

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

| | | |
|------------------------------------|---|---------------------------|
| _____ |) | NOTICE OF INTENTION TO |
| In the Matter of: |) | PROHIBIT FROM FURTHER |
| MCDONALD HUNT HARDIN, individually |) | PARTICIPATION; NOTICE OF |
| and as an institution-affiliated |) | ASSESSMENT OF CIVIL MONEY |
| party of |) | PENALTY, FINDINGS OF FACT |
| CITIZENS BANK & TRUST COMPANY |) | AND CONCLUSIONS OF LAW; |
| EASTMAN, GEORGIA |) | ORDER TO PAY; AND NOTICE |
| (INSURED STATE NONMEMBER BANK) |) | OF HEARING |
| _____ |) | FDIC-13-0325e |
| |) | FDIC-13-0324k |
| |) | |

The Federal Deposit Insurance Corporation (FDIC), has determined that McDonald Hunt Hardin (Respondent), individually and as a former institution-affiliated party of Citizens Bank & Trust Company in Eastman, Georgia (Bank), has directly or indirectly participated or engaged in unsafe or unsound banking practices, and/or acts, omissions, or practices which constitute breaches of his fiduciary duties as an officer of the Bank; that Respondent, by reason of such practices and breaches of fiduciary duty, received financial gain or other benefit and/or the Bank has suffered financial loss or other damage and/or the interests of its depositors have been prejudiced; and that such practices and breaches of fiduciary duty demonstrate Respondent's personal dishonesty and/or continuing or willful disregard for the safety or soundness of the Bank. The FDIC, therefore, institutes this

proceeding for the purpose of determining whether an appropriate order should be issued against Respondent under the provisions of section 8(e) of the Federal Deposit Insurance Act (Act), 12 U.S.C. § 1818(e), prohibiting Respondent from further participation in the conduct of the affairs of any insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of the FDIC and such other appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D).

The FDIC, further being of the opinion that Respondent, individually and as a former institution-affiliated party of the Bank, has recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank and breached his fiduciary duties; and that such practices and breaches were a part of a pattern of misconduct which caused a substantial loss to the Bank, and resulted in pecuniary gain or other benefit to Respondent, hereby assesses a civil money penalty in the amount set forth in the accompanying Order to Pay pursuant to the provisions of section 8(i) of the Act, 12 U.S.C. § 1818(i).

The allegations that follow demonstrate that from 2007 through 2010, while serving as a Loan Officer, Senior Loan Officer, and City President at the Bank, Respondent knowingly

made no less than 11 fraudulent loans to 9 borrowers for the purpose of generating loan proceeds that he then diverted -- and/or instructed borrowers to divert -- for improper and/or unauthorized purposes.

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e); NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY; FINDINGS OF FACT AND CONCLUSIONS OF LAW; ORDER TO PAY; AND NOTICE OF HEARING (Notice of Assessment) pursuant to section 8(i) of the Act, 12 U.S.C. § 1818(i), and the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308, and alleges as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. The FDIC has jurisdiction over this matter.

1. At all times pertinent to this proceeding the Bank has been a corporation existing and doing business under the laws of the State Georgia, having its principal place of business in Eastman, Georgia. The Bank is, and at all times pertinent to this proceeding was, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III; and the laws of the State of Georgia.

2. From December 2, 2002, until September 10, 2010, Respondent was employed in the Bank's Warner Robins, Georgia location as a Loan Officer, Senior Loan Officer, and City

President. The Bank's Board of Directors designated Hardin as one of the Bank's executive officers and considered the City President position to be akin to that of a Vice President at the Bank.

3. At all times pertinent to the charges herein, Respondent was an "institution-affiliated party" as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of sections 8(e)(7), 8(i) and 8(j) of the Act, 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

4. The FDIC has jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.

II. Factual Background.

Respondent's Employment At The Bank

5. The Bank is a state chartered non-member institution established in 1934, with its headquarters in Eastman, Georgia. It operates five branches in Georgia.

6. As of December 31, 2010 (the year that Respondent's employment by the Bank was terminated), the Bank's assets were \$176.7 million with \$107.1 million in net loans.

