction Monitoring

Overview of BSA/AML and OFAC Risk and Control Environment

The Company's core product offering consists of providing access to funding for domestic U.S. small- and medium-sized businesses ("SMBs") through the *Kabbage*® Small Business Loan Program ("Lending Program"). Access to such funding is provided through an online platform ("Platform"), which serves as the application, underwriting, and servicing platform.

The Lending Program is supported by a partnership with Celtic Bank, a Utah-chartered, privately owned industrial bank. Celtic Bank serves as lender for the Lending Program, while the Company serves as "Program Manager" responsible for marketing, servicing, and collections. The Company's partnership with Celtic Bank is governed by a Program Management Agreement (PMA) detailing the Company's responsibilities to Celtic Bank as the Program Manager.

The Company also offers payment processing services ("Payments Program"). The Payment Program is currently in a "beta" phase, with current Lending Program customers as participants. The Payment Program includes invoicing (ability to generate and email invoices with a link to process card transactions), Unique Pay URL[1] (generation of unique URL to accept one-time payments). Similar to the Lending Program, the Payment Program is offered through a partnership with Worldpay LLC ("WorldPay") and Fifth Third Bank, and is governed by a Payment Facilitator Merchant Agreement (PFMA).

The Company is exposed to moderate money laundering inherent risk within the Lending Program through two (2) primary channels: customer risk and geographical risk. Its customer risk stems from having a proportion of accounts from higher risk entity and industry types, account onboarding being completed through an online process, and expected growth within the overall customer base. The Company also has a number of customers operating in geographic areas with known higher risks related to money laundering and forms of illegal trafficking[2]. Inherent product risk is relatively low due to the limited product offerings currently in place. The Company's exposure to risk through the Payments Program is generally unknown at this time, as it is currently being piloted with a limited number of existing Lending Program customers. The Company's transaction risk is reduced as it does not accept cash or cross-border payments and loan repayments are typically conducted as domestic Automated Clearing House (ACH) transactions from U.S. financial institutions, commonly as recurring auto-debits. The Company's exposure to the broader category of financial crime is primarily through fraud, and the Company has experienced cases of organized fraud-ring activity, as well as one-off identity theft cases.

Although the Company does not have any legal or regulatory requirement to implement a formal BSA/AML and OFAC program and related controls, the Company's bank partners have placed responsibility with the Company for a number of compliance-related controls. Key BSA-AML and OFAC controls on which Kabbage's partners place reliance on the Company include Know Your Customer (Customer Identification Program, Customer Due Diligence, Enhanced Due Diligence), OFAC screening, transaction monitoring for identification of potentially suspicious activity, and 314(A) law enforcement information-sharing requests.

A key component of the Company's BSA/AML and OFAC control framework is a robust screening program. The Company screens potential customers during onboarding, including OFAC screening, as well

---

[1] Uniform Resource Locator

[2] High Intensity Drug Trafficking Areas (HIDTA) and High Intensity Financial Crime Areas (HIFCAs).

as periodically as changes are made to customer accounts and to screening lists. Initial enhanced due diligence (EDD) is performed on all client accounts deemed high risk by the Company. The Company also conducts transaction monitoring on loan repayments using a set of defined rules. Any matches or potentially suspicious activity identified by the Company is required to be reported to Celtic Bank in the form of a Questionable Activity Report (QAR). Celtic Bank will complete any required investigation and file a Suspicious Activity Report (SAR) with the Financial Crimes Enforcement Network ("FinCEN"), if needed. A similar process for the Payments Program is expected for Unusual Activity Reports (UARs) escalated to World Pay and Fifth Third Bank, following the pilot period.

The Company's overall BSA/AML and OFAC compliance framework is governed by a BSA/AML Policy and a BSA/AML Program Manual. Both documents were created in cooperation with Celtic Bank based on its own related policies, with approval by Celtic Bank required for the BSA/AML Policy on an annual basis. The Policy and Program Manual are supported by a set of evolving procedures covering the Company's customer and transaction screening processes. Effective implementation of the system of internal controls and governing documentation is the responsibility of the Company's Board-appointed BSA/AML Officer.

BSA/AML Program Elements: Summary

Risk Assessment

The Company's risk assessment methodology was developed by an independent, third party provider[3]. The latest version, the 2018 Risk Assessment, covers the period from December 31, 2017 to December 31, 2018 for the BSA/AML Program. The requirement and purpose for the risk assessment is outlined by the BSA/AML Policy, and the results of the risk assessment are provided by the BSA/AML Officer to the Board of Directors or a delegated committee (currently the Audit Committee) of Kabbage for review.

The risk assessment methodology focuses on the inherent money laundering and OFAC-related risks presented by three areas – customers, products and services, and geographies. The 2018 assessment concluded:

	BSA/AML	OFAC
Inherent Risk	Moderate	Low
Control Effectiveness	Satisfactory	Satisfactory
Residual Risk	Moderate	Low
Direction of Residual Risk	Decreasing	Stable

The audit team reviewed the 2018 risk assessment, BSA/AML Policy, and formal review of the risk assessment by the Board of Directors. Treliant found the ultimate output of the risk assessment to be reasonable and aligned to the risk profile of the Company. However, weaknesses within the methodology were identified with respect to the weighting calibration for inherent riskand control assessment as well as with the factors chosen to drive the assessment. Inconsistencies and weaknesses were also identified in the control effectiveness rating methodology.

[3] Promontory, Inc ("Promontory").

Program Governance

Governance

Oversight of the Company's BSA/AML and OFAC Compliance Program ultimately falls under the responsibilities of the Company's Board of Directors (the "Board"). While compliance reporting is provided directly to the full Board, the charter for the Board's Audit Committee delegates the risk and compliance oversight function to the Audit Committee.

The Company's Board designates a BSA/AML Officer who is responsible for day-to-day management of the BSA/AML and OFAC Compliance Program, as well as the Chief Compliance Officer (CCO). The Board also approves the Company's BSA/AML Policy on an annual basis, reviews the results of annual independent testing of the BSA/AML Program, and addresses any compliance issues raised internally or by Celtic Bank.

The audit team reviewed a sample of Board and committee meeting minutes (or "attestation"), formal approval documentation of key BSA/AML documents, formal approval of the BSA/AML Officer and CCO, professional qualifications of the BSA/AML Officer, BSA/AML Program reporting to the Board, and the amended charter for the Audit Committee and did not find any material concerns or issues. However, within the Program reporting provided to the Board, the audit team identified opportunities for enhancements in the comprehensiveness of the Key Performance Indicators (KPIs) and Key Risk Indicators (KRIs) that are collected and reported.

The Company demonstrates a thoughtfully constructed policy and program framework that was originally developed with the assistance of an independent third party advisory services firm, Promontory. The Policy and supplemental Program documentation adequately cover the BSA/ AML and OFAC standards that would be expected for an organization of the type and complexity of the Company.

The Company maintains a catalogue of identified issues related to its BSA/AML Program, including BSA/AML and OFAC compliance. The issue tracking logs include the source of each issue (e.g., self-identified, external audit, partner bank reviews), a description of the issue, commentary on remediation work related to the issue, and a "latest status" update for each issue. The Company shares the issue tracking log with Celtic Bank to help ensure its overall compliance program, including BSA/AML and OFAC compliance, meets Celtic Bank's compliance management standards. Material issues are also escalated to the Company Management and the Board of Directors (or delegated committee) for review and resolution. The audit team identified some weaknesses in the tracking related to the formal conclusion of tracked issues.

System of Internal Controls

Treliant reviewed the operational procedures for the Company's BSA/AML and OFAC control functions, and found similar issues to those identified during the prior review, i.e., the operational procedures generally lack the detail and formality needed to fully describe the roles and responsibilities, execution steps and change control aspects for a process.

Know Your Customer (KYC) / Know Your Business (KYB)

The Company collects and verifies the identity of all Program customers, including beneficial owners and controllers (referred to as "business leaders" in the application) at the time of onboarding and periodically, if changes are made to the customer account, through automated non-documentary verification via LexisNexis. If the identity of an applicant cannot be authenticated or if the applicant information appears to present fraud or money laundering risk, the Company's Account Review Team will perform an investigation and either place the application in a pending resolution queue, request additional information, and/or recommend that a QAR be completed. Additional review is performed on all client accounts deemed high risk by the Company based on the Company's Customer Risk Rating (CRR) Methodology.

The audit team evaluated the design of the KYC program, and also conducted sample testing on manually verified KYC/KYB alerts and high risk customers to assess the effectiveness of internal controls.

Office of Foreign Assets Control (OFAC)

The Company has implemented GIACT, a third-party screening tool, to perform OFAC screening for applicants, customers, employees and vendors. Screening is performed during onboarding, on a monthly recurring basis for existing customers and when changes are made to customer accounts. Due to the nature of the origination/disbursement flow using Automated Clearing House (ACH) transactions, the Company does not perform screening on transactions. Potential true matches are escalated to Celtic Bank and confirmed true matches are reported to OFAC and the Board (or delegated committee). The Company has not identified any true matches that would have require reporting.

During the prior review, Treliant assessed the design of OFAC name screening process and provided observations. During this review, Treliant reassessed the areas of weakness identified in the prior review and found the weaknesses to have been resolved. Treliant also conducted sample testing on the OFAC match review process to assess the effectiveness of internal controls and identified some weaknesses in the alert clearing processes related to timeliness and sufficiency of clearing commentary.

Transaction Monitoring (TM)

The Company has an automated transaction monitoring process in place based on the money laundering red flags for lending identified in the FFIEC BSA/AML Examination Manual. The Company conducts automated transaction monitoring on loan repayments greater than $5,000 using a set of defined rules by means of custom SQL queries of the Company's primarily customer business application. Each TM alert automatically creates a ticket in the Salesforce application which is reviewed and decisioned by the Account Review team. Any unresolved tickets are escalated to the BSA/AML Officer and the Compliance Manager. Loan disbursements and payments are primarily conducted through ACH transactions originated through other U.S. financial institutions. Therefore, the Company is not exposed directly to higher risk transactions, such as currency, international wires or domestic wires. This also eliminates the need for the Company to aggregate currency transactions to support Currency Transaction Reports (CTRs).

The audit team evaluated the design for transaction monitoring to assess the effectiveness of internal controls and identified some weakness and areas for enhancement, such as enhancing the review/investigation process and potential adoption of more effective detection scenarios.

Questionable Activity Reporting (QAR)

Potentially suspicious activity and OFAC matches identified by the Company during customer onboarding and ongoing monitoring are required to be reported to Celtic Bank in the form of a QAR. The Compliance Operations Manager is responsible for this process and for evaluating whether to close accounts with multiple QARs. The Company may also close an account at the request of Celtic Bank. Following the receipt of a QAR, Celtic Bank will complete any required further investigation and file a Suspicious Activity Report (SAR), if needed. A similar process for the Payments Program is expected for UARs escalated to World Pay and Fifth Third Bank, following the pilot period. Upon receipt of a UAR, Fifth Third Bank will complete any required further investigation and file a SAR, if needed.

The BSA/AML Program Manual provides specifies creation of a QAR within 30 days of the identification of potentially suspicious activity.

Treliant evaluated the design of the suspicious activity review process, the interaction between the Company and Celtic Bank, and also conducted sample testing on cleared transaction monitoring alerts and on QARs filed by the Company in an effort to assess the effectiveness of internal controls. Treliant identified several areas for enhancement primarily with the activity narrative quality.

