

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**  
**DEPARTMENT OF THE TREASURY**

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<b>In the Matter of:</b> )	<b>Adjudicatory Proceeding</b>
)	
<b>IRVIN D. HAIRSTON, LEWIS</b> )	<b>No.: AP-10-05</b>
<b>HAIRSTON, GLORIA HODGE</b> )	
<b>HYLTON, JAMES C. MCKAY,</b> )	<b>Effective Date: August 4, 2010</b>
<b>SIMONE H. REDD, MICHAEL C.</b> )	
<b>SCALES, and ROBERT A. WILLIAMS</b> )	
)	
<b>Directors and</b> )	
<b>Institution Affiliated Parties of</b> )	
)	
<b>Imperial Savings and Loan Association</b> )	
<b>Martinsville, Virginia</b> )	
<b>OTS Docket No. 07270</b> )	
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**NOTICE OF CHARGES AND HEARING AND NOTICE OF**  
**ASSESSMENT OF CIVIL MONEY PENALTIES.**

**I. PRELIMINARY STATEMENT**

1. The Director of the Office of Thrift Supervision (OTS), pursuant to Section 8(i)(2)(B) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(i)(2)(A), issues this Notice of Charges and Hearing and Notice of Assessment of Civil Money Penalties (Notice). By issuing this Notice, the OTS commences administrative adjudicatory proceedings to assess civil money penalties against Irvin D. Hairston (I. Hairston), Lewis Hairston (L. Hairston), Gloria Hodge Hylton (Hylton), James C. McKay (McKay), Simone H. Redd (Redd), Michael C. Scales (Scales), and Robert A. Williams (Williams) (collectively referred to as Respondents); each a member of the Board of Directors (Board) and therefore, an institution-affiliated party (IAP) of Imperial

Savings and Loan Association, Martinsville, Virginia, OTS Docket No. 07270, a federally chartered savings association (Imperial or Association).

2. OTS charges that Respondents, while serving as directors of the Association, engaged in (i) violations of law or regulation; and (ii) violations of OTS Cease and Desist Order No. SE-08-06, issued pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), effective April 4, 2008 (Order).

3. OTS charges that, based on the foregoing, grounds exist to assess a civil money penalty against each of the Respondents, pursuant to section 8(i)(2)(A)(i) and (ii) of the FDIA, 12 U.S.C. § 1818(i)(2)(A)(i) and (ii).

## **II. JURISDICTION**

4. Imperial, at all relevant times, is a federal savings bank with a charter issued under the Home Owners' Loan Act (the HOLA). *See* 12 U.S.C. §§ 1461 *et seq.*

5. Imperial, at all relevant times, is subject to examination, supervision, and regulation by the OTS. *See* 12 U.S.C. §§ 1463 and 1464.

6. I. Hairston, L. Hairston, Hylton, McKay, Red, Scales, and Williams at all times relevant hereto, served as directors of Imperial and are each an "institution-affiliated party." *See* 12 U.S.C. § 1813(u)(1).

7. The Director of the OTS is the "appropriate federal banking agency" with jurisdiction to initiate and maintain civil money penalty proceedings against IAPs. *See* 12 U.S.C. §§ 1818(i)(2), 1813(q)(4) and 1464(d)(1)(A),

8. Because the Respondents are, and at all relevant times, have been IAPs, each Respondent is subject to the authority of the OTS to initiate and maintain these administrative

proceedings against him or her pursuant to the provisions of Section 8 of the FDIA, 12 U.S.C. § 1818.

### **III. FACTUAL ALLEGATIONS AND CHARGES**

#### **Count I: Violation of 12 C.F.R. § 563.177(c)(2).**

9. Section 563.177(b) requires that each savings association develop and maintain an effective Bank Secrecy Act Compliance Program. Pursuant to Section 563.177(c)(2), an effective BSA Compliance Program must include an independent test of the association's compliance with applicable BSA Laws and Regulations.<sup>1</sup>

10. The Association failed to obtain an independent test of Imperial's BSA compliance for fiscal years 2006, 2007 and 2008 until compelled to do so by the issuance of a cease-and desist order in violation of the requirements of 12 C.F.R. § 563.177(c)(2).

11. The requirement of conducting an independent audit is one of the four required minimum elements of an effective BSA compliance program. *See generally* 12 C.F.R. § 563.177. The testing is considered critical because it is intended to alert the institution to weaknesses in its program, and identify areas needing enhancements or stronger controls.

12. As a director of Imperial, each Respondent engaged or participated in a violation of Section 563.177(c)(2) by failing to ensure that an independent test of the Association's BSA Compliance Program was promptly conducted for each fiscal year between 2006 and 2008, thereby repeatedly violating Section 563.177(c)(2).