7. From December 2002 until approximately March 2009, Respondent was the only Bank officer located at the Bank's South Houston Lake Road loan office in Warner Robins, Georgia.

8. In or about March 2009, the Bank opened a branch at 1041 Georgia Highway 96 in Warner Robins, Georgia. From

approximately March 2009 until the Bank terminated his employment on September 10, 2010, Respondent simultaneously held the titles of Senior Loan Officer and City President at this branch.

9. As a Senior Loan Officer, Respondent's lending limits to a single borrower were:

- A. Unsecured: \$15,000
- B. Automobile/Boats: \$50,000
- C. Commercial Real Estate: \$100,000
- D. Single Family Residential: \$200,000

10. During the entirety of Respondent's employment at the Bank, the Bank had written loan policies which governed the Respondent's conduct when making loans on behalf of the Bank.

11. Respondent was aware of the Bank's loan policies during the entirety of his employment at the Bank.

12. As of September 2010, Respondent managed a \$24.4 million loan portfolio.

13. During the entirety of his employment at the Bank, Respondent was responsible for overseeing the loan application process including, but not limited to, performing credit analyses on prospective borrowers. He was also responsible for approving and structuring loans within the Bank's policies, ordering appraisals and closing loans with all required documentation.

14. Respondent was authorized only to approve those loans that were within his lending authority.

15. For loans in excess of established lending limits, Bank policies required Respondent to submit loan requests to the Bank's Executive Loan Committee for approval. If approved, Respondent was responsible for closing such loans within the terms and conditions of the Executive Loan Committee's approval.

16. During his employment at the Bank, Respondent was trained in how to identify fraudulent and/or nominee loans and understood the characteristics of a fraudulent and/or nominee loan scheme.

17. Respondent knew at the time of the facts alleged in this Notice that in a nominee loan transaction, the nominee borrower is someone who is listed on the loan documentation as the borrower but who intends to take the loan out in their name for the benefit of someone else and that the nominee borrower has no intention of retaining loan proceeds, using loan proceeds consistent with the stated purpose of the loan, or personally repaying the loan.

*** and ***

18. Among the loans originated by Respondent during his employment at the Bank were no less than 15 loans to ***, ***, and/or their respective corporate entities.

19. *** and *** are cousins who over the years have participated in various business dealings together including, but not limited to, a music production company, real estate

construction, and investments in various real estate developments and other business entities.

III. Respondent Orchestrated a Fraudulent Loan Scheme

Respondent's Quid Pro Quo Relationship With ***

20. In late 2007 or early 2008, *** told Respondent that he wanted to borrow money from the Bank to acquire lots in the Fairview Heights subdivision of Perry, Georgia ("Fairview Heights") and build duplexes that he could then sell and/or rent as a means to provide financial security for his family including, but not limited to using the proceeds to provide financial support and medical care to ***'s ailing father.

21. During this conversation, Respondent offered to originate loans from the Bank to ***.

22. When Respondent offered to originate loans for ***, Respondent and *** reached an understanding by which *** would, at times, divert all or a portion of his loan proceeds to various persons, entities, or accounts that Respondent would identify to ***.

23. The purpose of this arrangement between *** and Respondent was to provide *** with loans that he could use for real estate ADC projects in Fairview Heights and to provide support to his family and ailing father, while providing Respondent with diverted loan proceeds that he could use for his own benefit, the benefit of third-parties with whom Respondent

had business or personal relationships, and/or to service other Bank loans originated by Respondent which were, or were about to become, past due or delinquent.

The Nominee Loans

24. In or about November 2008, Respondent orchestrated a fraudulent loan scheme designed to generate loan proceeds from fraudulent loans to nominee borrowers which Respondent could then divert to various improper and unauthorized purposes.

25. Respondent instructed *** and *** to bring him nominee borrowers who were employed and who would sign for loans without any expectation of receiving the loan proceeds.

26. *** and *** brought nominee borrowers to Respondent. These nominee borrowers were family, friends, and/or employees of *** and ***.