Section 314(a) and External Requests

Section 314(a) of the USA Patriot Act requires a financial institution to conduct a one-time search of its customer and transaction databases upon request by law enforcement in order to identify matches to subjects on the circulated lists, and to provide a response to FinCEN within fourteen (14) days of the notification date.

The Company's Compliance Operations Manager is responsible for ensuring compliance with 314(a) information-sharing requests from Celtic Bank and liaising with the Bank regarding all requests and results within the timelines prescribed in the BSA/AML Program Manual. Celtic Bank makes the final determination to FinCEN and files responses.

Treliant evaluated the process by which the Company receives, searches, and responds to 314(a) and other external requests from Celtic Bank. No exceptions were identified.

Quality Assurance (QA)

The Company maintains a QA process for a variety of Compliance functions, including BSA/AML Program functions. On a quarterly basis, the Company's Compliance Operations Manager completes compliance checks on CIP identification and verification, CIP notice presentation and initial OFAC screening processes. Any results of such checks are incorporated into compliance reporting provided to management and the Company's Board, as well as regular reporting provided to Celtic Bank on screening outcomes.

During the prior review, Treliant noted that the Company's QA processes were evolving. During this review, Treliant evaluated the design of the QA review process and conducted sample testing on QA reviews in an effort to assess the effectiveness of internal controls, and found that there continue to be weaknesses in the documented procedures.

Record-Keeping

The Company maintains records for customer account information for the five (5) year time period consistent with BSA record-keeping requirements.

Training

The Company currently uses OnCourse (formerly Banker's Edge) online training as the primary method of providing training to its staff. Training content is appropriate given the Program's inherent risk profile. Online training is supplemented with department-specific and on-the-job targeted training as needed, including a BSA/AML-focused training annually for employees with front-line BSA/AML responsibilities. Additionally, the Company provides annual BSA/AML and OFAC training to its Board of Directors.

The audit team assessed the design of the BSA/AML training program, and also conducted testing using training data to ensure employees completed training as required and in a timely manner and that content delivered was comprehensive and effective. Some weaknesses were identified in the tracking/assurance of new employee training and exposure of OFAC-related topics for all employees.

Overall Rating and Rationale

Treliant conducted an assessment of the adequacy and effectiveness of the BSA/AML Program. The results of this review indicate that the design and/or operating effectiveness of controls provide limited assurance to mitigate the identified key risks for the activities covered within the scope of this review.

The overall rating for the BSA/AML control environment is Limited Assurance

The BSA/AML Program demonstrates limited evidence of enhancement since the prior review. Reiterating last year's observations, Treliant considers that the lack of enhancements in the Company's Compliance Program operational procedures an important weakness that requires prioritization by the Company. Without adequate written procedural documentation, the quality of execution of the control cannot be fully tested. This weakness affects testing of CIP, EDD, OFAC and TM controls and is considered a systemic gap. The program requires additional time for refinement and maturity. The Company has a number of enhancements underway including implementation of additional TM scenarios, updating the CRR methodology and applying it to the complete client population and augmentation of Board reporting. However, these efforts were not fully implemented during the period of review.

The following table supports the rationale for the overall rating by evaluating each of the BSA/AML Program elements and describes the degree of assurance that can be placed on the current key controls to effectively mitigate BSA/AML risk.

Assessment Key[4]	
	Reasonable assurance can be placed on the effectiveness of the controls to mitigate the identified risk.
	Limited assurance can be placed on the effectiveness of the controls to mitigate the identified risk.
	Insufficient assurance can be placed on the effectiveness of the controls to mitigate the identified risk.

BSA/AML Program Element	2018 Assessment	2019 Assessment	Summary of Testing Completed
Program Governance			Weaknesses were observed in the overall tracking and validation of remediated issues, leading to repeat findings in this review period. (See Issue #2 and related Issue #1.) Additionally, Promontory previously identified the need to enhance the information provided, and Treliant concurs with this observation. (See Observation #1.)

BSA/AML Program Element	2018 Assessment	2019 Assessment	Summary of Testing Completed
Risk Assessment	🟩	🟨	Weaknesses were identified with the Company's selection and completeness of inherent risk factors as well as inconsistencies with the assessment of control effectiveness. (See Issue #5.)
KYC/KYB/CRR	🟨	🟨	The CRR demonstrates some weaknesses in the selection and completeness of risk factors, for customers and related parties (e.g., business representatives and UBOs), and with the identification of prohibited customer types. (See Issues #5 and #7.) Additionally, the lack of comprehensive operational procedures for conducing EDD is also a weakness, and is evident in the quality and consistency of the EDD reviews that have been performed. (See Issue #1.) Also, the Company has not yet assigned risk ratings to all of its customers, a process that is in progress, but not yet completed.
OFAC	🟨	🟨	Operational testing of the alert deposition processes identified weaknesses in the alert clearing process. (See Issue #4 and related Issue #1.) Also, opportunities for improvement were noted for model and access mitigation controls (See Observations #3 and #4.)
Transaction Monitoring	🟨	🟨	The existing monitoring scenarios have generated limited productive results, and Promontory has recommended (and the audit team concurs) that the Company should consider reviewing existing monitoring scenarios and develop new scenarios. See Observation #2). Operational testing of the alert deposition processes identified weaknesses in the alert clearing process. (See Issue #4 and related Issue #1.)
Questionable Activity Reporting	🟩	🟨	Operational testing of the investigation process identified weaknesses in the quality of reporting. (See Issue #4 and related Issue #1) Additionally, although not material given the ability of Celtic to access information with Kabbage to perform their SAR investigations, it was noted that the QAR that is provided by Celtic Bank for reporting does not exactly mimic FinCEN's SAR.

BSA/AML Program Element	2018 Assessment	2019 Assessment	Summary of Testing Completed
Section 314(a)			No exceptions were noted in the design or operating effectiveness of controls related to 314(a).
Quality Assurance			Similar to last year's review, weaknesses were identified. The process for reviewing the sample or conducting re-performance testing is not defined or formally documented within procedures, including the methodology for determining a representative sample size or subjective sampling. (See Issue #1.)
Training			Exceptions were noted with ensuring that new employees took assigned online training within the Policy mandated 90-days. Also, the OFAC specific online training was limited to only Compliance and Risk personnel, rather than being offered to the entire staff. (See Issue #6.)

Treliant would like to extend our appreciation to the Company's Compliance and Risk teams for their assistance and cooperation during this audit.

Detailed Findings

High Risk Findings

Issue #: 1 **Control Category:** *KYC/KYB/CRR, OFAC, TM, QAR, 314(a), QA* **Issue Rating**: *High Risk* **Repeat Issue:** *Yes, 2019 Treliant Audit*	**Operating Procedures** Similar to the prior review, although BSA/AML and OFAC written procedures provide steps for Risk Analysts to verify customer identity and clear alerts, they do not specify the level of detail required forRisk Analyst commentary and documentation within Salesforce, the system of record. As a result, for most samples reviewed for KYC/KYB, OFAC Screening, TM, and CRR (see related Issue #4), the Risk Analyst comments did not indicate why an OFAC or TM alert was cleared or why a KYC/KYB or CRR flagged customer was verified and what steps were taken to perform the review. The Procedures/ Desktop Operating Instructions (DOIs) generally lack the common elements found in documents at similar organizations and financial institutions that maintain KYC, TM, and OFAC related processes. For example, common procedural sections include: purpose and scope, roles and responsibilities, process summary, specified operating instructions, procedure governance, terms and definitions, and procedure version control. With respect to specified operating instructions, the procedures lack information about the input, processing and output for the process that would provide information about where the inputs to the process originate, the specific steps to perform the tasks as well as the systems/applications/tools used to compete the tasks, and the desired output for the process.

Moderate Risk Findings

Issue #: 2 **Control Category:** *Governance* **Issue Rating**: *Moderate Risk* **Repeat Issue:** *No*	**Issue Management** The audit team reviewed the issue logs (i.e., Remediation Plan and Compliance Issue Log) of the Company's BSA/AML and OFAC Risk Assessment and CRR methodologies. The review identified a primary weakness in the issue management process. The current process allows for an issue to be closed without validation by an independent or separate testing/ review function. The impact of this weakness was most evident in the closing of the finding from Treliant's prior review related to the enhancement of operating procedures. Minimal updates were made to the procedures and the updates not address the risks identified by the finding.

Issue #: 3 **Control Category:** *OFAC*	**OFAC Alert Clearing** The audit team reviewed the timing for reviewing Saleforce tickets (alerts) generated as a result of watch list matches from the GIACT screening. During onsite interviews, Management indicated that alerts are to be cleared

Issue Rating: *Moderate Risk* **Repeat Issue:** *No*	within two (2) days. Testing identified that eight (8) of ten (10) alerts (80%) were cleared in a period longer than two (2) days (mode = 1, median = 1.3, max = 4).

Issue #: 4 **Control Category:** *OFAC, TM, QAR* **Issue Rating**: *Moderate Risk* **Repeat Issue:** *No*	**Alert and Investigation Narrative** The audit team reviewed the concluding Salesforce ticket comments and QAR narratives and generally found them to be lacking in clear and concise details that explain why the review is being conducted and why the resulting analysis either mitigates the risk identified by the alert or why the results are being escalated for further action either by the Company or the partner bank. OFAC operational testing identified that eight (8) of the ten (10) alerts reviewed (80%) lacked sufficient commentary to explain why the match entity (Company relationship) was not the same as the watch list entity (e.g., insufficient commentary that describes the specifics for why the name, date-of-birth and/or address did not match). Testing also identified that four (4) of the ten (10) alerts reviewed (40%) had insufficient supporting evidence/documentation to support the clearing conclusion. In one case, an inappropriate method was used to clear the alert, whereby the Analyst searched the name of the customer company, rather than searching for the name that matched in the alert. In two (2) alerts, the results of Requests for Information (RFI) responses were inconclusive. Transaction monitoring operational testing identified that five (5) of the ten (10) alerts reviewed (50%) lacked sufficient commentary to explain why review analysis concluded that the observed activity was not questionable or unusual. Testing also identified that eight (8) of the ten (10) alerts reviewed (80%) had insufficient supporting evidence/documentation to support the clearing conclusion. The narratives of each of the sixteen (16) 2019 year-to-date QARs demonstrated weaknesses when compared with the guidance provided by FinCEN for preparing a complete and sufficient SAR narrative.[5] In general, the Company's narratives lack the fundamental three section structure that includes an introduction, body and conclusion. The Company's current narratives make it difficult to discern how the suspicious activity came to light. Additionally, the narratives tend to lack a detailed explanation of the activity witnessed by the company through its visibility into the customer's attached accounts that would provide context for the reported behavior and whether the actual transaction behavior matches expected behavior.

