COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108

IN THE MATTER OF:

DAVID ALLAN AFFELDT,
THOMAS KEVIN KEOUGH &
NANCY AYERS KEOUGH

ADMINISTRATIVE COMPLAINT
Docket No. E-2011-0014

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “Enforcement Section” and the “Division,” respectively) files this complaint (the “Complaint”) in order to commence an adjudicatory proceeding against the above named Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough (“Affeldt”, “Kevin Keough”, “Nancy Keough” and collectively the “Respondents”) for violations of M.G.L. c. 110A, the Massachusetts Uniform Securities Act (the “Act”), and 950 CMR 10.00 et seq., (the “Regulations”). The Complaint is focused the Respondents’ collective and individual offer and sale of unregistered and non-exempt securities in the Commonwealth of Massachusetts as well Respondents’ collective and individual actions in the capacity of unregistered agents in the Commonwealth of Massachusetts in violation of the Act and the Regulations.

The Enforcement Section seeks an Order: 1) requiring Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth; 2) requiring Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers
Keough to provide an accounting of all proceeds which were received as a result of the alleged wrongdoing, and to offer rescission to and fairly compensate investors for those losses attributable to the alleged wrongdoing; 3) requiring Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 4) denying Respondent Thomas Kevin Keough’s application for registration as an agent of a broker-dealer; 5) imposing an administrative fine on Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 6) taking any such further actions which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

II. SUMMARY

This Complaint alleges the Respondents violated the Act and the Regulations by engaging in the offer and sale of unregistered and non-exempt securities issued by Inofin, Incorporated ("Inofin"), a Massachusetts corporation, in the Commonwealth of Massachusetts. The original business purpose of Inofin was to provide deep sub-prime automobile financing to a customer base that could not otherwise qualify for conventional or institutional financing because of poor credit history.

In order to capitalize its sub-prime automobile financing operations, Inofin engaged in the offer and sale of unregistered and non-exempt promissory notes to investors. These promissory note investments were either 3 or 5 years in term and offered annual interest rates which had once been as high as 22%, but which more recently averaged between 10% and 15%. Investor funds were initially used to finance
sub-prime automobile loans which carried an annual average interest rate of 19.79%. The difference between the two rates, which ranged between 4.79% and 9.49%, was retained by Inofin for overhead and profit. In order to solicit new investors, Inofin entered into referral compensation arrangements with several existing investors. The referral fee paid to these individuals ranged between 3% and 6% of the amount invested with Inofin.

Kevin Keough had met Michael Joseph Cuomo ("Cuomo"), whom would later become Inofin’s President, in 1981 while roommates in college and they had maintained contact in the years following college. Kevin Keough stated he first heard of Inofin through Cuomo in 1992. Kevin Keough stated that he first contacted Affeldt in 1996, while employed with PaineWebber Incorporated, via a “cold call” for purposes of soliciting Affeldt’s brokerage business.

In 2002, Kevin Keough stated he introduced Affeldt, an advisory client at the time to Inofin (at which time Kevin Keough was registered in the Commonwealth of Massachusetts as a broker-dealer agent of Morgan Stanley DW Inc.) as an alternative to investments in bonds and certificates of deposit. In January or February of 2003, Affeldt made his initial investment in Inofin in the amount of $50,000.00. Kevin Keough stated that at some point during 2003, his wife Nancy Keough was compensated by, or on behalf of, Inofin for Affeldt’s referral and initial investment “[b]ecause obviously I can’t be involved in anything like that.”

Between 2004 and 2009, Inofin paid a total of at least $1,192,454.67 in compensation identified as “Referral Fees” to at least ten individuals, including $368,430.51 in compensation to Nancy Keough and $135,488.30 in compensation to
Affeldt. Despite the disparity in compensation, Cuomo stated while Nancy Keough only referred only two investors to Inofin, Cuomo identified Affeldt as a "great source" who had referred at least 50 investors to Inofin.

During the Relevant Time Period, Kevin Keough had been registered in Massachusetts with at least five successive firms as either an agent of a broker-dealer or as a representative of an investment adviser. The Uniform Application for Securities Industry Registration or Transfer ("Form U-4") filed with the Division on behalf of Kevin Keough during the Relevant Time Period failed to disclose his association with Inofin as required by then-NASD Conduct Rules 3030 and 3040. Kevin Keough currently has an application pending for registration as a broker-dealer agent of Bishop, Rosen & Co., Inc. Affeldt and Nancy Keough were not registered in the Commonwealth with the Division during the Relevant Time Period.

III. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities, as provided for by the Act. The Act authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those persons engaged in the business of effecting transactions in securities for the account of others or for their own account; and 3) those persons transacting business as investment advisers within the Commonwealth.

2. The Division brings this action pursuant to the enforcement authority conferred upon it by § 407A of the Act and M.G.L. c. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all Regulations and rules promulgated thereunder.
3. This proceeding is brought in accordance with §§ 201, 204, 301 and 407A of the Act and its Regulations. Specifically, the acts and practices constituting violations occurred within the Commonwealth of Massachusetts.

4. The Division specifically reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of October 1, 1993 to date (the “Relevant Time Period”).

V. RESPONDENTS

6. David Allan Affeldt (“Affeldt”) is an individual with a last known principal place of residence at 10404 Joiners Lane, Potomac, Maryland 20854-1941. Affeldt was formerly employed as chief counsel for the United States’ Senate Committee on Aging and is currently a member of the bar of the District of Columbia. Affeldt was not registered in Massachusetts as a broker-dealer, an agent of a broker-dealer or an issuer, an investment adviser or an investment adviser representative, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.

7. Thomas Kevin Keough (“Kevin Keough”) is an individual with a last known principal place of residence at 20 Freedom Drive, North Reading, Massachusetts 01864-3226. Kevin Keough has been married to Nancy Keough for approximately sixteen years. Kevin Keough is currently assigned Central Registration Depository number 2106695. During the Relevant Time Period, Kevin
Keough had been registered in Massachusetts with at least five successive firms as either an agent of a broker-dealer or as a representative of an investment adviser. Kevin Keough currently has an application pending for registration as a broker-dealer agent of Bishop, Rosen & Co., Inc.

8. Nancy Ayers Keough ("Nancy Keough") is an individual with a last known principal place of residence at 20 Freedom Drive, North Reading, Massachusetts 01864-3226. Nancy Keough has been married to Kevin Keough for approximately sixteen years. Nancy Keough was not registered in Massachusetts as a broker-dealer, an agent of a broker-dealer or an issuer, an investment adviser or an investment adviser representative, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.

VI. OTHER INVOLVED AND RELATED PARTIES

9. Inofin, Incorporated ("Inofin") is a domestic for-profit corporation first organized under the laws of the Commonwealth of Massachusetts as First Investors Factoring, Inc. on or about March 1, 1994. On or about January 15, 1997, First Investors Factoring, Inc. filed articles of amendment with the Corporations Division of the Office of the Secretary of the Commonwealth formally changing its corporate name to Inofin, Incorporated. In annual reports filed with the Corporations Division of the Office of the Secretary of the Commonwealth, Inofin describes the business of the corporation as "automobile financing." In annual reports filed with the Corporations Division of the Office of the Secretary of the Commonwealth, Inofin identifies its principal place of business as 55 Accord Park Drive, Unit D, Rockland, Massachusetts 02370. Inofin was not registered in Massachusetts as a broker-dealer,
an investment adviser, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period. Inofin has never filed an application for the registration of, or notice of exemption from registration for, securities to be offered and/or sold in Massachusetts either with the Division or with the United States Securities & Exchange Commission. Inofin has never filed an application for the registration of statutory agents in Massachusetts.

10. Michael Joseph Cuomo ("Cuomo") is an individual with a last known principal place of residence at 53 Gunners Exchange Road, Plymouth, Massachusetts 02360. According to filings made with the Corporations Division of the Office of the Secretary of the Commonwealth, Cuomo currently serves as President, Treasurer, and as a Director of Inofin. Cuomo was not registered in Massachusetts as a broker-dealer, an agent of a broker-dealer or an issuer, an investment adviser or an investment adviser representative, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.