27. The nominee borrowers (collectively, the "Nominee Borrowers") included: ***'s friend, *** ("****"); ***'s sister, ***, a.k.a. *** (hereinafter, "****"); ***'s friend and former college professor, *** ("****"); ***'s friend, *** ("****"); a third-party named *** ("****"); a third-party named *** ("****"); a Georgia corporation known as *** ("****"); and *** ("****"), the spouse of ***'s friend, ***.

28. Respondent caused the Bank to make loans to the Nominee Borrowers (hereinafter, the "Nominee Loans") as follows:

| Date | Loan Number | | | |
|------|-------------|--|--|--|
|------|-------------|--|--|--|

| | | Nominee Borrower | Loan Amount | Hereinafter referred to as: |
|----------|--------|-------------------------|--------------------|------------------------------------|
| 10-26-09 | **2459 | *** | \$97,500 | **** Loan" |
| 12-21-09 | **2511 | *** | \$95,511 | **** Loan # 1" |
| 12-21-09 | **2512 | *** | \$95,511 | **** Loan # 2" |
| 1-15-10 | **2534 | *** | \$176,511 | **** Loan" |
| 2-26-10 | **2584 | *** | \$97,511 | **** Loan" |
| 4-28-10 | **2637 | *** | \$87,000 | **** Loan # 1" |
| 5-25-10 | **2661 | *** | \$120,000 | **** Loan" |
| 5-25-10 | **2662 | *** | \$120,000 | **** Loan" |
| 7-30-10 | **2736 | *** | \$25,166 | **** Loan # 2" |
| 8-27-10 | **2759 | *** | \$38,184 | **** Loan" |

29. From October 26, 2009 through August 27, 2010, Respondent originated the Nominee Loans to the Nominee Borrowers with the knowledge that those Nominee Borrowers did not intend to repay the loans.

30. From October 26, 2009 through August 27, 2010, Respondent originated the Nominee Loans to the Nominee Borrowers for the purpose of diverting loan proceeds to the personal benefit of Respondent, ***, ***, and/or their respective corporate entities, as well as to service other loans at the Bank originated by Respondent which either were, or were about to become, past due or delinquent.

31. From October 26, 2009 through August 27, 2010, Respondent originated the Nominee Loans to the Nominee Borrowers with the intent that the Nominee Loans would not be repaid by the Nominee Borrowers but would instead be repaid by ***, ***, their respective corporate entities, and/or by the diversion of loan proceeds from the Nominee Loans themselves.

32. From October 26, 2009 through August 27, 2010, Respondent originated the Nominee Loans to the Nominee Borrowers for loan amounts at or slightly below Respondent's maximum lending limit authority, in order to avoid having to submit loan approval requests for the Nominee Loans to the Bank's Executive Loan Committee.

33. During this same time period, the Bank's policy was to assess a late charge to any loan with an unpaid loan payment that was 10 days past the required payment date ("Past Due"). Additionally, any loan that reached the point of being 30 days past due ("Delinquent") appeared on a daily report of delinquent loans that was accessible by any member of Bank management.

34. All or substantially all of the loans to which Respondent diverted loan proceeds from the Nominee Loans were either: (a) Past Due; (b) about to trigger thresholds that would result in them being Past Due; (c) Delinquent; or (d) about to trigger a thresholds that would result in them being Delinquent.

Respondent Falsified and/or Instructed Others to Falsify Loan Applications, Credit Applications and Personal Financial Statements

35. With respect to all or substantially all of the Nominee Loans, Respondent approved loans based upon loan applications, credit applications, and personal financial statements (the "Loan Applications") that the Respondent knew or should have known contained inaccurate information.

36. With respect to all or substantially all of the Nominee Loans, Respondent knew or should have known that the information contained in the Loan Applications for the Nominee Loans was inaccurate because, without any input whatsoever from the Nominee Borrowers, Respondent completed the Loan Applications on behalf of the Nominee Borrowers and/or instructed *** and *** to fill them out on behalf of the Nominee Borrowers.

37. When filling out Loan Applications on behalf of Nominee Borrowers, Respondent filled in items including, but not limited to the Nominee Borrower's annual income, total assets, and liabilities without ever having obtained any information from the Nominee Borrower.