[5] https://www.fincen.gov/sites/default/files/shared/sarnarrcompletguidfinal_112003.pdf

Low Risk Findings

Issue #: 5
 	
Control Category:
Risk Assessment, KYC, CRR
 	
Issue Rating:
Low Risk
 	
Repeat Issue:
No
	Risk Assessment
	
	The audit team reviewed the design of the Company's BSA/AML and OFAC Risk Assessment and CRR methodologies. Based on the review, Treliant noted a number of weaknesses and potential enhancement opportunities for assessing the Company's BSA/AML and OFAC risks, including:
	
	● The 667 clients with "Not Known" entity type representing 0.4% of the population, were the only High Risk entity type, which indicates that the customer legal entity type within the risk assessment does not provide sufficiently granular risk classification. All possible legal entity types should be graded on a continuum from lower to moderate to high to very high risk, for example. Typically, higher risk is associated with private vs. public companies due to lower levels of transparency; also LLCs formed in low UBO transparency states could be deemed high risk (i.e. Delaware, Wyoming, Nevada, Oregon, etc.).
	● As the AML Risk Assessment methodology assigns a risk rating to each two-digit North American Industry Classification System (NAICS) codes within Kabbage's existing customer portfolio as of a point in time, the methodology does not appear to comprehensively identify higher risk for money laundering industries across all industry types. Additionally, higher risk businesses may not be adequately identified using the 2-digit NAICS code, which does not provide sufficient granularity relative to FFIEC Examination Manual and other regulatory guidance. For example, identification of cash-intensive businesses may require 4-digit NAICS codes for appropriate identification.
	● Customer inherent risk does not utilize additional available customer attributes which could assist in identification of higher customer inherent risk:
	  ○ customer tenure;
	  ○ suspicious activity red flags (e.g., number of QARs, 314(a) matches, OFAC matches, etc.);
	  ○ international activity (e.g., logins from foreign IP addresses, especially those in higher risk jurisdictions); and
	  ○ customers with international affiliations (e.g. international parent companies, resident or non-resident alien UBOs or business representatives, particularly from higher risk jurisdictions).
	● Although Kabbage's assessment of inherent product and service risk appears in alignment with regulatory guidance, without sufficient commentary and reference the estimation of risk could be considered subjective and qualitative. A product and services matrix that assesses each offered Kabbage product and service for inherent risk based on various risk factors (ability for pre-payment, allowed loan payment transaction types, product use limitations) and that assigns a simplified product risk scoring methodology, for

	example, and also weighting risk through point-in-time or average outstanding loan balances could assist Kabbage to better quantify its risk exposure. ● Although not specifically mandated by guidance, products and services risk can also consider transaction types and transaction values and volumes. For Kabbage, transactional exposure could at the highest level be segmented into debits (loan funding) and credits (loan payments by recurring ACH, non-recurring ACH, fees by non-recurring ACH, etc.) which can then be assigned specific transaction type risk to provide greater granularity of inherent transaction risk. ● Additional use of metrics could assist Kabbage in estimation of directionality of risk (i.e., year-over-year changes). ● For the Transaction Geographic risk factor, there is no scoring band used to derive the risk designation as is the methodology with the Customer Geography risk factor. Without sufficient commentary and reference, the risk designation could be considered subjective and qualitative. With respect to control effectiveness, the Company appears to make adjustments to the control effectiveness ratings when control weaknesses are identified (e.g., through testing and independent reviews). However, the absence of objective scoring granularity within the Control Effectiveness Scoring Bands can lead to discrepancies. For example, there are two control categories (BSA/AML Risk Governance and QA, and Independent Testing) that are rated as "Strong", but there were identified deficiencies within the control environment that included items such as Compliance reporting to the Board, staffing assessment, tailored training, QA sampling methodology and procedural enhancements that could have potentially impacted the control ratings, but are were not fully rationalized. The control assessment methodology could also be strengthened to provide greater granularity for instances where Management has reported that a finding/issue has been remediated, but the remediation has not yet been fully validated by a review function.

Issue #: 6 **Control Category:** *Training* **Issue Rating***:* *Low Risk* **Repeat Issue:** *No*	**Training** The audit team reviewed the design and effectiveness of the Company's BSA/AML and OFAC training program, citing these observations: ● Sample testing of May 2018 new hires identified seven (7) of nineteen (19), or 37%, assignments were completed outside of the Policy mandated 90-day timeframe. ● Kabbage currently does not assign the OFAC specific online course to all employees, only employees within Compliance and Risk. The other courses assigned to all employees (i.e., Customer Information Program, AML for Customer Service and BSA for Customer Service) do not address OFAC. It is common practice for all employees to receive, at minimum, an OFAC exposure course

	which provides the purpose of economic and trade sanctions, and the relevancy to all U.S. Persons. ● Several technical discrepancies were noted in Kabbage's training documentation: ○ Compliance Training Policy lists a course for "PATRIOT Act" that was not assigned to Kabbage personnel. ○ Compliance Management System document status that new employee training is stated as "during the first two weeks" which needs to be updated to "30 days".

Issue #: 7 **Control Category:** *KYC/KYB/CRR* **Issue Rating**: *Low Risk* **Repeat Issue:** *No*	**Prohibited Customers** The audit team reviewed the loans originated in June 2019. A visual inspection of the customer names produced a number customers that appear to be outside the Company's risk appetite (i.e., financial services, non-profits and firearms). Additionally, the Company's Policy is unclear as to whether the prohibition of firearms customers is limited manufacture or also includes sales. Potential out-of-appetite customers: • Financial Services - 16 • Non-Profit - 7 • Firearms - 12 The Company was continuing to research the identified customers at the time this report was submitted.

Observations[6]

Observation #: 1 **Control Category:** *Governance* **Previously cited:** *Yes: Promontory Risk Assessment 5.2.1.3* **Target remediation date:** *November 13, 2019*	**Management Reporting (Key Performance and Key Risk Indicators)** The audit team reviewed the Compliance reporting developed for Management and Board review. The current metrics could be enhanced to meet common standards for KPIs and KRIs for tracking changes to a company's risk profile and out-of-control conditions in the operational workflow. Relatedly, the Company does not currently define any risk appetite or risk tolerance thresholds that would identify an out-of-control condition. Notably absent are metrics related to the number of transaction monitoring alerts, number of OFAC alerts, number of high risk customers, including

[6] Observations are offered where prior findings or observations remediation is in progress but is still identified as a target for attention, discrepancies were noted within the review but do not represent an immediate and/or significant impact on the control environment, and opportunities of the Company to make further enhancements to existing policy, procedure, and process. Observations do not require a formal Company Remediation Effort.

	any long term trending (e.g., 12 to 13 months) for these types of metrics that may be useful in determining any seasonal or cyclical patterns. The 2018 Risk Assessment recommended that the Company enhance the Board reporting contents to include, "Risk-based issues (e.g. changes in risk distribution of the Company's customer base and volume of high-risk customers; major changes in transaction monitoring alert volumes; any OFAC hits)" Treliant concurs with and reiterates this recommendation.
Observation #: 2 **Control Category:** *Transaction Monitoring* **Previously cited:** *Yes, Promontory Risk Assessment 5.2.3* **Target remediation date:** *September 31, 2019*	**Transaction Monitoring Scenarios** The audit team reviewed each of the sixteen (16) QARs that were escalated during the review period, and only one (1) could be readily identified as originated from one of the transaction monitoring scenarios. The remainder primarily originated through external identification (e.g., fraud victim contact, subpoena, police report). The 2018 Risk Assessment recommended that the Company establish a process for ongoing development, testing, calibration, and validation of detection scenarios/rules, including a process to evaluate and develop new scenarios as needed based on changes to or expansions of product scope/design; and ongoing periodic review of the efficiency and efficacy of existing scenarios/rules. Treliant concurs with and reiterates this recommendation. Management has provided a draft of the revised rules set. The set includes new rules for overpayments, which adds to the Company's identification of lending related red flags.
Observation #: 3 **Control Category:** *OFAC* **Previously cited:** *No* **Target remediation date:** *N/A*	**Sanctions Filter** The 2018 Risk Assessment stated that "Kabbage's has not yet performed a formal validation or calibration of its OFAC name screening tool to ensure the data feeds into the tool and algorithms, including confidence levels and fuzzy logic, are appropriately set up and effectively identify potential sanctions matches". Treliant confirmed that there is no on-going monitoring of the performance of the screening filter. Treliant recommends that, at a minimum, the Sanctions screening system be tested to confirm that exact and strong aliases from the OFAC Sanctions List are interdicted. Additionally, Kabbage confirmed in the interviews that it did not screen the merchant names that were part of transactions, when the transaction was executed on Alibaba.com (for example). The rationale being that it is Alibaba's and the financial institution's (making the payments) responsibility to screen merchants. Treliant asked if the merchant names were captured within Kabbage in any of the data stores. Should vendor names be captured, Treliant recommends that the vendor names be screened to avoid the possibility of capturing a potential SDN name and not screening the name.
Observation #: 4 **Control Category:**	**Access Mitigation**

OFAC **Previously cited:** *No* **Target remediation date:** *N/A*	Per the 2018 Risk Assessment and interviews with Kabbage, the audit team confirmed that Kabbage currently maintains a list of 26 countries (including broad and narrowly sanctioned countries) that are blocked from accessing the Kabbage website through Internet Protocol controls. However, it was unclear that the controls provided services or lists to further protect the potential use of Kabbage (e.g., via VPNs) from sanctioned countries. Treliant recommends that Kabbage investigate available technical tools to further protect unauthorized use from sanctioned countries.

Appendix

Appendix A: List of Documents Reviewed

#	Document Name
1	#1 lmProduct Matrix 2019-06-06 - PFG.xlsx
2	#1 Product Matrix (LM 6.5.19).docx
3	#11 Know Your Customer Procedures (FINAL 3.1.19).docx
4	#12 Customer Risk Rating Procedures (FINAL 1.11.19).docx
5	#13 Transaction_Monitoring_Procedures (FINAL 6.23.18).docx
6	#13 Transaction_Monitoring_Procedures (FINAL 6.23.18)_PASSWORD.txt
7	#14 attestation Board meeting 7.24.19.pdf
8	#14 Compliance slide from Board deck 7.24.19.png
9	#14 Compliance Slides Board Meeting.docx
10	#14 KBG Summary of Policy Changes for Board (FINAL 7.19.19) .pptx
11	#1-Company Summary-Profile.docx
12	#2 KBG - 2018 BSA AML and OFAC Risk Assessment (Board Reviewed 7.24.19).docx
13	#22 Kabbage - Code of Conduct KBG Board Approved 20190424.docx
14	#23 Bangalore Code of Conduct and Ethics.csv
15	#23 US Code of Conduct.csv
16	#25, 32 Compliance SLAs from Celtic.docx
17	#27 resolutions appointing CCO, BSA AML officer .pdf
18	#30 Customer Risk Rating Procedures (FINAL 1.11.19).docx
19	#4 Kabbage - 2018 BSA AML and OFAC Risk Assessment (Board Reviewed 7.24.19).docx
20	#4 Kabbage - Commercial Credit Policy v6.0 (KBG Board Approved 4.24.19).docx
21	#44 Start Date Report.xlsx
22	#44 Termination Report.xlsx
23	#45 BSA_AML_training_attendance_ 12.12.2018.pdf
24	#46 BSA AML OFAC Webinars attended.docx
25	#48 Board Annual Compliance Training 2018.pptx
26	#49 BSA AML Board Training Attendance Tracker.png

#	Document Name
27	#5 Org Charts (Risk, BSA AML OFAC).docx
28	#50 2018 Enterprise BSA_AML & OFAC RA Remediation Plan (AH 8.6.19).xlsx
29	#50 2018 Enterprise BSA_AML & OFAC RA Remediation Plan UPDATED 9.12.19) (1).xlsx
30	#50 2018 Enterprise BSA_AML & OFAC RA Remediation Plan UPDATED 9.12.19).xlsx
31	#51 Complaint Log 2019 August.xlsx
32	#51 Compliance Issues Log 2019 Q1.xlsx
33	#7 Enterprise BSA_AML and OFAC Policy (KBG Board Approved 7.24.19).docx
34	#8 Kabbage - BSA AML Program Manual (FINAL 7.3.18).docx
35	#9 Compliance Training Policy Ready for Approval 20190812.docx
36	2. Transaction_Monitoring_Procedures (FINAL 3.18.19).docx
37	2018 FINAL course completion 11.20.2018.xlsx
38	2019 Karrot Celtic Bank CRA.xlsx
39	2019 Karrot Celtic Delinquent Accounts.xlsx
40	2019 May Celtic Bank CRA.xlsx
41	2019 May Celtic Bank Loans Taken By Fuelman Customers.xlsx
42	2019 May Celtic Charged Off Accounts.xlsx
43	2019 May Celtic Delinquent Accounts.xlsx
44	2019 May Celtic Loans Taken By Celtic Customers.xlsx
45	2019-06-04 FinCEN 314a Business List - PROCESSED 2019-06-05.xlsx
46	2019-06-04 FinCEN 314a Personal List - PROCESSED 2019-06-05.xlsx
47	2019-06-18 FinCEN 314a Business List - PROCESSED 2019-06-18.xlsx
48	2019-06-18 FinCEN 314a Personal List - PROCESSED 2019-06-18.xlsx
49	22-Kabbage Vendor Management Policy - KBG Board Approved 20190424.docx
50	35-Kabbage Credit Process Overview - 20190401.pdf
51	A Callen Aspen Bank Account.png
52	AAA Plumbing Services QAR.xlsx
53	Active Employees (19).xlsx
54	Alibaba apply-now(no-biz-info).pdf

#	Document Name
55	Alibaba checkout-start-terms.pdf
56	Alibaba First Amendment to Collaboration Agreement.pdf
57	Alibaba userprofile-activity-payments-services.pdf
58	Alibaba_Kabbage - Collaboration Agreement (Executed) (June 20 18).pdf
59	All OFAC tickets June 2019.xlsx
60	approval email of BSA AML Policy from CCO (1).png
61	approval email of BSA AML Policy from CCO.png
62	AR Vapes - Please_DocuSign_AR_VapesMN187k121218.pdf
63	AR Vapes - snip 1.jpg
64	AR Vapes - snip 2.PNG
65	AR Vapes - snip 3.PNG
66	AR Vapes - snip 4.PNG
67	Audit Committee 080515 Minutes and Charter_Signed.pdf
68	Catalog- 2019 Course Catalog for Banking (1).pdf
69	Catalog- 2019 Course Catalog for Banking.pdf
70	Celtic Bank CRA 2019 April.xlsx
71	Celtic Bank CRA 2019 June.xlsx
72	Celtic Bank Loans Taken By Fuelman Customers 2019 April.xlsx
73	Celtic Bank Loans Taken By Fuelman Customers 2019 June.xlsx
74	Celtic Charged Off Accounts 2019 April.xlsx
75	Celtic Charged Off Accounts 2019 June.xlsx
76	Celtic Delinquent Accounts 2019 April.xlsx
77	Celtic Delinquent Accounts 2019 June.xlsx
78	Celtic Loans Taken By Celtic Customers 2019 April.xlsx
79	Celtic Loans Taken By Celtic Customers 2019 June.xlsx
80	CelticClosedAccounts_2019-04.xlsx
81	CelticClosedAccounts_2019-05.xlsx
82	CelticClosedAccounts_2019-06.xlsx

#	Document Name
83	CelticDeclinedAccounts_2019-04.xlsx
84	CelticDeclinedAccounts_2019-05.xlsx
85	CelticDeclinedAccounts_2019-06.xlsx
86	CelticNewAccounts_2019-04.xlsx
87	CelticNewAccounts_2019-05.xlsx
88	CelticNewAccounts_2019-06.xlsx
89	Chronology of Events Torozyan Final 20180716.docx
90	Code of Conduct updated 9.20.19.xlsx
91	Complaint Log 2019 April.xlsx
92	Complaint Log 2019 June.xlsx
93	Complaint Log 2019 May.xlsx
94	Compliance Issues Log 2019 July.xlsx
95	FL Publix QAR .xlsx
96	FL Publix QAR 20190517.xlsx
97	Fraud Procedure Doc Q1 2018 (2).docx
98	Fraud_Report_Aug_2019 (1).xlsx
99	Fraud_Report_June_2019 (2).xlsx
100	Hakala Brothers Kabbage Group Inc. wire 001.jpg
101	Hakala Brothers Kabbage wiring instructions 001.jpg
102	High risk customers screenshots 9.23.19.docx
103	Industry Dropdown.png
104	June loans _ $10k screenshots.docx
105	June originations screenshots (SH 9.23.19).docx
106	Kabbage - 2018 Treliant BSA-AML Audit Remediation (1.3.19) copy.xlsx
107	Kabbage - BSA_AML & OFAC Program Manual (FINAL 9.4.19).docx
108	Kabbage - Compliance Management System KBG Board Approved 10.24.18.docx
109	Kabbage - Proposed Revisions to TM & CRR Rules (8.1.19).docx
110	Kabbage AML Training Discussion Deck FINAL #45.pptx

#	Document Name
111	Kabbage Application Wizard May 2019.pptx
112	Kabbage Brand Fraud Summary.docx
113	Kabbage Card - Program Terms and Conditions (FINAL Nov 2017)(v2).pdf
114	Kabbage Inc. Mail - GIACT.pdf
115	Kabbage Payments - June.xlsx
116	Kabbage_2019 BSA-AML-OFAC_GQ (SH 9.11.19).docx
117	Kabbage_2019 BSA-AML-OFAC_Observation Vetting (9.25.19).docx
118	Kabbage_2019 BSA-AML-OFAC_Risk Assessment Questions (AH Cmts 9.19.19).docx
119	Kabbage_WorldPay Fifth Third PFMA_20181023_signed.pdf
120	Karrot Celtic Bank CRA 2019 April.xlsx
121	Karrot Celtic Bank CRA 2019 June.xlsx
122	Karrot Celtic Delinquent Accounts 2019 April.xlsx
123	Karrot Celtic Delinquent Accounts 2019 June.xlsx
124	KarrotCelticClosedAccounts_2019-04.xlsx
125	KarrotCelticClosedAccounts_2019-05.xlsx
126	KarrotCelticClosedAccounts_2019-06.xlsx
127	KarrotCelticDeclinedAccounts_2019-04.xlsx
128	KarrotCelticDeclinedAccounts_2019-05.xlsx
129	KarrotCelticDeclinedAccounts_2019-06.xlsx
130	KarrotCelticNewAccounts_2019-04.xlsx
131	KarrotCelticNewAccounts_2019-05.xlsx
132	KarrotCelticNewAccounts_2019-06.xlsx
133	KBG 2019 BSA-AML-OFAC_Training _ #3_2019-09-17.docx
134	KBG Training _ #2 (SH 9.12.19).docx
135	KBG_2019 BSA-AML-OFAC_General Questions #1 (FINAL 9.20.19).docx
136	KBG_2019 BSA-AML-OFAC_Population __2019-09-17 (1).docx
137	KBG_2019 BSA-AML-OFAC_Population __2019-09-17 (2).docx
138	Key for June originations screenshots 9.23.19.pdf

#	Document Name
139	KYB_KYC Refresh Overview & High Level Plan .pptx
140	KYC-KYB Checklist (FINAL 1.11.2019).docx
141	Latesha Johnson QAR.xlsx
142	Linda Smith Pay Pal Credentials.png
143	Linda Smith QAR Docs.pdf
144	Monthly Total Ticket # (October 2018- end of July 2019).xlsx
145	OFAC screenshots for Treliant (2).docx
146	OFAC screenshots for Treliant.docx
147	Pay with Kabbage New Product Risk Assessment.docx
148	Payments Demo Videos-20190919.zip
149	Payments Roadmap 1 of 2 .png
150	Payments Roadmap 2 of 2 .png
151	Paypal QAR Report Amended 20190213.xlsx
152	Paypal QAR Report.xlsx
153	Paypal QAR v3 (2.21.19).xlsx
154	police report & affidavit.pdf
155	Police Report.pdf
156	policereport.pdf
157	Population Samples.xlsx
158	Potential_OFAC_Hits_BatchID_68900.pdf
159	Potential_OFAC_Hits_BatchID_68902.pdf
160	Q1 2019 Quarterly Monitoring Final 20190726.xlsx
161	QAR Armenia Rev 20181204.xlsx
162	QAR Callen.xlsx
163	QAR Fealy.xlsx
164	QAR Kabbage Brand Fraud Amend 20190415.xlsx
165	QAR Kabbage Brand Fraud.xlsx
166	QAR Motwani.xlsx

#	Document Name
167	QAR Narrative - Aladjadjan Celtic.docx
168	QAR Zoya Torozyan 20180813.xlsx
169	QAR Zoya Torozyan.xlsx
170	QAR-Aladjadjian Celtic.xlsx
171	QAR-Edward Bailey 20190305.xlsx
172	QAR-Linda Smith.xlsx
173	QAR-Multiple Apps 20190403 Ammended 20190414.xlsx
174	QAR-Multiple Apps 20190403.xlsx
175	QAR-Twice as Nice-Amended 20190516.xlsx
176	QAR-Twice is Nice.xlsx
177	Resolution appointing BSA AML OFAC officer.png
178	Samer Abdel Hamid QAR.xlsx
179	Semi-annual testing Q1,2 2019.xlsx
180	Slides from new hire orientation with notes.pptx
181	STEPHEN ORTHOPEDIC SPORT CENTER.pdf
182	Strategic Referral Partners All that still have a contract & when we signed them.xlsx
183	TM alert screenshots for Treliant.docx
184	Transaction Monitoring Rules for Payments (EM 8.27.19).png
185	Treliant - BSA AML Doc Request (8.23.19).xlsx
186	Treliant BSA-AML Audit Remediation (3.19.19).xlsx
187	Treliant Training Questions_2019-09-11.docx
188	Treliant_Sample Request (2).xlsx
189	Updated Treliant samples 9.19.19.xlsx

Appendix B: List of Meetings and Walkthroughs

#	Date of Meeting	Meeting Details
1	8/26/2019	**Overview** **Azba Habib**, BSA/AML Officer
2	8/26/2019 1:00 PM	**Credit and Fraud Management** **Kaustav Das**, Head of Fraud **Siddharth Shah**, Risk Analyst
3	8/26/2019 2:30 PM	**Account Review** **Courtney Kirkpatrick**, Risk Analyst
4	8/26/2019 3:00 PM	**Compliance Program** **Scott Askins**, Chief Compliance Officer
5	8/26/2019 4:00 PM	**Payment Offering Overview** **Nan Siler**, Head of Payment Operation **Liz Maiellaro**, Corporate Counsel
6	8/27/2019 1:00 PM	**Compliance Program Operations** **Kris Nelson**, Compliance Analyst
7	8/27/2019 1:30 PM	**Account Review** (Continued from 8/26/2019) **Courtney Kirkpatrick**, Risk Analyst
8	9/13/2019 1:30 PM	**Technology (OFAC)** **Azba Habib**, BSA/AML Officer **Sunita Hall**, Compliance Analyst
9	9/20/2019 9:30 AM	**Technology (OFAC)** (Continued from 9/13/2019) **Azba Habib**, BSA/AML Officer **Sunita Hall**, Compliance Analyst **C. Brooks, Program Manager** **C. Hill, Head of Solutions Architecture**