13. Accordingly, a CMP is authorized pursuant to Section 8(i)(2)(A)(ii) of the FDIA, 12 U.S.C. § 1818(i)(2)(A)(i).

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<sup>1</sup> The term "BSA Laws and Regulations" is defined in the Order to include the Currency and Foreign Transactions Reporting Act, as amended by the USA Patriot Act and other laws (the Bank Secrecy Act or BSA), 31 USC §§ 5311 *et seq.*, and the related regulations issued and/or administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), 31 CFR §§ 103.11 *et seq.*, and the related BSA regulations issued by OTS, 12 CFR § 563.177 (collectively, the BSA Laws and Regulations).

**Count II: Violation of Paragraph 1 of the Order.**

14. OTS realleges Paragraphs 9-13 above.

15. Paragraph 1 of the Order requires Imperial, including its Board of Directors, to cease and desist from any action that causes, brings about, participates in, counsels, or aids and abets any violation of 12 C.F.R. § 563.177.

16. As a director of Imperial, each Respondent engaged or participated in a violation of 12 C.F.R. § 563.177(c)(2) after entering the Agreement by not promptly securing an independent audit for fiscal years 2006-2008, thereby violating Paragraph 1 of the Order.

17. Accordingly, a CMP is authorized pursuant to Section 8(i)(2)(A)(ii) of the FDIA, 12 U.S.C. § 1818(i)(2)(A)(ii).

**Count III: Violation of Paragraph 5 of the Order.**

18. Paragraph 5 of the Order required the Board to revise the Association's Bank Secrecy Act policies and procedures (BSA Policy) within sixty (60) days after the Effective Date of the Order to require annual independent third party testing of the Association's BSA Compliance Program.

19. The Association's BSA Policy was not revised and approved by the Board until November 2008, more than 180 days after the Effective Date of the Order.

20. Paragraph 5 of the Order also required the Association to conduct and complete an annual independent test of the Association's BSA Compliance Program within ninety (90) days of the end of the Association's fiscal year -- March 31.

21. The annual independent test of the Association's BSA Compliance Program for fiscal year 2008 commenced on September 23, 2009, more than 160 days after the end of the fiscal year.

22. Each Respondent has engaged or participated in a violation of Paragraph 5 of the Order by (i) failing to revise the Association's policies within sixty (60) days after the Effective Date of the Order; and (ii) failing to obtain an annual independent test of the Association's BSA Compliance Program within ninety (90) days of 2008 fiscal year end.

23. Accordingly, assessment of CMPs is authorized pursuant to Section 8(i)(2)(A)(ii) of the FDIA, 12 U.S.C. § 1818(i)(2)(A)(ii).

**Count IV: Violation of Paragraph 6 of the Order.**

24. Paragraph 6 of the Order required the Board to engage a qualified third party and within ninety (90) days after the Effective Date of the Order, obtain an independent test of the Association's BSA Compliance Program, including a transaction review, for the delinquent period March 1, 2006 to April 4, 2008.

25. This testing did not commence until September 23, 2009, more than a year and a half after the Effective Date.

26. Each Respondent engaged or participated in a violation of Paragraph 6 of the Order by failing to obtain an independent test for prior outstanding periods within ninety (90) days after the Effective Date of the Order.

27. Accordingly, the assessment of CMPs is authorized pursuant to Section 8(i)(2)(A)(ii) of the FDIA, 12 U.S.C. § 1818(i)(2)(A)(ii).

**Aggregate Amount of Assessed Civil Penalties**

28. Based on the foregoing, grounds exist, pursuant to 12 U.S.C. § 1818(i)(2)(A), to assess a first tier civil penalty against each Respondent. After taking into account the size of Respondent's financial resources, good faith considerations, the gravity of the violations, the

history of previous violations, and such other matters as justice may require, the OTS hereby assesses a civil money penalty of \$5,000 against each Respondent individually.

**Civil Penalty Payment Directions and Procedural Matters**

29. It is hereby ordered that each Respondent shall forfeit and pay a civil money penalty of \$5,000.

30. The civil money penalties set forth in this Notice are assessed by the OTS pursuant to sections 8(i)(2) of the FDIA , 12 U.S.C. § 1818(i)(2). Except as the OTS may otherwise order in writing, remittance of the payment of the penalties set forth herein shall be made by delivering to the OTS Financial Operations at 1700 G Street, N.W., Washington, D.C. 20552, a cashier's check or official bank check in the amount of \$5,000 payable to the order of the Treasury of the United States.

31. Notice is given, pursuant to section 8(i)(2)(H) of the FDIA, 12 U.S.C. § 1818(i)(2), that Respondent is afforded an opportunity for a formal hearing, if requested, concerning the above assessment of civil money penalties. A hearing will be held with respect to the assessment against Respondent, provided that within twenty (20) days after issuance and service of this Notice, Respondent files a written request for a hearing concerning the assessment. Any request for such a hearing must be filed with the Office of Financial Institution Adjudication (OFIA), 3501 North Fairfax Drive, Suite D8116, Arlington, VA 22226, and with the OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings, ([sandra.evans@ots.treas.gov](mailto:sandra.evans@ots.treas.gov)), 1700 G Street, N.W., Washington, D.C. 20552, within twenty (20) days after issuance and service of this Notice on Respondent.