38. When instructing *** and/or *** to fill out Loan Applications on behalf of the Nominee Borrowers, Respondent told *** and/or *** what to write down for the Nominee Borrower's annual income, total assets, and total liabilities without ever having obtained any information from the Nominee Borrowers.

39. All or substantially all of the Nominee Borrowers spoke with Respondent for the first time when either *** or *** brought them to Respondent's office at the Bank where Respondent told the Nominee Borrower that he or she had been approved for a loan.

40. Respondent instructed the Nominee Borrowers to sign Loan Applications that had been partially or completely prepared on their behalf, and without their input, by Respondent, ***,

and/or ***.

41. With respect to all or substantially all of the Nominee Loans, Respondent either asked Nominee Borrowers to sign blank Loan Applications or Respondent approved loans based upon Loan Applications that the Respondent knew or should have known the Nominee borrower did not sign.

Respondent Knowingly Relied Upon Fraudulent and/or Forged Real Estate Appraisals

42. With respect to all or substantially all of the Nominee Loans, Respondent instructed *** to obtain appraisals on real property that served as collateral for the Nominee Loans.

43. With respect to all or substantially all of the Nominee Loans, Respondent instructed *** to obtain appraisals on real property that served as collateral for the Nominee Loans.

44. Respondent knew or should have known that the appraisals obtained by *** on real property that served as collateral for the Nominee Loans were forgeries.

45. Respondent knew or should have known that the appraisals obtained by *** on real property that served as collateral for the Nominee Loans were forgeries.

46. Respondent knew or should have known that the appraisals obtained by *** on real property that served as collateral for the Nominee Loans contained false information

about the condition and value of the collateral.

47. Respondent knew or should have known that the appraisals obtained by *** on real property that served as collateral for the Nominee Loans contained false information about the condition and value of the collateral.

48. Respondent approved loans and advanced loan proceeds based upon appraisals obtained by ***, which Respondent knew or should have known were forgeries and/or falsified.

49. Respondent approved loans and advanced loan proceeds based upon appraisals obtained by ***, which Respondent knew or should have known were forgeries and/or falsified.

Respondent Approved Nominee Loans That He Knew Were Secured By Non-Existent and/or Fraudulent Collateral

50. With respect to all or substantially all of the Nominee Loans for which Respondent listed real estate as the collateral securing the loan, Respondent approved loans that he knew or should have known were not, and/or could not be, secured by the collateral that Respondent identified to the Bank in Bank records.

51. With respect to certain of the Nominee Loans, Respondent instructed the Bank's closing attorney to wait until after the loan had closed before running a title search on the collateral property securing the loan.

52. For example, loan documents prepared and/or reviewed by

the Respondent listed real property at **** Perkerson Road in Atlanta, Georgia ("**** Perkerson Road") as collateral for the *** Loan.

53. Land records on file with the State of Georgia demonstrate that at all relevant times, **** Perkerson Road was never conveyed to *** and was owned by ***.

54. Respondent knew or should have known that *** could not have pledged **** Perkerson Road as collateral for the *** Loan.

55. Yet, according to Bank records prepared by and/or at the direction of Respondent, it was ***, not ***, who purported to pledge **** Perkerson Road as collateral for the *** Loan.

56. With respect to all or substantially all of the Nominee Loans for which Respondent listed automobiles as the collateral securing the loan, Respondent disbursed loan proceeds when he knew or should have known that the automobile(s) at issue did not actually exist.

57. With respect to those loans for which Respondent listed fictitious automobiles as the collateral securing the loan, Respondent instructed *** and/or *** to forge bills of sale and/or create fraudulent bills of sale for automobile sales that never took place.

58. For example, Respondent signed loan documents indicating that the \$38,184 in proceeds from the *** Loan would be used by *** to purchase a 2010 Lexus GS 350 when Respondent

knew that no such vehicle existed and no such sale took place.

59. In order to provide the Bank with documentation reflecting the value of the collateral for the *** Loan, Respondent instructed *** to forge a bill of sale for ***'s purported purchase of a 2010 Lexus GS 350.

60. In response, *** created a fraudulent bill of sale using a Vehicle Identification Number that he made up and a vehicle value provided to him by Respondent. Respondent included this fraudulent bill of sale in the Bank's loan file for the *** Loan.