E□HIBIT 6

Kabbage

March 25, 2020

Board of Directors Update

Objectives

- Recap immediate responses to this crisis
  - OpEx efforts
  - Lending efforts
  - Government efforts
- Discussions/Decisions
  - Lending go forward
  - ABS / Credit Warehouse / Macquarie (corp facility)
  - Major decision points/potential scenarios

Immediate Responses to This Crisis

OPEX
Lending Business Actions Taken
Government Efforts

OpEx Efforts

We are aggressively reducing operating expenses

Category	Description	Estimated savings*
Marketing	• Halted all non-partner customer acquisition spend • Partner spend currently severely curtailed with reduction in lending risk appetite • Will be reduced further if lending further curtailed	$50-55mm
Vendor Management	• Terminating non-essential vendor spend • Active discussions to reduce or spread current payments due, through extending payment terms and/or receiving price concessions • Optimizing weekly vendor payment cycle	$5-10mm
Compensation	• Immediate freeze on all hiring, including backfills • Significant RIF	$40-$45mm

Total OPEX reductions: $95-110mm

Estimated 2020 OPEX remaining: $50-65mm

* Relative to balance of year budget

Lending Efforts

We are managing our book aggressively: taking immediate actions to reduce exposure and overall risk profile

Action Taken	Description
Reduce Existing Customer Exposure	• Manage down exposure in inactive / never borrowed population • Enforce stricter adherence to data connectivity • Revenue • Significant tightening of credit box (i.e., RCM Tiers 1-5 only) and strategy
New Customer Underwriting Criteria	• Significant tightening of credit box (i.e., NCM Tiers 1-4 only; blocking high-risk industries) and strategy
Identify Cash Flow Shortfall *(in progress)*	• Identify business revenue fall off • Data-driven "quick ratio" • Leverage suite of deep learning models, (e.g., balance / revenue / shortfall forecasts, transaction-only risk model)

Summary Portfolio Impact

	Pre-Crisis (3/12)	**Post-Action** (3/19)
Eligible customers [1]	125K	38K
Total credit limit	$3.7B	$1.0B
Open to buy	$2.5B	$752MM
Same-day qualification rate [4]	33%	22%

1) Eligible customers defined as customers who are *NOT* delinquent / closed / charged-off / EPP, do not have any No Cash Access flags, and have a credit limit > 0; includes inactive / never borrowed customers
2) Same-day qualification rate defined as applications that are verified and qualified in the same day; pre-crisis time period = 3/1-3/12; post-action time period = 3/13-3/23

For loans outstanding, we are helping our customers manage through this time of payment hardship

SMBs across industries and geographies are being impacted by this crisis

For SMBs that contact us, we extend payment terms to bridge until receipt of government aid or the end of quarantine

Tactics to extend payment terms

Payment Deferral	3 or 7 day deferral
Skip-a-Pay	Autopay Off until following due date
Extended Payment Plan (EPP)	Hardship program for delinquent accounts to extend payments up to 60 months
Refinancing	Refinance current obligations into new loan *(launching this week)*

Government Efforts

We have worked aggressively to empower Kabbage to be a vehicle to deliver crisis funding to SMBs

What is the challenge our country faces?

- Providing relief to SMBs is a 2 part problem:
    - Allocation of relief funding
    - Disbursement relief funding to SMBs
- Once relief funding is allocated, disbursing funds is a monumental challenge
    - Technology and automation must be used to reach our 31M SMBs
    - Traditional FI infracture alone cannot handle the volume of SMBs

Why Kabbage?

- **Our fully automated platform is one of a handful that can scale quickly to get relief dollars to SMBs**
- Key capabilities include:
    - Fully automated, 10 minute onboarding
    - Fully automated underwriting
    - Automated disbursement and repayment mechanisms

Current language in the Coronavirus Stimulus Bill (not yet passed) enables the Kabbage Platform to help in this crisis

Key takeaways from current bill

- $349B in government-guaranteed SBA Small Business Interruption Loans appropriated
  - Program through 6/30
  - 6 month deferral of all payments
  - 4% rate cap; 10 year max term
  - Loan forgiveness will be available with documented funds usage
- Private institutions are lenders; Treasury can also define non-bank lenders (i.e., could include Kabbage)
  - 1-5% servicing fee to be paid

Implications for Kabbage

- Lending via platform partnerships
  - Use our tech to facilitate lending for banks with balance sheets that can be rapidly deployed
  - Current thinking: pursue 1-2 large anchor partners and offer standard "plug and play" for smaller banks
- Direct lending
  - Requires definition of Treasury guidelines (likely weeks away)
  - Will need to procure alternate source of funding

Discussions / Decisions

Context: Facilities & Cash Flows

Major Decision Points/Potential Scenarios
- *Go Forward Lending*
- *ABS / Warehouse / Macquarie*
- *Go Forward Scenarios*

CONFIDENTIAL

Context: Facilities and Cash Flows

Overview of 2 facilities used to fund loans

ABS Series 2019-1

Key facts

- $1B receivables; $900MM debt
- Matures 3/2022; legal final maturity 3/2024

Key triggers of Rapid Amortization

- Asset performance based triggers breached
- Borrowing base deficiency, e.g., if:
  - We stop lending and
  - Too many receivables move from bucket 2 to bucket 3, etc.
- KBG insolvency

Key implications of Rapid Amortization

- Kabbage earns no revenue on loans in facility
- Kabbage cannot fund new loans including re-fi
- Losses in the receivables beyond the first 5% passed on to the investors

Warehouse Facility -- 2019-A

Key facts

- $181MM receivables; $165MM debt
- Matures 6/2023; legal final maturity 6/2024

Key triggers of Rapid Amortization

- Asset performance based triggers breached
- Financial covenants are breached

Key triggers of Event of Default

- Borrowing base deficiency, e.g., if:
  - We stop lending and
  - Too many receivables move from bucket 2 to bucket 3, etc.

Key implications of above:

- Kabbage earns no revenue on loans in facility
- Kabbage cannot fund new loans including re-fi
- Losses in the receivables beyond the first 5% passed on to the investors

Corporate Facility -- Macquarie: Scenarios and Remedies

($50MM drawn; matures October 2021; 1mL+6.25%)

Scenarios	Consequence	Macquarie's Remedies
1) ABS - Rapid Amortization Event	EOD under corporate facility; Macquarie is last in line after the ABS noteholders	1) Sell the ABS residual interest to a 3rd party - likely no buyer in this environment 2) Wait to get paid until after the ABS noteholders 3) Demand KBG to full amount; if KBG doesn't pay, start a BK petition as long as it is able to get 2 other creditors to join - KBG doesn't have any other creditors other than trade creditors 4) File a lawsuit against KBG
2) ABS - Event of Default	Same as Scenario 1	Same as Scenario 1
3) Corporate Facility - declare an EOD based on a MAE before ABS hits a Rapid Amortization Event	EOD under corporate facility	1) Receive monthly servicing fee and excess spread in ABS while exploring below options 2) Same as Scenario 1
4) Corporate Facility - Macquarie reduces the value of the residual before ABS hits a Rapid Amortization Event	Borrowing base deficiency in corporate facility (50% of the residual value); last value of residual was $237MM, needs to drop below $100MM to breach borrowing base	1) Receive monthly servicing fee and excess spread in ABS to cure borrowing base deficiency

Liquidity - Facility Amortization Scenario

	3/31/2020	4/30/2020	5/31/2020	6/30/2020	7/31/2020	8/31/2020	9/30/2020	10/31/2020	11/30/2020	12/31/2020
Portfolio Cash Contribution/(Burn)	**$ 16,862,407**	**$ 200,000**	**$ 200,000**	**$ 200,000**	**$ 200,000**	**$ 200,000**	**$ 200,000**	**$ 200,000**	**$ 200,000**	**$ 200,000**
Macquarie Interest	$ -	$ (330,000)	$ (330,000)	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Opex/Capex	$ (14,533,796)	$ (8,424,384)	$ (6,152,825)	$ (5,080,214)	$ (5,222,347)	$ (5,191,901)	$ (5,192,251)	$ (5,465,018)	$ (5,465,193)	$ (5,465,368)
Cfaas Product Cash Usage	$ -	$ (500,000)	$ (1,412,500)	$ (1,412,500)	$ (412,500)	$ (412,500)	$ (412,500)	$ (2,412,500)	$ (2,412,500)	$ (2,412,500)
Potetntial March shortfall of payments	$ (6,000,000)									
Macquarie payoff			$ (50,000,000)							
Total Cash Contribution/(Burn)	**$ (3,671,389)**	**$ (9,054,384)**	**$ (57,695,325)**	**$ (6,292,714)**	**$ (5,434,847)**	**$ (5,404,401)**	**$ (5,404,751)**	**$ (7,677,518)**	**$ (7,677,693)**	**$ (7,677,868)**
Ending Liquidity	**$ 55,511,706**	**$ 46,457,321**	**$ (11,238,004)**	**$ (17,530,717)**	**$ (22,965,564)**	**$ (28,369,965)**	**$ (33,774,716)**	**$ (41,452,234)**	**$ (49,129,927)**	**$ (56,807,794)**

→ Assumptions:

- Cease originations; early amortization begins April 1. Servicing income continues for 19-A and sold loans
- Opex curtailed to $2.5mm in compensation, $2.5mm in technology and other, no marketing
- Payments/Checking continue, K Card 2.0 delayed to Q420. Cash usage associated with capital requirements for assumed growth in those products
- Cash on hand sufficient to fund operations until Macquarie pay down; new capital required at time of pay down
- March ending cash position assumes sufficient ability to pledge all remaining eligible collateral prior to amortization

→ No new lending reflected in forecast; new loans would be sold or throttled appropriately until credit facilities re-established

Potential Paths Forward

CONFIDENTIAL

We believe that we should let 2019-1 and 2019-A hit a Rapid Amortization trigger/EOD trigger respectively

Option	Immediate implications	Risks
Hit triggers	• Halts lending • ~97% of our receivables and related revenue are trapped • Kabbage is not subjected to any credit losses above 5% and 0.5% cash reserve account	• Triggers Macquarie Corporate Facility EOD → must either renegotiate terms or cover $50MM repayment • Halts 97% of revenue; would likely need to raise equity
Do not trigger Rapid Amortization	• Continue to lend at minimal levels to maintain facility requirements • Restricted amount of EPPs and more than once skip-a-pay even if we get an amendment consent from Kroll • Buys time for a recovery	• High likelihood we breach some trigger in 30-60 days anyway ○ B2-B3 roll rates likely to spike ○ Higher than allowed customer relief program receivables will need to be funded via equity ○ Lend more to maintain facilities • Would likely need to raise equity

We are assessing four potential paths forward

(assuming packaging of assets, separate out ABS/WH)

- Ensure we have enough capital through 2020 (9 months) - ~$57m
  - Points of consideration
    - Through Q12021 (~$18mm more)
    - Negotiate with Macquarie or seek buyout of facility
    - Assumes no revenue (could restart lending, etc., government upside)
    - Amount / Valuation TBD
- Sell company (conversation with Amex thus far, others to follow)
- Pre-package BK with DIP financing
- Work with Silver Lake, TPG, or others to conduct roll-up (call with SL Friday)

What would Kabbage look like on the other side?