11. Kevin Joseph Mann, Sr. ("Mann") is an individual with a last known principal place of residence at 920 Ocean Street, Marshfield, Massachusetts 02350. According to filings made with the Corporations Division of the Office of the Secretary of the Commonwealth, Mann currently serves as Secretary, Chief Executive Officer, and as a Director of Inofin. Mann was not registered in Massachusetts as a broker-dealer, an agent of a broker-dealer or an issuer, an investment adviser or an investment adviser representative, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.
12. Melissa Marie George ("George") is an individual with a last known principal place of residence at 21 Maple Pond Lane, Duxbury, Massachusetts 02332. According to filings made with the Corporations Division of the Office of the Secretary of the Commonwealth, George currently serves as Chief Financial Officer and as a Director of Inofin. George was not registered in Massachusetts as a broker-dealer, an agent of a broker-dealer or an issuer, an investment adviser or an investment adviser representative, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.

VII. ALLEGATIONS OF FACT

13. Inofin has never filed an application for the registration of, or notice of exemption from registration for, securities to be offered and/or sold in Massachusetts either with the Division or with the United States Securities & Exchange Commission.¹

14. Inofin has never filed an application for the registration of statutory agents in Massachusetts.

15. Affeldt was not registered in Massachusetts as a broker-dealer, an agent of a broker-dealer or an issuer, an investment adviser or an investment adviser representative, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.

16. Kevin Keough had been registered in Massachusetts with at least five successive firms as either an agent of a broker-dealer or as a representative of an investment adviser during the Relevant Time Period. Kevin Keough currently has an application pending for registration as a broker-dealer agent of Bishop, Rosen & Co., Inc.

¹ Inofin is the subject of a separate Administrative Complaint, filed contemporaneous with this present action, alleging violations of §101, 201 and 301 of the Act. See Docket no. E-2010-0043.
17. Nancy Keough was not registered in Massachusetts as a broker-dealer, an agent of a broker-dealer or an issuer, an investment adviser or an investment adviser representative, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.

18. On or about March 1, 1994, First Investors Factoring, Inc. (n/k/a Inofin, Incorporated) was incorporated under the laws of the Commonwealth of Massachusetts with Cuomo serving as President, Treasurer, Clerk and sole Director. *A true and accurate copy of the articles of incorporation for First Investors Factoring, Inc. are attached hereto as Exhibit 1.*

19. According to records maintained on file with the Massachusetts Division of Banks, the Commissioner of Banks initially issued a motor vehicle sales finance company license to First Investors Factoring, Inc. (n/k/a Inofin, Incorporated), number MV0147, on or about September 12, 1994.

20. On or about January 15, 1997, First Investors Factoring, Inc. filed articles of amendment with the Corporations Division of the Office of the Secretary of the Commonwealth formally changing its corporate name to Inofin, Incorporated. *A true and accurate copy of the articles of amendment for First Investors Factoring, Inc. are attached hereto as Exhibit 2.*

21. According to documents filed with the Corporations Division of the Office of the Secretary of the Commonwealth, Cuomo, Mann, and George have served as the sole executive officers and sole directors of Inofin since at least 2001 through the present.

22. Inofin has capitalized its sub-prime automobile financing activities during the Relative Time Period through the offer and sale of promissory notes.
23. Cuomo stated that while the minimum investment amount Inofin had traditionally sought was $50,000.00, he had accepted investments as low as $5,000.00 on multiple occasions.

24. In connection with the amount of any investment contemplated, Mann stated:

If it appeals to them, yeah, we find out whether or not this is their last 50,000, because we've told me, I do not want to be responsible for the outcome of your life if this is what you're putting in here. That belongs in a bank or a CD, or whatever.

... And we make perfectly clear that there is risk involved. I think we make it clear in both our offering documents, and we make it clear in each individual that comes in, that there is risk involved here; that there's a reason we pay the rate we pay.

25. In his own discussions with potential investors, Cuomo stated:

We're dealing with individuals that have poor credit and, you know, struggle to make payments. I do tell them there is risk. I ask them. I said if you can't afford to lose this money, then it might not be for you because it is what it is. It's a loan. You've got a fixed rate of return. It's got an interest rate. But, you know, there is no insurance; there's no, you know, bank insurance.

26. Once investor funds were received by Inofin, Cuomo stated that the funds were all deposited into, and redeemed from, a comingled Bank of America account and were not segregated by investor in any manner.

