

#2009-041

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

<u>In the Matter of:</u>)	
David Duhn)	
Former President)	AA-EC-09-15
First Integrity Bank, N.A.)	
Staples, MN)	

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate this cease and desist proceeding against David Duhn (“Respondent”) pursuant to 12 U.S.C. § 1818(b) on the basis of Respondent’s activities as President of First Integrity Bank, N.A., Staples, MN (“Bank”) through the issuance of a Notice of Charges for Issuance of an Order to Cease and Desist for violations of 12 U.S.C. §§ 371c(a)(4); 371c(c)(1); and 371c-1(a)(1)(B); and

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, Respondent, without admitting or denying any wrongdoing, desires to enter into this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b);

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

ARTICLE I

JURISDICTION

(1) The Bank was a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 et

Initials: _____
Date: _____

seq. Accordingly, the Bank was an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was the President of the Bank and is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof (*see* 12 U.S.C. § 1818(i)(3)).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain this cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b).

ARTICLE II

PERSONAL CEASE AND DESIST ORDER

(4) Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that, whenever Respondent is employed by, or is offered employment at, an insured depository institution or otherwise becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

- (a) Comply fully with all laws, regulations, and policies applicable to any insured depository institution with which he is or may become affiliated.
- (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code.
- (c) Not breach the fiduciary duties of loyalty or care owed to any insured depository institution with which he is or may become affiliated.

- (d) Provide the board of directors of the insured depository institution of which Respondent is currently an institution-affiliated party with a copy of this Order. Respondent shall provide written certification of compliance with this paragraph (4)(d) to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, D.C. 20219, within ten (10) days of execution of this Order.
- (e) Prior to accepting any offer of a position that causes Respondent to become an institution-affiliated party of an insured depository institution, provide the board of directors of the insured depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance, Office of the Comptroller of the Currency, 250 E St., SW, Washington, D.C. 20219, along with a written certification of his compliance with this paragraph (4)(e) within ten (10) days after acceptance of such position.
- (f) Familiarize himself with, and adhere to, the written policies and procedures of any insured depository institution or agency with which he is or may become affiliated or seek and receive written permission from appropriate authorized individuals to do otherwise. In the event that the Respondent is affiliated with an insured depository institution or agency with written policies and procedures that are more stringent than the provisions of this Order, the Respondent shall adhere to the written policies and procedures of such insured depository institution or agency.

(5) If, at any time, Respondent is uncertain whether a situation implicates paragraph (4) of this Article, or if Respondent is uncertain about his duties arising from these or any other requirements of this Order, he shall obtain, at his own expense, and abide by the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution; and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the banking agencies' web sites.

(6) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818(b).

ARTICLE III

WAIVERS

- (7) By executing this Order, Respondent waives:
- (a) the right to the issuance of a Notice of Charges for Issuance of an Order to Cease and Desist under 12 U.S.C. § 1818(b);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and 12 C.F.R. Part 19;
 - (c) all rights to seek judicial review of this Order;
 - (d) all rights in any way to contest the validity of this Order; and
 - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the

terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

(8) Respondent shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any legal (or other professional) expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359; and Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359.

(9) Any failure by Respondent to comply with this Order shall be subject to enforcement for the longer of (a) the period allowed by the applicable statute of limitations, or (b) five (5) years following the failure to comply.

(10) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(11) It is hereby agreed that the provisions of this Order constitute a settlement of this cease and desist proceeding contemplated by the Comptroller, and any and all claims against Respondent arising from his employment with the Bank, of which the Comptroller was aware as of March 17, 2009.

(12) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (11), shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting

