

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

In the Matter of:)	
K. Patrick Kruchten, Chairman and CEO,)	AA-EC-04-79
Demian Kruchten, Director and Vice President,)	
David Duhn, Director and President,)	
Bruce Carr, Director and Vice President,)	
)	
First Integrity Bank, N.A.,)	
Staples, Minnesota.)	

Decision and Order on Request for a Private Hearing

Pursuant to 12 C.F.R. § 19.33 Respondents K. Patrick Kruchten, Chairman and CEO, Demian Kruchten, Director and Vice President, David Duhn, Director and President, and Bruce Carr, Director and Vice President, of First Integrity Bank, N.A. (“Bank”), have requested a private hearing in this case.¹ The Enforcement and Compliance Division (“Enforcement Counsel”) of the Office of the Comptroller of the Currency (“OCC”) opposes the request.

After considering the applicable law and the arguments of the parties, I have determined that the Respondents’ request for a private hearing must be denied.

Background

On December 21, 2004, the OCC initiated this enforcement action by serving each Respondent with a Notice of Assessment of a Civil Money Penalty (collectively, the “Notices”). Among other things, the Notices charge that the Respondents, as directors and officers of the Bank, violated the Bank’s limit on covered transactions with affiliates, violated the rules on

¹ As Respondents submitted nearly identical requests for each administrative proceeding, this Decision and Order addresses all four requests.

extension of credit to insiders, and participated in the filing of inaccurate Reports of Condition and Income. Further, the Notices charge that Respondents' acts involved a breach of their fiduciary duty to the Bank. Respondents have filed answers to the Notices and the instant requests for a private hearing.

In their requests, Respondents allege as follows: that a public hearing would involve an unwarranted invasion of personal privacy due to the disclosure of loan terms and other financial information; that disclosure of such information would result in undue competitive harm to individuals and entities involved in those transactions; and lastly, that a public hearing would present reputational risks to the Bank. These allegations are made without any supporting factual information or legal authority.

Decision

Before 1990, OCC administrative hearings were required by statute to be private unless the Comptroller determined that a public hearing was in the public interest. In 1990, Congress reversed the presumption favoring a private hearing, with the result that current law presumes that such hearings will be public. Under the terms of the statute, 12 U.S.C. § 1818(u)(2): “All hearings on the record with respect to any notice of charges issued by [OCC] *shall be open to the public*, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.” (Emphasis added.)

By changing prior law to require public hearings, Congress evidenced its expectation that hearings would be closed only infrequently. The substantial change in the law reflects Congressional recognition that the predictable concerns about the harm to a bank and bank customers from disclosure of the evidence is no longer sufficient to justify a private hearing. *See Magee v. Greenspan*, 808 F. Supp. 847, 851 (D.D.C. 1991) (“[T]he change in the statute shows

that Congress has shifted the balance of interests towards public disclosure rather than protection of banking executives accused of wrongdoing.”). Instead, a public hearing must present a concrete risk of harm to the public interest. *Decision and Order on Request for a Private Hearing, In re Hamilton Bank, N.A.*, AA-EC-01-08 at *3 (2001).

In this case, Respondents have not presented facts showing the harm that would occur from a public hearing, only unsubstantiated allegations and self-serving statements. These conclusory statements cannot overcome the presumption that hearings on the record will be open. In my judgment; a closed hearing would withhold from the public and the Bank’s customers the nature and scope of concerns raised by the Bank’s regulator. This is precisely the type of information that Congress wished to make public when it reversed the previous presumption favoring private hearings.

For the reasons above, I am unable to conclude that an open hearing is contrary to the public interest.

Order

The Bank's request for a private hearing is denied.

So ordered this 8th day of March, 2005.

Julie L. Williams
Acting Comptroller of the Currency