27. With respect to the interest rate offered, Mann stated:

That has changed over time and period, and as we've become more mature, it's gone down. Originally, it was expensive. And currently, I would estimate it to be between -- depending on the individual notes, but between twelve and thirteen and a half percent, something like that...

The highest was probably – this is going back some time, but it was high, 22-22 percent. But the norm probably over the previous going five years and beyond back was probably between 15 and 18.

28. With respect to the rate of return of the promissory notes, Cuomo stated:
each has a specific rate of return... There are different rates of return... determined with the availability of the money, the economy. You know, we have from 10 to 15 percent. And it's basically driven by the economy, I want to say.

29. The interest rates on Inofin's promissory notes were so attractive that the company was eventually able to attract and obtain at least 275 investors.

30. Inofin was able to achieve and maintain its business by charging a higher rate of interest to automobile purchasers than Inofin was obligated to pay to its investors. As to the amount of the differential Cuomo stated "[o]n the low end it would be 4.79 percent. On the high end, it would be 9.49 percent."

31. While the annual rate of return Inofin paid to investors ranged between 10 and 15 percent, Cuomo identified 19.79 percent as the typical annual rate of interest charged to automobile purchases.

32. With respect to the term of the promissory notes issued by Inofin, Cuomo stated "[T]hree years... I have done five-year notes. The longer, the better. But if it's not a three-year note, it's a five-year note; same thing. Same fixed rate of return, fixed period of time."

33. Cuomo stated that each Inofin investor "has an account. They can go on-line, a secured site, and pull up their account. They can print a statement, if they choose to. They can see their activity. It's all in the computer."

34. Mann identified a document entitled Inofin's "Investor Profile Application" which any potential Inofin investor would receive. *A true and accurate copy of the Investor Profile Application is attached hereeto as Exhibit 3.*

35. In addition to the Investor Profile Application, Mann stated that potential Inofin Investors would also receive a second Inofin document entitled "Executive
Summary." A true and accurate copy of the Executive Summary is attached hereto as Exhibit 4.

36. The Executive Summary contained the following description of Inofin’s automobile financing business:

To date, Inofin has established business relationships with 1500 dealers in the states of Massachusetts, Connecticut, Maine, Rhode Island, New Hampshire, Georgia, Virginia, W. Virginia, Tennessee, North Carolina and South Carolina. The company has funded approximately 30,000 automobile loans in these states.

See Exhibit 4.

37. Under the heading “INVESTMENT SECURITY” the Executive Summary contained the following statement:

The following are the instruments used to secure your investment in Inofin:

- A promissory note, which would be executed by Inofin for the benefit of the investor.
- Monthly statements of your investment.
- Unlimited access to your account via our website www.inofin.com

See Exhibit 4.

38. In addition to the Investor Profile Application and Executive Summary, Mann stated that potential Inofin Investors would also receive a third Inofin document entitled “Investment Scenarios.” A true and accurate copy of the Investment Scenarios document is attached hereto as Exhibit 5.

39. While Mann stated relative to the Investor Profile Application, Executive Summary and Investment Scenarios document that while he was “certain this was distributed after 2006”, he was uncertain whether an earlier version had existed.
40. The Investment Scenarios document, addressed to “Our Future Investor”, described that Inofin investors could either receive a monthly interest check in the mail or elect to have their interest added to the principal of their investments. *See Exhibit 5.*

41. The Investment Scenarios document contained the following description of the inception of the investment:

Inofin Incorporated offers our investors the opportunity to invest in secured, newly funded auto loans and to receive monthly statements of their investment, along with a check for their earned interest. This type of investment offers our investors a **guaranteed profit** and each month, a payment of their earned interest based on their principal investment.

The investment works as follows:

1. Investors complete an Investor Profile Application.
2. Inofin Incorporated accepts investment deposits starting at $50,000.00.
3. Inofin completes, signs and forwards a Promissory Note to the investor.
4. Our automated accounting system generates interest on the investor’s balance on a nightly basis.

*See Exhibit 5.* (emphasis in original).

**The Keoughs and Affeldt**

42. Kevin Keough stated he first heard of Inofin through Cuomo in 1992. Kevin Keough had met Cuomo 1981 while roommates in college and they had maintained contact in the years following college.