April

Checking alpha/beta

Government funding disbursement

May

Payments/Checking package: same day settlement

Insights: help get your business running again

Summer (post quarantine)

Charge card launch

Intelligent lending when the market is ready

Beyond

Scale up all products in lock-step including LOC, as a true platform

20

Appendix

Additional Information on Government Efforts

Executive Summary: Alleviating Our Small Business Crisis is Essential to Averting Economic Collapse

By leveraging technology that is in market at scale today, SMBs could have cash in hand 10-20 days after the rules, regulations, and relief structures are promulgated

- Our 30.8 million small and medium businesses (SMBs), employ 47% of our workforce and account for 40% of payroll. They are critical to our economy
  - 50% have less than 27 days cash buffer on hand,[1] meaning we must act quickly if we are going to keep them afloat
- The **operational complexity of moving money to 30.8 million SMBs is massive**, and we must use our country's best-in-class capabilities to enable it
  - **Banks today are equipped to work with the 92 thousand "medium" SMBs**
    - They have existing relationships with these entities: relationship managers personally know the companies and their leadership; they have already manually gathered and assessed their paperwork; connections exist to move money to their accounts
  - **However, banks, which rely on manual processes, do not have the ability to serve the tail of 30.7 million small and micro businesses. Technology and automation must be core to the solution,** which must include:
    - Program onboarding that takes minutes (not days) and includes business verification to weed out fraudsters
    - Underwriting: use of data to determine the amount of relief funding for which a business qualifies with no human review needed
    - Funding disbursement: movement of money to a qualified SMB in 1 business day using the Automated Clearing House (ACH)
    - Monitoring and reporting on funding: loan performance; ongoing fraud monitoring; reporting on funding usage (e.g., confirm usage for payroll)
  - **A group of fintech companies has the capabilities and scale to handle this *right now*;** these companies have developed and refined these capabilities over the last 10 years, rapidly deploying billions of dollars to millions of SMBs
    - To over-simplify, if the government can fund an account with relief dollars, in a matter of days, these fintechs could connect to this government-funded account and quickly and safely move this money to the SMBs in need
    - Empowering fintechs to help quickly in this time of crisis requires the following:
      - Allowing qualified non-banks to aid small businesses through the SBA 7(a) program during the COVID-19 Crisis
      - Allowing qualified non-banks to aid small businesses by servicing as an onboarding conduit to SBA Disaster Assistance Programs (DAP)
      - Forming federal or state-level SPVs to allow fintech firms to batch fund SMBs from SPVs under simplified underwriting guideline
- We need to move quickly to help our SMBs. They will be hit first and most severely in this crisis, and with each passing day, more will not survive

1 Cash buffer days are the number of days of cash outflows a business could pay out of its cash balance were its inflows to stop (computed as the ratio of its average daily cash balance to its average daily cash outflows).

SOURCE: (1) US Census Bureau, SUSB Annual Data Tables by Establishment Industry, 2017. (2) SBA Office of Advocacy, 2019 Small Business Profile, 2020. (3) "Cash is King: Flows, Balances, and Buffer Days. Evidence from 600,000 Small Businesses." JP Morgan Chase & Co Institute. September 2016.

We are aggressively working to empower Kabbage to be a vehicle to deliver crisis funding to SMBs

(additional details)

Multiple policy workstreams

- Short term SMB stabilization: Kabbage onboards for SBA programs and "Treasury Interruption Loans" - working on regulatory guidance with Treasury, SBA, and NEC
- Medium-term response: Kabbage originates SBA guaranteed loans and "Treasury Interruption Loans" pending rulemaking from Treasury and SBA
- Long term recovery: Kabbage back to BAU but now arranging partnerships with existing 7(a) lenders
- Spearheading a coordinated industry-wide effort to present a unified voice

How you can help

- Help us get the 1 page executive summary (appendix) in front of Secretary Mnuchin; his office will control implementation of SMB relief funding
- Help us think through financial ops proposals with Treasury/ SBA in the near future
- Continue to support Kabbage's policy team in DC
- Use your media presence to:
    - Highlight how urgently SMBs need access to emergency capital
    - Highlight how a fintech-driven approach is necessary to operationalize a response

Portfolio forecast modeling deep dive

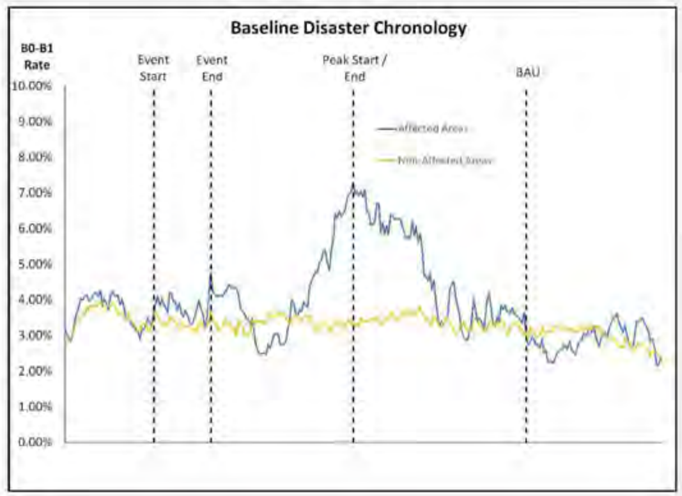
Delinquency / Loss Forecast Methodology: Outstanding Portfolio

- Leveraged historical ***early delinquency*** trends and performance observed in disaster areas
- Specifically, we look at the amount of principal dollars moving from our current / non-delinquent balance into our first delinquency bucket (i.e., Bucket 0) - typically a strong indicator of losses observed
- These baseline 0-1 roll rates are then subjected to a multiplier based on the expected impact of COVID-19 across industries
- We applied a uniform flow through rate (moving into later stages of delinquency, B1+), as we have observed little variance in historical observations during shock events

Estimating Early Delinquency: Disaster Baseline

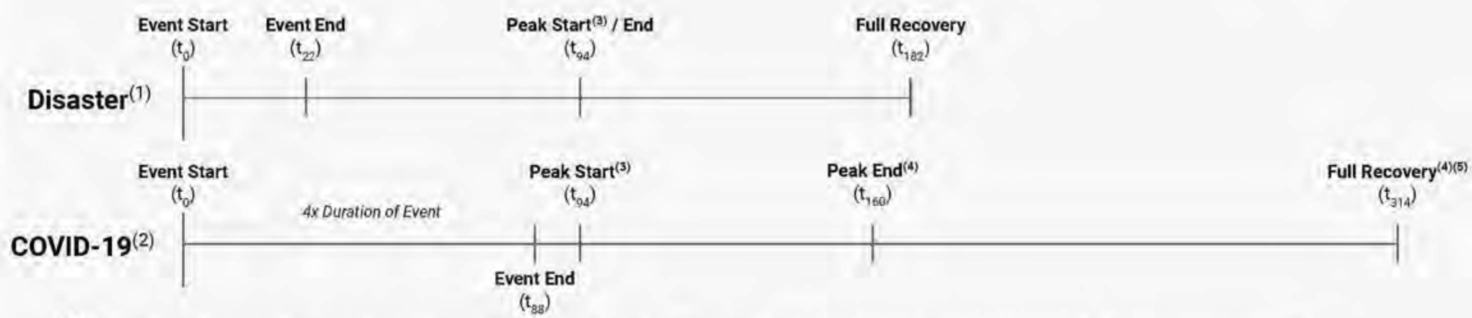
- Based on performance during disaster events, we quantified both the severity and duration of previous "shock" to early delinquency roll rate (i.e., Principal Dollar Bucket 0-1 Roll Rate)

  - Chronology divided into three distinct periods:
    - **Event Period**
      - Duration of event and build to peak
    - **Peak / Peak Duration Period**
      - Heightened delinquency beyond event
    - **Recovery Period**
      - Beginning from Peak End to recovery to "BAU" delinquency levels of portfolio



Estimating Early Delinquency: Modeling Timeline

- Previous disasters had an "event period" of 22 days - built the delinquency outlook to extend the timeframe to account for a significantly longer event duration
    - A longer event causes:
        - Higher peak rates and longer peak periods
        - Longer recovery period given longer duration of event itself
- Assumed 88-day event period for COVID - timelines below outline impact to delinquency outlook:



Notes:
(1) The disaster dataset analyzed was performance during hurricanes Harvey and Irma. The Event Start is classified as the day the hurricanes formed and Event End is the day the second hurricane dissipated.
(2) COVID-19 scenario assumes an Event Start of March 16th, 2020 and a quarantine/Event End on June 12th, 2020.
(3) The Peak Start of early delinquency remains the same number of days after the Event Start for both the COVID-19 and Disaster scenarios. It is assumed that this is the point where early delinquency will hit a terminal "peak" value. As some industries hit their peaks earlier then others due to fewer days of cash on hand, this date represents the day that all industries will be at their peak and is the full portfolio peak.
(4) The length of the peak and recovery are both functions of the duration of the event. Additional days from the Event Start to the Event End add to days from Peak Start to Peak End, which add to the days from Peak End to full recovery.
(5) Peak End to Full Recovery in COVID-19 is a linear decline for the entire portfolio back to previously forecasted early delinquency values.

Estimating Early Delinquency: Impact By Industry

- Using industry-level cash on hand data, we built an assumption as to *when* industries reach peak delinquency
  - In a shorter event, industries with less cash on hand reach their peak delinquency quicker, due to faster cash shortfall
  - In a longer event, all industries reach their peak delinquencies closer together due to sustained nature of shock
- Calculated the peak change in delinquency rates based on the expected duration of an event vs. the duration of the historical disaster set

Industry	JPM Days Cash At Hand	Scenario	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Peak Date
Accomodation and Food Services	16	Previous Baseline	4.05%	3.53%	3.93%	3.60%	4.04%	3.61%	3.70%	4.13%	3.91%	4.03%	N/A
		22 Day Event	5.94%	7.05%	7.84%	6.70%	6.09%	4.18%	3.70%	4.13%	3.91%	4.03%	4/17/2020
		88 Day Event	6.80%	10.73%	17.45%	17.94%	20.10%	17.21%	14.78%	13.20%	9.47%	6.53%	6/12/2020
Finance/Insurance/Real Estate/Rental and Leasing	47	Previous Baseline	3.36%	2.93%	3.26%	2.99%	3.35%	2.99%	3.07%	3.43%	3.24%	3.35%	N/A
		22 Day Event	3.90%	4.33%	5.89%	5.56%	5.05%	3.47%	3.07%	3.43%	3.24%	3.35%	6/18/2020
		88 Day Event	5.50%	8.52%	13.76%	14.89%	16.68%	14.29%	12.26%	10.95%	7.86%	5.42%	6/18/2020

Notes:
(1) In a 22 day event, AaFS peaks much quicker than an 88 day event as the industry has fewer days of cash on hand, while FIRERaL peaks at the same day in both scenarios as it is the industry with most cash on hand.
(2) In an 88 day event, both industries reach significantly higher peaks, as the "shock" of the event adds greater magnitude.
(3) The peak magnitude of events is calculated based on the number of days in an event and is calculated as a multiplier. The multiplier is then applied to the previous portfolio baseline rate.