IV. Respondent Diverted Proceeds From the Nominee Loans For Unauthorized and Improper Purposes

61. With respect to certain Nominee Loans, Respondent instructed the Nominee Borrowers to disburse loan proceeds to ***, ***, their respective corporate entities, other Nominee Borrowers, and/or third-party borrowers of the Bank by signing disbursement forms that Respondent had filled out on behalf of the Nominee Borrower which identified the individuals, entities, and/or accounts to which Respondent wanted to divert the Nominee Loan proceeds and the amount(s) that Respondent wanted each individual, entity, and/or account to receive.

62. With respect to other Nominee Loans, Respondent would instruct the Nominee Borrowers, ***, and/or *** to disburse loan proceeds, by giving them a list which identified the individuals,

entities, and/or accounts to which Respondent wanted to divert the Nominee Loan proceeds and the amount(s) that Respondent wanted each individual, entity, and/or account to receive.

63. Respondent instructed the Nominee Borrowers, *** and/or *** to take loan proceeds that were disbursed to them via the Bank's closing attorney and use the list to purchase cashier's checks at another financial institution which Respondent could then use for the benefit of Respondent, ***, ***, their respective corporate entities, other Nominee Borrowers, and/or third-party borrowers of the Bank.

64. After the Nominee Borrowers, ***, and/or *** purchased the cashier's checks identified by Respondent, they would give those checks to Respondent who would then instruct Bank employees to deposit them and/or apply them to loan payments on behalf of the various individuals, entities, and/or accounts that Respondent identified.

65. On or about October 26, 2009, Respondent represented in Bank records that \$97,500 in proceeds from the *** Loan would be used by *** to purchase real estate. Respondent then diverted and/or conspired with ***, ***, and/or *** to divert \$15,000 in proceeds from the *** Loan to ***; \$16,000 to *** (a corporation owned by ***, hereinafter, "****"); \$19,500 to a third-party, and another \$21,805 in proceeds to make payments to four different Bank loans to various borrowers.

66. On or about December 21, 2009, Respondent represented in Bank records that \$95,511 in proceeds from the *** Loan # 1 and another \$95,511 in proceeds from the *** Loan # 2 would be used by *** to purchase real estate. Respondent then diverted and/or conspired with ***, ***, and/or *** to divert \$70,731 in proceeds from *** Loans # 1 and # 2 to (a) the purchase various vehicles out of the Bank's repossessed automobile portfolio by various third parties, and (b) make payments on loans of the following individuals or companies: ***; ***, who at the time was a Bank customer and ***'s stepmother (hereinafter, "****"); ***, who at the time was an employee of *** (hereinafter, "****"); ***, which at the time was a Georgia corporation owned by *** (hereinafter, "****"); ***, which at the time was a Georgia corporation owned by *** and/or *** and managed by *** (hereinafter, "****"); and two third-party borrowers of the Bank. The remaining proceeds from the *** Loan # 1 and *** Loan # 2 were diverted to ***.

67. On or about January 15, 2010, Respondent represented in Bank records that \$176,511 in proceeds from the *** Loan would be used by *** to refinance real estate. Respondent then diverted and/or conspired with ***, ***, and/or *** to divert \$16,790 in proceeds from the *** Loan to make payments on Bank loans of the following individuals or companies: ***, ***, and two third-party borrowers of the Bank. The remaining proceeds

from the *** Loan were diverted to ***.

68. On or about February 26, 2010, Respondent represented in Bank records that \$97,511 in proceeds from the *** Loan would be used by *** to refinance real estate. Respondent then diverted and/or conspired with ***, ***, and/or *** to divert \$97,000 in proceeds from the *** Loan to make payments on the Bank loans of the following individuals or companies: ***, ***, ***'s brother ***, ***, ***, ***, ***, ***, and four third-party borrowers of the Bank.