43. Kevin Keough stated that he provided First Investors Factoring, Inc. (n/k/a Inofin, Inc.) with $50,000.00 in 1992, with the understanding that those funds would be invested in funding for automobile loans. Kevin Keough stated that he withdrew his $50,000.00 investment approximately three months later.

44. Kevin Keough stated that he provided Inofin with a second investment of $49,000.00 in late 2007-2008, and a subsequent third investment of $10,000.00 in 2008-2009,
with the understanding that those funds would be borrowed by Inofin clients for automobile purchases.

45. Kevin Keough stated that his investments with Inofin were memorialized by a promissory note.

46. Kevin Keough stated that, according to statements he received from Inofin, his investments with Inofin earned an approximate 15 percent annual rate of return.

47. Kevin Keough stated that he first contacted Affeldt in 1996, while employed as a registered agent of PaineWebber Incorporated, via a “cold call” for purposes of soliciting Affeldt’s brokerage business.

48. Between approximately April 7, 2000 and April 17, 2006, Kevin Keough was registered in the Commonwealth of Massachusetts as a broker-dealer agent of Morgan Stanley DW Inc.

49. Kevin Keough stated he introduced Affeldt to Inofin at some point during 2002 as an alternative to investments in bonds and certificates of deposit.

50. Kevin Keough identified Affeldt as an advisory client at the time Affeldt was introduced to Inofin.

51. Affeldt stated that in January or February of 2003, he made his initial investment in Inofin in the amount of $50,000.00.

52. Affeldt stated that in the spring of 2003, he began adding to the principal of his investment with Inofin, with the most recent investment occurring on June 15, 2009 in the amount of $150,000.00.
53. Affeldt stated that as of December 6, 2009, he had approximately $2.6 million in promissory note investments with Inofin between several personal and retirement accounts.

54. In describing his arrangement with Inofin, Affeldt stated “I get promissory notes, and then I get paid interest on those promissory notes based upon what I have invested.”

55. Affeldt stated “I mean in my case, they were paying me like 13 percent.”

56. Kevin Keough stated that at some point during 2003, his wife Nancy Keough was compensated by, or on behalf of, Inofin for Affeldt’s referral and initial investment “[b]ecause obviously I can’t be involved in anything like that.”

57. According to Nancy Keough in the early 2000’s, “David and I came to an agreement - - when the agreement was, I really don’t recall -- that we would bring in family friends, and probably split commissions with whoever it is that we brought in.”

58. According to Nancy Keogh, while she suggested investments in Inofin to “seventy-five to a hundred” persons, she recalled “zero” of those referrals being subsequently converted to investors.

59. According to Cuomo, Nancy Keogh ultimately referred only two persons to Inofin who were subsequently converted to investors.

60. Affeldt identified his current occupation as an attorney engaged in mostly tax preparation and legislative work.

61. Affeldt stated he believed that “some of my clients who make investments in their retirement plans have selected Inofin.”
62. Affeldt described the compensation he received from either Inofin or Cuomo in connection with referring investors as a “finder’s fee” based upon a percentage of the investment or loan made with Inofin.

63. Affeldt stated that while he has spoken to Cuomo over the telephone “more than 15 times since I initially spoke with him in 2003”, he has never met Cuomo in person.

64. In describing Affeldt’s relationship to Inofin, Cuomo stated that he:

had I guess a casual conversation with David Affeldt; gave him my name. And that's how David ended up -- and then I developed a relationship with David over time, and offered to, I offered to compensate him for any referrals that he would send to me, not expecting much, but was pleasantly surprised at the amount.

65. In further describing the arrangement between Affeldt and Inofin, from 2002 through the present, Cuomo stated “I think he referred probably 50 people over that period of time… I was surprised, quite honestly. I was pleasantly surprised. But it kept on going. He's been a great source.”

66. Coumo stated that “[t]here are several people that are compensated” in connection with referrals provided to Inofin and that their compensation would be based on a “percentage of the dollar amount lent.”

67. In describing the referral fee arrangement between Inofin and the Keoughs and Affeldt, Cuomo stated:

I had an arrangement or agreement with Kevin that I -- with Nancy and Kevin that -- Normally, the fee is anywhere between 3 and 6 percent. And that I would compensate. I found an area where David was happy, and I gave the balance of the 5 or 6 percent to the Keoughs.