Key Inputs Into Delinquency / Loss Forecast

- Based on this logic, we determine the monthly Bucket 0-1 principal roll rates by industry:

	Current Balance Distribution (02/29)	3/31/2020	4/30/2020	5/31/2020	6/30/2020	7/31/2020	8/31/2020	9/30/2020	10/31/2020	11/30/2020	12/31/2020
Accomodation and Food Services	*4.64%*	6.80%	10.73%	17.45%	17.94%	20.10%	17.21%	14.78%	13.20%	9.47%	6.53%
Agriculture/Mining/Utilities	*0.70%*	4.90%	7.73%	12.57%	12.93%	14.49%	12.41%	10.65%	9.51%	6.82%	4.71%
Arts/Entertainment/Recreation	*2.16%*	5.66%	8.92%	14.51%	14.92%	16.72%	14.31%	12.29%	10.97%	7.87%	5.43%
Construction	*15.05%*	6.48%	10.21%	16.61%	17.08%	19.13%	16.38%	14.06%	12.56%	9.01%	6.22%
Educational Services	*1.26%*	4.58%	7.22%	11.73%	12.07%	13.52%	11.58%	9.94%	8.88%	6.37%	4.39%
Finance/Insurance/Real Estate/Rental and Leasing	*6.99%*	5.50%	8.52%	13.76%	14.89%	16.68%	14.29%	12.26%	10.95%	7.86%	5.42%
Food & Beverage Stores	*1.21%*	5.78%	8.95%	14.45%	15.63%	17.51%	15.00%	12.87%	11.50%	8.25%	5.69%
Health Care and Social Assistance	*5.40%*	6.79%	10.71%	17.41%	17.90%	20.06%	17.18%	14.74%	13.17%	9.45%	6.52%
Information	*2.93%*	4.66%	7.35%	11.96%	12.30%	13.78%	11.80%	10.13%	9.05%	6.49%	4.48%
Manufacturing	*4.67%*	5.88%	9.27%	15.08%	15.51%	17.37%	14.88%	12.77%	11.41%	8.18%	5.65%
Other Services	*9.78%*	6.64%	10.47%	17.03%	17.51%	19.62%	16.80%	14.42%	12.88%	9.24%	6.38%
Professional and Business Services	*22.37%*	5.35%	8.44%	13.73%	14.12%	15.82%	13.55%	11.63%	10.39%	7.45%	5.14%
Retail Trade	*13.39%*	6.55%	10.33%	16.80%	17.28%	19.36%	16.58%	14.23%	12.71%	9.12%	6.29%
Transportation and Warehousing	*5.10%*	9.32%	14.69%	23.89%	24.57%	27.53%	23.57%	20.23%	18.07%	12.96%	8.94%
Wholesale Trade	*4.34%*	5.61%	8.85%	14.40%	14.81%	16.59%	14.20%	12.19%	10.89%	7.81%	5.39%

Event Period *Peak Period* *Recovery Period*

- Subsequent delinquency roll rates are held constant at the following values, as we did not identify variance by industry to 1+ roll rates in historical "disaster" events - ***represents a 63% flow through rate to charge-off (post-Bucket 1)***:

Subsequent Roll Rate	%
1 to 2	85.0%
2 to 3	88.7%
3 to 4	92.1%
4 to 5	95.6%
5 to 6	97.3%
6 to C/O	97.8%

Loss Expectation

- **Starting Principal Balance as of 02/29 (Bucket 0)** = $1.2B
- **Avg. Term Outstanding** = 8.7 Months [1]
- **Total Charge-Off Dollars** = $393MM (vs. $136MM in normal / budgeted delinquency forecast)

Industry	Starting Balance (as of 02/29)	Principal Charge-Off As % of Starting Balance	Principal Charge-Off
Accomodation and Food Services	54,291,251	35.99%	19,538,714
Agriculture/Mining/Utilities	8,194,406	28.54%	2,339,087
Arts/Entertainment/Recreation	25,344,462	31.84%	8,070,558
Construction	176,236,102	34.64%	61,050,303
Educational Services	14,801,218	27.18%	4,022,918
Finance/Insurance/Real Estate/Rental and Leasing	81,919,927	31.25%	25,598,261
Food & Beverage Stores	14,196,608	32.55%	4,620,362
Health Care and Social Assistance	63,251,453	35.80%	22,646,310
Information	34,303,723	27.49%	9,428,962
Manufacturing	54,695,116	32.66%	17,865,920
Other Services	114,525,354	35.24%	40,358,775
Professional and Business Services	261,959,666	30.53%	79,986,036
Retail Trade	156,873,122	35.21%	55,241,037
Transportation and Warehousing	59,769,676	43.27%	25,860,257
Wholesale Trade	50,881,371	31.62%	16,089,462
Total	1,171,243,455	**33.53%**	**392,716,963**

Based on when 100% of outstanding balances today are scheduled to be paid off (based on maturity date, weighted by duration); includes EPP balances, which makes up approx. 5% of total balance

Additional Information on Debt Facilities

ABS Series 2019-1: Key Facts

Outstanding Debt	$900MM
Scheduled Maturity	15-Mar-22
Legal Final Maturity	Mar-24
Rating Agency	Kroll
Ratings	AA, A, BBB, BB, B
Over-Collateralization/First Loss Piece	5%
Monthly Excess Spread (includes Servicing Fee)	$10-12MM
Receivables in the transaction	$1B

Rapid Amortization Events:
1) Asset performance based triggers are breached
2) Asset deficiency or borrowing base deficiency happens and remains uncorrected for 3 BD – will happen when receivables move from bucket 2 to bucket 3 or if any of the receivables because of concentration limits fall out of the borrowing base and we don't have cash or new receivables to put them in the transaction
3) A servicer default occurs
4) KBG insolvency occurs
5) An Event of Default occurs
6) Failure to make any payments or deposit money when due within 5 BD
7) Breach of any reps and warranties across different documents

ABS Series 2019-1: Rapid Amortization Event

Process and Impact

- If we stop new originations, we will be unable to meet the borrowing base requirements under 2) and hit a rapid amortization
- Rapid Amortization can start as early as we breach the borrowing base; first investor payment could happen on April 15th if we breach before
- Once a Rapid Amortization Event is declared by Kabbage, all cash collections from the customers are trapped in the SPV and are used to pay the noteholders first; Kabbage will still have to service the receivables till March 2024 and also produce monthly servicer reports
- During this time, Kabbage doesn't receive any servicing fees
- Also, no borrowing base needs to be maintained which means, we don't have to cure the delinquencies and as a result, no liquidity drag
- The 5% risk retention or the first loss piece will likely need to be recorded as an expected loss
- If noteholders are not paid in full by the legal final maturity date, an Event of Default occurs and noteholders have the ability to sell the remaining collateral in the SPV
- Interaction with the corporate facility is outlined separately

Risks

- As open to buy line for customers is shut down, credit losses are likely to increase even further, causing a large portion of noteholders to incur principal loss
- Future ability of capital markets access is severely impaired
- While the transaction is non-recourse to Kabbage and we have sufficient risk factors coverage, noteholders may find reasons to take legal actions against Kabbage, especially if they have incurred principal losses: potential breach of reps and warranties, breach of contractual provisions especially servicing
- Therefore, offering products such as re-financing or offering relief programs to the customer beyond the limits in the transaction could lead to a litigation risk that KBG as a servicer is not acting to maximize recoveries or in accordance with the transaction documents
- There is an option to enter into a servicer default which will transfer servicing to the back-up servicer but this provides another opportunity for the noteholders to take legal action against Kabbage for breaching contractual obligations in the servicing agreement

Warehouse Facility -- 2019-A: Key Facts

Outstanding Debt	$165MM
Scheduled Maturity	15-June-23
Legal Final Maturity	June-24
Rating Agency	Kroll
Ratings (Class A only)	A
Over-Collateralization/First Loss Piece	5%
Monthly Excess Spread	$1-2MM
Receivables in the transaction	$181MM
Class A Lender	20 Gates
Class B Lender	Atalaya Capital

Rapid Amortization Events:
1) Asset performance based triggers are breached
2) Breach of any financial covenant
3) A servicer default occurs
4) An Event of Default occurs
5) Reduction of Class A rating to below 'A'

Events of Default:
1) Borrowing base deficiency is not cured within 2BD
2) And others

Warehouse Facility -- 2019-A: Event of Default

Process and Impact

- If we stop new originations, we will be unable to meet the borrowing base requirements and hit an EOD vs a rapid amortization
- The lenders will need to send a notice to KBG that a Facility Termination Date has occurred
- All cash collections from the customers are trapped in the SPV and are used to pay the lenders first; Kabbage will still have to service the receivables till June 2024 and also produce monthly servicer reports unless the lenders exercise their remedy outlined below
- During this time, Kabbage receives monthly servicing fees
- Also, no borrowing base needs to be maintained which means, we don't have to cure the delinquencies and as a result, no liquidity drag
- The 5% first loss piece will likely need to be recorded as an expected loss
- The remedies available to the lenders will allow them to:
  - Sell the receivables in the SPV to a 3rd party, which in this market is probably impossible for them to do
  - Direct the SMB customers to make payments to a dedicated account in the name of the lenders - highly impractical for them to do as they don't have the resources or the expertise to this
- We will negotiate with the lenders to let the receivables cash flow be used to pay them down vs exercising their remedy

Risks

- As open to buy line for customers is shut down, credit losses are likely to increase even further, causing some lenders to incur principal loss
- While the transaction is non-recourse to Kabbage and we have sufficient risk factors coverage, lenders may find reasons to take legal actions against Kabbage, especially if they have incurred principal losses: potential breach of reps and warranties, breach of contractual provisions especially servicing
- Therefore, offering products such as re-financing or offering relief programs to the customer beyond the limits in the transaction could lead to a litigation risk that KBG as a servicer is not acting to maximize recoveries or in accordance with the transaction documents
- There is an option to enter into a servicer default which will transfer servicing to the back-up servicer but this provides another opportunity for the lenders to take legal action against Kabbage for breaching contractual obligations in the servicing agreement
- We expect that the possibility of any litigation action by the lenders is very low.

EXHIBIT 7

United States Senate
WASHINGTON, DC 20510-0908

March 30, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street SW
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza:

We write to request your immediate and sustained attention and commitment to implementing the *Keeping American Workers Paid and Employed Act*, which President Trump signed into law on March 27, 2020, as part of the *Coronavirus Aid, Relief, and Economic Security Act*, known as the *CARES Act* (Public Law 116-136). The *Keeping American Workers Paid and Employed Act* provides $377 billion in immediate and meaningful relief to small businesses so that they can remain operational despite economic losses caused by the COVID-19 pandemic. This includes the Paycheck Protection Program – a new loan guarantee program created under the Small Business Administration's (SBA's) 7(a) program that is intended to assure employees of covered small businesses not only a paycheck in the near-term, but also the longer term assurance that their job will still be there for them.

It is critical that this relief is disbursed to small businesses as quickly as possible to help ensure that no small businesses are forced to choose between solvency and retaining their employees during this uncertain time. To that end, we urge the Treasury Department and the SBA to quickly issue publicly-available, comprehensive guidance to lenders and businesses on the assistance available, including the Paycheck Protection Program, emergency Economic Injury Disaster Loan grants, and debt relief provisions. We also ask that you continue to expeditiously upgrade and update the SBA website so that it is simple for borrowers to find links to the programs authorized under the *CARES Act*, identify Paycheck Protection Program lenders, and apply for the paycheck and grant assistance.

As all of government works to stop the spread of COVID-19, it is incumbent upon Congress and your agencies to work together to ensure that workers and small businesses have every opportunity afforded by this law to provide for and enjoy the dignity of work, which is second only to the immediate health and safety of Americans, and the need for workers and families to continue to receive income to pay their bills.