69. On or about April 28, 2010, Respondent represented in Bank records that \$87,000 in proceeds from the *** Loan # 1 would be used by *** to refinance real estate. Respondent then diverted and/or conspired with ***, ***, and/or *** to divert \$40,415 in proceeds from the *** Loan # 1 to make payments on Bank loans of the following individuals or companies: ***, ***, ***, ***, ***, ***, and a third-party borrower of the Bank. Another \$40,000 in proceeds from *** Loan # 1 was diverted to ***.

70. Additionally, on or about April 30, 2010, Respondent also diverted \$1,275.91 in proceeds from *** Loan #1 to pay the premium on Respondent's personal life insurance policy at ***.

71. On or about May 25, 2010, Respondent represented in Bank records that \$120,000 in proceeds from the *** Loan would be used by *** to purchase real estate and that \$120,000 in proceeds

from the *** Loan would be used by *** to purchase real estate. Respondent then diverted and/or conspired with ***, ***, ***, and/or *** to divert \$95,126 in proceeds from the *** and *** Loans to make payments on Bank loans to the following individuals or companies: ***, ***, ***, ***, ***, ***, ***, ***, and nine third-party borrowers of the Bank. Another \$123,613 in proceeds from the *** Loan and *** Loan were diverted to ***.

72. On or about July 30, 2010, Respondent represented in Bank records that \$25,166 in proceeds from the *** Loan # 2 would be used by *** to purchase a 2010 Dodge Charger. Respondent then diverted and/or conspired with ***, ***, and/or *** to divert \$14,450 in proceeds from the *** Loan # 2 to make payments on Bank loans to the following individuals or companies: ***, ***, and ***. The remaining proceeds from *** Loan # 2 were diverted to ***.

73. On or about August 27, 2010, Respondent represented in Bank records that the \$38,184 in proceeds from the *** Loan would be used by *** to purchase a 2010 Lexus GS 350. Respondent then diverted \$23,785 in proceeds from the *** Loan to make the loan payments on the Bank's loans to ***, ***, *** and two third-party borrowers of the Bank.

V. Other Fraudulent Transactions Orchestrated By Respondent

74. On or about July 31, 2007, Respondent accepted a \$15,000 personal loan from *** ("****") through ***'s Georgia

corporation, *** ("***").

75. Respondent's acceptance of a loan from *** created a conflict of interest for Respondent because, at the time, *** and *** were borrowers who had several existing loans at the Bank that had been originated by Respondent.

76. Respondent failed to disclose to the Bank that a conflict of interest existed between him, ***, and/or ***.

77. Despite this conflict of interest and Respondent's outstanding obligation to repay the \$15,000 personal loan to ***, Respondent originated a loan transaction by which *** received a loan from the Bank to purchase two repossessed vehicles from the Bank.

78. On or about December 10, 2009, Respondent made Loan # **2510 to *** in the amount of \$22,170 (the "*** Loan"). On the Loan Note and Security Agreement for the *** Loan, Respondent represented that the purpose of the loan was to allow *** to "purchase a trailer and backhoe from the bank that was repossessed."

79. On the Loan Note and Security Agreement for the *** Loan, Respondent identified the collateral for the loan as a "2005 Horton Trailer & 2004 CAT Model 2400" and the "total sales price" for these vehicles as \$24,298.15.

80. Respondent disbursed the entire \$22,170 in proceeds from the *** Loan to *** on or about December 10, 2009.

81. Despite the fact that the purpose listed by Respondent on the December 10, 2009 *** Loan was the purchase of the 2005 Horton Trailer and 2004 CAT Model 2400 from the Bank's inventory of repossessed vehicles, the proceeds of the *** Loan were never applied to ***'s purchase of the 2005 Horton Trailer.

82. On or about December 22, 2009, Respondent conveyed the 2005 Horton Trailer and two other vehicles, a 2002 Chevrolet Tahoe and a 1998 Ford Pickup Truck (hereinafter, the "*** Vehicles") to *** without any consideration from *** to the Bank.

83. Respondent then concealed this fraudulent transaction with *** by diverting Nominee Loan proceeds and falsifying Bank records.

84. On or about December 30, 2009, Respondent diverted \$32,500 in loan proceeds from the *** Loan # 1 and *** Loan # 2 to the Bank in order to create debits which permitted Respondent to remove the *** Vehicles from the Bank's repossessed inventory list and make it appear as though *** had purchased them from the Bank.