**Respondent is encouraged to file any request for a hearing electronically with the Office of Financial Institution Adjudication at [ofia@fdic.gov](mailto:ofia@fdic.gov).** Respondent shall also serve a copy of any such request upon Susan L. Chomicz, Deputy Chief Counsel – Enforcement,

([susan.chomicz@ots.treas.gov](mailto:susan.chomicz@ots.treas.gov)), Office of Thrift Supervision, 1700 G St., N.W., Washington, D.C. 20552; Lisa Cameron, Senior Attorney, Enforcement Division, ([lisa.cameron@ots.treas.gov](mailto:lisa.cameron@ots.treas.gov)), Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552; and Alan H. Faircloth, Regional Enforcement Counsel, ([alan.faircloth@ots.treas.gov](mailto:alan.faircloth@ots.treas.gov)), Office of Thrift Supervision, 1475 Peachtree St., NE, Atlanta, Georgia 30309.

32. If Respondent fails to file a request for a hearing within the aforementioned twenty-day (20) period, the above assessment of civil money penalties in the aggregate amount of \$5,000 shall constitute a final and unappealable assessment order of the OTS against Respondent as provided by 12 U.S.C. § 1818(i)(2)(E). *See also* 12 C.F.R. § 509.19(c)(2). Any final and unappealable assessment order may be referred to the United States Department of Justice for collection against the subject of the assessment order.

## **VII. PROCEDURES GENERALLY**

33. The OTS hereby appoints Administrative Law Judge C. Richard Miserendino (ALJ) of OFIA to preside over any hearing held regarding the subject of this Notice. Unless otherwise set by the ALJ or by agreement of the parties, the hearing should commence on or before sixty days following service of this Notice. The exact time of day and any change in location will be announced at a later time by the ALJ. The hearing will be conducted before the ALJ in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 554-557, as made applicable by 12 U.S.C. § 1818(h) and 12 C.F.R. Part 509.

34. Respondent is directed to file an Answer to this Notice within twenty (20) days with OFIA, Attn: Honorable C. Richard Miserendino, ALJ, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500, with the Secretary for Adjudicatory Proceedings, Office of the Chief Counsel, OTS, 1700 G. Street, N.W. Washington, D.C. 20552, and with the attorneys whose

names appear on the accompanying certificate of service, within twenty (20) days from the date of service of this Notice of Charges, in accordance with 12 C.F.R. § 519.19. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at [ofia@fdic.gov](mailto:ofia@fdic.gov). Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice and shall, upon the OTS's motion, cause the ALJ or the OTS to find the facts in this Notice to be as alleged and to issue an appropriate order.

35. Section 509.10 of the OTS rules, 12 C.F.R. § 509.10, governs the filing of papers in this proceeding. Except as otherwise provided by that rule, any papers required to be filed shall be filed with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8 113, Arlington, VA 22226-3500.

36. Respondent also shall serve a copy of each and every of filing on: OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings, ([sandra.evans@ots.treas.gov](mailto:sandra.evans@ots.treas.gov)), 1700 G St., N.W., Washington, D.C. 20552 and Susan L. Chomicz, Deputy Chief Counsel – Enforcement, ([susan.chomicz@ots.treas.gov](mailto:susan.chomicz@ots.treas.gov)), Office of Thrift Supervision, 1700 G. Street, N.W. Washington, D.C. 20552; Lisa Cameron, Senior Attorney, Enforcement Division, ([lisa.cameron@ots.treas.gov](mailto:lisa.cameron@ots.treas.gov)), Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552; and Alan H. Faircloth, Regional Enforcement Counsel, ([alan.faircloth@ots.treas.gov](mailto:alan.faircloth@ots.treas.gov)), Office of Thrift Supervision, 1475 Peachtree St., NE, Atlanta, Georgia 30309.

37. Within twenty (20) days after service of this Notice, Respondent may file a written request for a private hearing. Section 509.23 of the OTS rules, 12 C.F.R. § 509.33, sets out the requirements for any such request and any replies thereto. The evidentiary hearing of this matter



before the presiding ALJ will be open to the public, unless the Director of the OTS, in his sole discretion, determines that an open hearing will be contrary to the public interest. *See* 12 U.S.C. § 1818(u)(2). The Director (or a duly authorized representative) will rule on any request filed under Section 509.33(a), and copies of any such request should be sent to the Director of OTS, c/o Ms. Sandra Evans, Secretary for Adjudicatory Proceedings, Office of Thrift Supervision, 1700 G Street, N.W. – Fifth Floor, M2, Washington, D.C. 20552.

The Office of Thrift Supervision, by its Acting Director (or his duly authorized designee), issues this Notice on this 4th day of August, 2010.

**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_ /s/

Name: Thomas A. Barnes

Title: Deputy Director Examinations, Supervision  
and Consumer Protection

(Pursuant to delegated authority)