Thank you for your immediate attention to these matters. We stand ready to assist your efforts to implement the *Keeping American Workers Paid and Employed Act*. Thank you for your efforts.

Sincerely,

Marco Rubio
Chairman
Senate Committee on Small Business
and Entrepreneurship

Benjamin L. Cardin
Ranking Member
Senate Committee on Small Business
and Entrepreneurship

Susan Collins
Chairman
Senate Special Committee on Aging

Jeanne Shaheen
Member
Senate Committee on Small Business
and Entrepreneurship

EXHIBIT 8

PAYCHECK PROTECTION PROGRAM (PPP) INFORMATION SHEET:

BORROWERS

The Paycheck Protection Program ("PPP") authorizes up to $349 billion in forgivable loans to small businesses to pay their employees during the COVID-19 crisis. ***All loan terms will be the same for everyone.***

The loan amounts will be forgiven as long as:

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8 week period after the loan is made; and
- Employee and compensation levels are maintained.

Payroll costs are capped at $100,000 on an annualized basis for each employee. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

Loan payments will be deferred for 6 months.

When can I apply?

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.

Where can I apply? You can apply through any existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating. Visit www.sba.gov for a list of SBA lenders.

Who can apply? All businesses – including nonprofits, veterans organizations, Tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors – with 500 or fewer employees can apply. Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries (click HERE for additional detail).

For this program, the SBA's affiliation standards are waived for small businesses (1) in the hotel and food services industries (click HERE for NAICS code 72 to confirm); or (2) that are franchises in the SBA's Franchise Directory (click HERE to check); or (3) that receive financial assistance from small business investment companies licensed by the SBA. Additional guidance may be released as appropriate.

What do I need to apply? You will need to complete the Paycheck Protection Program loan application and submit the application with the required documentation to an approved lender that is available to process your application by June 30, 2020. Click HERE for the application.

What other documents will I need to include in my application? You will need to provide your lender with payroll documentation.

Do I need to first look for other funds before applying to this program? No. We are waiving the usual SBA requirement that you try to obtain some or all of the loan funds from other sources (i.e., we are waiving the Credit Elsewhere requirement).

How long will this program last? Although the program is open until June 30, 2020, we encourage you to apply as quickly as you can because there is a funding cap and lenders need time to process your loan.

How many loans can I take out under this program? Only one.

What can I use these loans for? You should use the proceeds from these loans on your:

- Payroll costs, including benefits;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

What counts as payroll costs? Payroll costs include:

- Salary, wages, commissions, or tips (capped at $100,000 on an annualized basis for each employee);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
- State and local taxes assessed on compensation; and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at $100,000 on an annualized basis for each employee.

How large can my loan be? Loans can be for up to two months of your average monthly payroll costs from the last year plus an additional 25% of that amount. That amount is subject to a $10 million cap. If you are a seasonal or new business, you will use different applicable time periods for your calculation. Payroll costs will be capped at $100,000 annualized for each employee.

How much of my loan will be forgiven? You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

You will also owe money if you do not maintain your staff and payroll.

- Number of Staff: Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- Level of Payroll: Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than $100,000 annualized in 2019.
- Re-Hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

How can I request loan forgiveness? You can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

What is my interest rate? 0.50% fixed rate.

When do I need to start paying interest on my loan? All payments are deferred for 6 months; however, interest will continue to accrue over this period.

When is my loan due? In 2 years.

Can I pay my loan earlier than 2 years? Yes. There are no prepayment penalties or fees.

Do I need to pledge any collateral for these loans? No. No collateral is required.

Do I need to personally guarantee this loan? No. There is no personal guarantee requirement. ***However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges against you.***

What do I need to certify? As part of your application, you need to certify in good faith that:

- Current economic uncertainty makes the loan necessary to support your ongoing operations.
- The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments.
- You have not and will not receive another loan under this program.
- You will provide to the lender documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight weeks after getting this loan.
- Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.
- All the information you provided in your application and in all supporting documents and forms is true and accurate. Knowingly making a false statement to get a loan under this program is punishable by law.

- You acknowledge that the lender will calculate the eligible loan amount using the tax documents you submitted. You affirm that the tax documents are identical to those you submitted to the IRS. And you also understand, acknowledge, and agree that the lender can share the tax information with the SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

EXHIBIT 9

PAYCHECK PROTECTION PROGRAM (PPP) INFORMATION SHEET

LENDERS

Who is eligible to lend? All existing SBA-certified lenders will be given delegated authority to speedily process PPP loans.

All federally insured depository institutions, federally insured credit unions, and Farm Credit System institutions are eligible to participate in this program.

- New lenders that are federally insured depository institutions, federally insured credit unions, or Farm Credit System institutions will need to submit their application to DelegatedAuthority@sba.gov to apply.

Non-bank and non-insured depository institution lenders can also begin making loans as soon as they are approved and enrolled in the program.

- New lenders that are non-bank or non-insured depository institution lenders will need to submit their application to NFRLApplicationForPPP@sba.gov to apply.

Are these loans guaranteed by the SBA? Yes, the SBA guarantees 100% of the outstanding balance, and that guarantee is backed by the full faith and credit of the United States.

Are there guarantee fees? The SBA waives all SBA guaranty fees, including the upfront and annual servicing fees.

What underwriting is required? As explained in the PPP Interim Final Rule, you will need to confirm receipt of borrower certifications; confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020; confirm the dollar amount of average monthly payroll costs; and follow applicable Bank Secrecy Act requirements. Lenders are permitted to rely on borrower certifications and representations as explained in the PPP Interim Final Rule and FAQ guidance.

How will lenders be compensated? Processing fees will be based on the balance of the financing outstanding at the time of final disbursement. SBA will pay lenders fees for processing PPP loans in the following amounts:

- Five (5) percent for loans of not more than $350,000;
- Three (3) percent for loans of more than $350,000 and less than $2,000,000; and
- One (1) percent for loans of at least $2,000,000.

Lenders may not collect any fees from the applicant.

Who can be an agent? An agent is an authorized representative and can be:

- An attorney;
- An accountant;
- A consultant;
- Someone who prepares an applicant's application for financial assistance and is employed and compensated by the applicant;
- Someone who assists a lender with originating, disbursing, servicing, liquidating, or

litigating SBA loans;
- A loan broker; or
- Any other individual or entity representing an applicant by conducting business with the SBA.

How will agents be compensated? Agent fees will be paid out of lender fees. The lender will pay the agent. Agents may not collect any fees from the applicant. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed:

- One (1) percent for loans of not more than $350,000;
- 0.50 percent for loans of more than $350,000 and less than $2 million; and
- 0.25 percent for loans of at least $2 million.

Can these loans be sold in the secondary market? PPP loans can be sold in the secondary market. The SBA will not collect any fee for any guarantee sold into the secondary market.

Please refer to the PPP Interim Final Rule and FAQ guidance for the most comprehensive and up-to-date guidance on this program.

EXHIBIT 10

U.S. Small Business Administration

ARCHIVED NEWS RELEASE 20-29

With $349 Billion in Emergency Small Business Capital Cleared, SBA and Treasury Begin Unprecedented Public-Private Mobilization Effort to Distribute Funds

WASHINGTON – Following President Trump's signing of the historic Coronavirus Aid, Relief, and Economic Security (CARES) Act, SBA Administrator Jovita ...

Published on April 2, 2020

WASHINGTON – Following President Trump's signing of the historic Coronavirus Aid, Relief, and Economic Security (CARES) Act, SBA Administrator Jovita Carranza and Treasury Secretary Steven T. Mnuchin today announced that the SBA and Treasury Department have initiated a robust mobilization effort of banks and other lending institutions to provide small businesses with the capital they need.

The CARES Act establishes a new $349 billion Paycheck Protection Program. The Program will provide much-needed relief to millions of small businesses so they can sustain their businesses and keep their workers employed.

"This unprecedented public-private partnership is going to assist small businesses with accessing capital quickly. Our goal is to position lenders as the single point-of-contact for small businesses – the application, loan processing, and disbursement of funds will all be administered at the community level," said Administrator Carranza. "Speed is the operative word; applications for the emergency capital can begin as early as this week, with lenders using their own systems and processes to make these loans. We remain committed to supporting our nation's more than 30 million small businesses and their employees, so that they can continue to be the fuel for our nation's economic engine."

"This legislation provides small business job retention loans to provide eight weeks of payroll and certain overhead to keep workers employed," said Secretary Mnuchin. "Treasury and the Small Business Administration expect to have this program up and running by April 3rd so that businesses can go to a participating SBA 7(a) lender, bank, or credit union, apply for a loan, and be approved on the same day. The loans will be forgiven as long as the funds are used to keep employees on the payroll and for certain other expenses."

The new loan program will help small businesses with their payroll and other business operating expenses. It will provide critical capital to businesses without collateral requirements, personal guarantees, or SBA fees – all with a 100% guarantee from SBA. All loan payments will be deferred for six months. Most importantly, the SBA will forgive the portion of the loan proceeds that are used to cover the first eight weeks of payroll costs, rent, utilities, and mortgage interest.

The Paycheck Protection Program is specifically designed to help small businesses ke… their workforce employed. Visit SBA.gov/Coronavirus for more information on the

Paycheck Protection Program.

- The new loan program will be available retroactive from Feb. 15, 2020, so employers can rehire their recently laid-off employees through June 30, 2020.

Loan Terms & Conditions

- Eligible businesses: All small businesses, including non-profits, Veterans organizations, Tribal concerns, sole proprietorships, self-employed individuals, and independent contractors, with 500 or fewer employees, or no greater than the number of employees set by the SBA as the size standard for certain industries
- Maximum loan amount up to $10 million
- Loan forgiveness if proceeds used for payroll costs and other designated business operating expenses in the 8 weeks following the date of loan origination (due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs)
- All loans under this program will have the following identical features:
  - Interest rate of 1%
  - Maturity of 2 years
  - First payment deferred for six months
  - 100% guarantee by SBA
  - No collateral
  - No personal guarantees
  - No borrower or lender fees payable to SBA

SBA's announcement comes on the heels of a series of steps taken by the Agency since the President's Emergency Declaration to expeditiously provide capital to financially distressed businesses affected by the Coronavirus (COVID-19) pandemic. Since March 17, SBA has taken the following steps:

- Declared all states and territories eligible for Economic Injury Disaster Loan assistance
- 1-year deferment on Economic Injury Disaster Loans provided due to COVID-19
- Automatic deferment of previous disaster loans for homeowners and businesses through 2020
- Waiver of garnishments through 2020

Visit SBA.gov/Coronavirus for more information on SBA's assistance to small businesses.

###

Media contacts

U.S. Small Business Administration

Press_Office@sba.gov

Return to top

About SBA

Contact SBA

Locations

Upcoming events

Newsroom

SBA blog

Leadership team

Open government

Freedom of Information Act

No Fear Act

About the site

Site map

Privacy policy

Linking policy

Plain language

Accessibility

Disclaimers

Oversight

Inspector General

Advocacy

Sign up

Receive information about upcoming SBA events, news alerts, and program updates.

* *indicates a required field*

Email *

ZIP Code *

Open data sources

Policies and guidance

Budget and performance

Regulations.gov

Hearings and appeals

Ombudsman

Fraud and identity theft

WhiteHouse.gov

USA.gov

Subscribe to SBA emails

Your information will only be used in accordance with our website privacy policy.

U.S. Small Business Administration
409 3rd St., SW
Washington, DC 20416
800-827-5722