85. On or about January 20, 2010, more than a month after the *** Loan closed and the proceeds of the *** Loan were disbursed, Respondent instructed a Bank employee to ask *** to provide bills of sale that reflected the Bank's sale of the various vehicles including, but not limited to, the *** Vehicles to ***.

86. When *** refused to provide bills of sale requested

by Respondent, Respondent instructed a Bank employee to create fraudulent bills of sale which Respondent then used to conceal his fraudulent conveyance of the *** Vehicles to ***.

87. As a result of Respondent's fraud, Hardin conveyed the *** Vehicles to *** without any consideration from *** to the Bank.

VI. Respondent Engaged in Unsafe or Unsound Banking Practices and Breaches of Fiduciary Duty Which Caused Loss and/or Risk of Loss to the Bank and Personal Financial Benefit To Respondent

88. Unsafe or unsound practices and breaches of fiduciary duties committed by Respondent in carrying out his responsibilities as a Loan Officer, Senior Loan Officer, and/or City President at the Bank with respect to the actions, transactions, incidents, and/or series of events described in Paragraphs 1 through 87 include, but are not limited to, the following:

- a) Knowingly participating in a surreptitious scheme to create fraudulent loans to the Nominee Borrowers and/or ***;
- b) Knowingly creating and/or instructing others to create fraudulent Bank records including, but not limited to, false or forged: (i) Loan Applications; (ii) Loan Note and Security Agreement; (iii) real estate appraisals; and (iv)

- bills of sale;
- c) Knowingly approving loans that Respondent knew the borrower had no intention of repaying;
 - d) Knowingly approving loans that Respondent knew the borrower had no intention of using for the purpose stated in Bank records;
 - e) Approving loans that were secured by real estate with the knowledge that the real estate appraisals for those loans had been obtained for the Bank by ***, ***, or the borrower seeking the loan;
 - f) Approving loans that were secured by real estate for which Respondent knew the appraisals were fraudulent;
 - g) Misrepresenting the existence and/or value of loan collateral to the Bank;
 - h) Failing to disclose to the Bank's Board of Directors or senior management the existence of a conflict of interest involving Respondent and a Bank customer;
 - i) Knowingly approving loans and/or making decisions on behalf of the Bank concerning transactions with a Bank customer with whom Respondent had a conflict of interest;
 - j) Causing the Bank to give valuable property to a

third-party for no consideration;

- k) Knowingly advancing loan proceeds for loans that Respondent knew or should have known were secured by insufficient, non-existent, and/or fraudulent collateral;
- l) Knowingly diverting, and/or instructing others to divert, loan proceeds for unauthorized and improper purposes;
- m) Knowingly violating the Bank's written loan policies by, among other things, failing to adhere to the Bank's requirement that loan officers: (i) properly document all loans; (ii) precede any consumer loan with sound credit analysis; (iii) be reasonably conservative in approving consumer loans; (iv) withhold loan proceeds until the loan officer has secured the loan and brought the borrower's credit file up to date; (v) obtain financial statements from borrowers with a total liability of \$100,000 or more; and (vi) obtain all real estate appraisals after October 1, 2009 from the Bank's main office in Eastman, Georgia.

89. As a result of the foregoing unsafe or unsound banking practices and breaches of fiduciary duties committed by Respondent, Respondent received personal financial gain and other

benefit of at least \$1,275 and the Bank incurred a risk of loss of over \$900,000 and an actual loss of at least \$500,000.

NOTICE OF INTENTION TO PROHIBIT
FROM FURTHER PARTICIPATION

90. Paragraphs 1 through 89 are re-alleged and incorporated herein by reference.

91. As a result of Respondent's foregoing acts, omissions, and/or practices, the Respondent has engaged and/or participated in unsafe or unsound practices in connection with the Bank.

92. Further, as a result of Respondent's foregoing acts, omissions, and/or practices, the Respondent has breached his fiduciary duty as an officer and/or director of the Bank.

93. As a result of the practices or breaches of fiduciary duty by the Respondent, as set forth above, the Bank incurred a risk of loss of over \$900,000 and an actual loss of at least \$500,000.