68. The Uniform Application for Securities Industry Registration or Transfer (“Form U-4”) filed with the Division on behalf of Kevin Keough during the Relevant Time Period fail to disclose his association with Inofin.
69. On March 29, 2011, Bishop, Rosen & Co., Inc. filed a Form U-4 with the Division on behalf of Kevin Keough. This application remains pending at this time.

70. Between 2004 and 2009, Nancy Keough received $368,430.51 in compensation identified as “Referral Fees” from Inofin.

71. Between 2004 and 2009, Affeldt received $135,488.30 in compensation identified as “Referral Fees” from Inofin.

72. Cuomo identified a “bulk” of Nancy Keough’s $368,430.51 in compensation as coming from Affeldt’s referral work.

73. Between 2004 and 2009, including Nancy Keough and Affeldt, Inofin paid a total of at least $1,192,454.67 in compensation identified as “Referral Fees” to at least ten individuals.

VIII. VIOLATIONS OF LAW

Count I – Violation of G.L. c. 110A § 201(a)

74. Section 201(a) of the Act provides:

It is unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.

75. Section 401(h) of the Act provides:

“Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a limited liability company, a limited liability partnership, a government, or a political subdivision of a government.

76. Section 401(b) of the Act provides, in pertinent part:

“Agent” means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

77. Section 401(f) of the Act provides, in pertinent part:
"Issuer" means any person who issues or proposes to issue any security.

78. Section 401(i)(1) of the Act provides:

"Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

79. Section 401(k) of the Act provides:

"Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

80. The Regulations at 950 CMR 14.401 provide:

**Investment Contract**, as used in M.G.L. c. 110A, § 401(k), includes:

(1) any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. As used in this subsection, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and successes of those seeking the investment or a third party; and

(2) any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subject to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the management of the enterprise.
81. The Enforcement Section herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 73 above.

82. The conduct of Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough as described above, constitutes violations of M.G.L. c. 110A, § 201(a).

**Count II – Violation of G.L. c. 110A §204(a)(2)(A)**

83. Section 204 of the Act provides, in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:— (A) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

84. The Enforcement Section herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 73 above.

85. The conduct of Respondent Thomas Kevin Keough as described above, constitutes violations of M.G.L. c. 110A, § 204(a)(2)(A).

**Count III – Violation of G.L. c. 110A §204(a)(2)(B)**

86. Section 204 of the Act provides, in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:— (B) has willfully violated or willfully failed to comply with any provision of this chapter or
a predecessor chapter or any rule or order under this chapter or a predecessor chapter.

87. The Enforcement Section herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 73 above.

88. The conduct of Respondent Thomas Kevin Keough as described above, constitutes violations of M.G.L. c. 110A, § 204(a)(2)(B).

**Count IV – Violation of G.L. c. 110A §204(a)(2)(G)**

89. Section 204 of the Act provides, in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:— (G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

90. The Regulations at 950 CMR 12.204 provide:

(b) Each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of his or her business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices in the securities industry and are thereby grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration or such other action as is appropriate:

... (2) Effecting securities transactions not recorded on the regular books and records of the broker-dealer that the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transactions.

... (5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase and sale of securities with any person not also registered as an agent for the same broker-dealer, or a broker-dealer under direct or indirect common control.
(6) Failing to disclose the name of the principal if different from name that the agent is doing business under, to the customer at the time of the first contact with the customer.

... (8) Engaging in conduct specified in 950 CMR 12.204(1)(a)1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 18, 19, 22, 23, 27 or 28.

The Regulations at 950 CMR 12.204(1)(a) provide:

(19) Failing to disclose that the [agent] is affiliated with the issuer of a security before entering into a contract with or for a customer for the purchase or sale of such security. If such disclosure is made orally, written disclosure must be given before the completion of the transaction.

91. The Enforcement Section herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 73 above.

92. The conduct of Respondent Thomas Kevin Keough as described above, constitutes violations of M.G.L. c. 110A, § 204(a)(2)(G).

Count V – Violation of G.L. c. 110A § 301

93. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the commonwealth unless: (1) the security is registered under this chapter; (2) the security or transaction is exempted under section 402; or (3) the security is a federal covered security.