94. As a result of the practices or breaches of fiduciary duty by the Respondent, as set forth above, Respondent has received financial gain of approximately \$1,275 or other benefit.

95. The acts, omissions, and/or practices of the Respondent, as set forth above, demonstrate Respondent's personal dishonesty and his willful or continuing disregard for the safety and soundness of the Bank.

96. As a result of the acts, omissions, and/or practices of

the Respondent, as set forth above, Respondent personal benefit from use of diverted loan proceeds to conceal that certain loans which he originated were, or were about to become, Past Due and/or Delinquent.

97. As a result of the acts, omissions, and/or practices of the Respondent, as set forth above, the interests of the Bank's depositors have been or could be prejudiced.

**NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

98. Paragraphs 1 through 97 are re-alleged and incorporated herein by reference and constitute FINDINGS OF FACT AND CONCLUSIONS OF LAW for purposes of this NOTICE OF ASSESSMENT.

99. As a result of the Respondent's foregoing acts, omissions and/or practices, as set forth above, the Respondent has recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank.

100. As a result of the Respondent's foregoing acts, omissions, and/or practices, as set forth above, the Respondent has breached his fiduciary duty as an officer and/or director of the Bank.

101. Respondent's unsafe or unsound practices, or breaches of fiduciary duty as set forth above, constitute a pattern of misconduct.

102. Respondent's unsafe or unsound practices, or breaches of fiduciary duty as set forth above, caused the Bank more than a minimal loss.

103. As a result of Respondent's unsafe or unsound practices, or breaches of fiduciary duty as set forth above, Respondent has received pecuniary gain or other benefit.

ORDER TO PAY

104. By reason of the conduct and actions set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against the Respondent pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B).

105. After taking into account the appropriateness of the penalty with respect to the size of financial resources and the good faith of the Respondent, the history of previous unsafe or unsound practices or breaches of fiduciary duty and such other matters as justice may require, it is:

ORDERED, that by reason of the Respondent's actions set forth above, a penalty of One Hundred Twenty Five Thousand Dollars (\$125,000) be, and hereby is, assessed against the Respondent pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B).

NOTICE OF HEARING

Notice is hereby given that a hearing shall commence sixty (60) days from the date of service of this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, or on such date as may be set by the Administrative Law Judge assigned to hear this matter at Macon, Georgia or at such other place as the parties to this proceeding and the Administrative Law Judge may agree, for the purpose of taking evidence on the charges herein specified, in order to determine whether a permanent order should be issued to prohibit Respondent from further participation in the conduct of the affairs of the Bank and any insured depository institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior permission of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D).

The hearing will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The exact time and precise location of the hearing will be determined by the Administrative Law Judge.

Respondent is hereby directed to file an answer to the NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION within twenty (20) days from the date of service, as provided by section 308.19 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19.

In the event that Respondent seeks a hearing on the NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY then Respondent is directed to request a hearing and file and answer within twenty (20) days from the date of service, as provided by section 308.19 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19. Failure of the Respondent to request a hearing shall render the civil money penalty assessed in this NOTICE OF ASSESSMENT final and unappealable pursuant to section 8(i)(E)(ii) of the Act, 12 U.S.C. § 1818(i)(E)(ii), and section 308.19(c)(2) of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19(c)(2).

An original and one copy of all papers filed in this proceeding shall be served upon the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8118, Arlington, VA 22226-3500. Copies of all papers filed in this proceeding shall be served upon the Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Room NYA-5070, Washington, D.C. 20429; A.T. Dill III, Assistant General Counsel, Legal Division, Enforcement Section, Federal Deposit Insurance Corporation, Room MB-2042, 550 17th Street,

N.W., Washington, D. C. 20429; and David A. Schecker, Regional Counsel, Federal Deposit Insurance Corporation, Boston Area Office, 15 Braintree Hill Office Park, Braintree, MA 02184.

Pursuant to delegated authority.

Dated at Washington, D.C., this 30th day of December, 2013.

/s/ _____
Christopher J. Newbury
Associate Director
Division of Risk Management Supervision