94. Section 401(h) of the Act provides:

“Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a limited liability company, a limited liability partnership, a government, or a political subdivision of a government.

95. Section 401(i)(2) of the Act provides:

“Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

96. Section 401(j)(1) of the Act provides:
“Sale” or “sell” includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

97. Section 401(p) of the Act provides:

"Federal covered security" means any security that is a covered security under section 18(b) of the Securities Act of 1933 or the regulations promulgated thereunder.

98. Section 401(k) of the Act provides:

"Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

99. The Regulations at 950 CMR 14.401 provide:

**Investment Contract,** as used in M.G.L. c. 110A, § 401(k), includes:

(1) any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. As used in this subsection, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and successes of those seeking the investment or a third party; and

(2) any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subject to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the management of the enterprise.
100. The Enforcement Section herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 73 above.

101. The conduct of Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough as described above, constitutes violations of M.G.L. c. 110A, § 301.

IX. STATUTORY BASIS FOR RELIEF

102. Section 407A of the Act entitled “Violations; Cease and Desist Orders; Costs” provides in pertinent part:

(a) If the secretary determines, after notice and opportunity for a hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take affirmative action, including the imposition of an administrative fine, the issuance of an order for accounting, disgorgement or rescission or any other relief as in his judgment may be necessary to carry out the purposes of [the Act].

103. The Enforcement Section herein re-alleges and restates the facts and allegations set forth in paragraphs 1 through 101 above.

104. Respondent David Allan Affeldt, directly and indirectly, engaged in the acts, practices, and courses of business set forth in the Administrative Complaint above, and it is the Enforcement Section’s belief that Respondent David Allan Affeldt will continue to engage in acts and practices similar in subject and purpose which constitute violations of §§ 201(a) and 301 of the Act if not ordered to cease and desist.

105. Respondent Thomas Kevin Keough, directly and indirectly, engaged in the acts, practices, and courses of business set forth in the Administrative Complaint above, and it is the Enforcement Section’s belief that Respondent Thomas Kevin Keough will continue to engage in acts and practices similar in subject and purpose which
constitute violations of §§ 201(a), 204 and 301 of the Act if not ordered to cease and desist.

106. Respondent Nancy Ayers Keough, directly and indirectly, engaged in the acts, practices, and courses of business set forth in the Administrative Complaint above, and it is the Enforcement Section’s belief that Respondent Nancy Ayers Keough will continue to engage in acts and practices similar in subject and purpose which constitute violations of §§ 201(a) and 301 of the Act if not ordered to cease and desist.

X. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors to enter an Order: 1) requiring Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth; 2) requiring Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough to provide an accounting of all proceeds which were received as a result of the alleged wrongdoing, and to offer rescission to and fairly compensate investors for those losses attributable to the alleged wrongdoing; 3) requiring Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 4) denying Respondent Thomas Kevin Keough’s application for registration as an agent of a broker-dealer; 5) imposing an administrative fine on Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 6) taking any such
further actions which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

XI. RELIEF REQUESTED

Wherefore, the Enforcement Section of the Division requests that the Director or Presiding Officer take the following actions:

A. Find that all the sanctions and remedies as detailed herein are in the public interest and necessary for the protection of Massachusetts investors;

B. Find as fact the allegations set forth in paragraphs 1 through 101 inclusive, of the Complaint;

C. Order Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth;

D. Order Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough to provide an accounting of all proceeds which were received as a result of the alleged wrongdoing, and to offer rescission to and fairly compensate investors for those losses attributable to the alleged wrongdoing;

E. Order Respondents David Allan Affeldt, Thomas Kevin Keough and Nancy Ayers Keough to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;

F. Deny Respondent Thomas Kevin Keough’s application for registration as an agent of a broker-dealer;
G. Impose an administrative fine on Respondents David Allan Affeldt, Thomas
Kevin Keough and Nancy Ayers Keough in such amount and upon such
terms and conditions as the Director or Presiding Officer may determine; and
H. Take any such further actions which may be in the public interest and
necessary and appropriate for the protection of Massachusetts investors.

MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION

By and through its attorneys,

[Signature]

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Dated: April 14, 2011