

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 11-001  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, )  
 )  
 5 Petitioner, ) Notice of Hearing - Amended Order to  
 ) Show Cause  
 )  
 6 and )  
 )  
 7 Inofin Incorporated, Michael Joseph )  
 )  
 8 Cuomo, Kevin J. Mann, Sr., Donald K. )  
 )  
 9 Heap, and Melissa M. George, )  
 )  
 10 Respondents )  
 )

11 NOTICE OF AMENDED ORDER TO SHOW CAUSE HEARING

12 1. The Department issued to the above named Respondents an Amended Order to  
 13 Show Cause on April 4, 2011, which Respondents received on April 7, 2011.  
 14 RSA Chapter 541-A and RSA Chapter 361-A require the Department to hold a  
 15 hearing on such matter within ten (10) calendar days of a written request  
 16 for a hearing unless otherwise waived by the Respondents. On May 6, 2011,  
 17 Respondent Inofin filed a timely request for a hearing and requested that  
 18 the Amended Order to Show Cause be consolidated with the original Order to  
 19 Show Cause and Cease and Desist and be heard on May 17, 2011. As of Tuesday,  
 20 May 10, 2011, the remaining Respondents herein have defaulted.

21 IT IS HEREBY ORDERED that:

22 2. Respondent Inofin appear before the New Hampshire Banking Department on  
 23 Tuesday, May 17, 2011 at 10:00 am, at the New Hampshire Banking  
 24 Department located at 53 Regional Drive, Suite 200, Concord, New Hampshire  
 25 03301, for the purpose of participating in an adjudicative proceeding, at  
 which time Respondent Inofin will have the opportunity to demonstrate why

1 the relief sought in the Amended Order to Show Cause should not become  
2 permanent.

3 3. Pursuant to RSA 541-A:31,III(b), the legal authorities under which the  
4 hearing is to be held are: RSA 541-A:30,III, RSA 361-A:3, RSA 361-A:3-a, RSA  
5 361-A:5 and RSA 361-A:11.

6 4. The Department's alleged violations against Respondent Inofin in the  
7 Amended Order to Show Cause are as follows:

8 Violation #1: Failure to facilitate (RSA 361-A:6-a,V) - 1 Count;

9 Violation #2: Violation of Department's January 6, 2011 Cease  
10 and Desist Order (RSA 361-A:3,I-a,(i)) - 1 Count; and

11 Violation #3: Failure to update information with the  
12 Commissioner (RSA 361-A:2,XII) - 1 Count;

13 5. The facts as alleged in the Amended Order to Show Cause are herein  
14 incorporated by reference.

15 6. An adjudicative proceeding shall be commenced pursuant to RSA 541-A:31  
16 for the purpose of permitting Respondent Inofin to show compliance with the  
17 stated violations.

18 7. Each party has the right to have an attorney present to represent the  
19 party at the party's expense, or may represent itself or himself. Respondent  
20 Inofin's Counsel has filed a notice of appearance.

21 8. Maryam Torben Desfosses, Hearings Examiner, New Hampshire Banking  
22 Department is designated as Hearings Examiner in this matter with authority  
23 to represent the public interest within the scope of the Department's  
24 authority. The Hearings Examiner shall have the status of a party to this  
25 proceeding.

1 9. A Presiding Officer will be delegated to preside over this matter  
2 pursuant to RSA 383:7-a and see also RSA 541-A:1,XV.

3 10. Any proposed exhibits shall be pre-marked, for identification only, and  
4 filed with the Department and provided to the opposing party by Thursday,  
5 May 12, 2011. The Hearings Examiner shall pre-mark the Department's exhibits  
6 with Arabic numbers. Respondent Inofin shall pre-mark exhibits with capital  
7 letters. An index/list of exhibits providing a brief description of each  
8 exhibit with its corresponding pre-marked number or letter shall be filed by  
9 both parties simultaneous with the filing of exhibits.

10 11. The parties shall exchange a list of all exhibits and witnesses to be  
11 called at the hearing with a brief summary at the hearing, and shall at the  
12 same time file a copy of their respective lists with the Presiding Officer.

13 12. All periods referenced in this notice shall be calendar days. If the  
14 last day of the period so computed falls on a Saturday, Sunday, or legal  
15 holiday, then the time period shall be extended to include the first  
16 business day that is not a Saturday, Sunday, or legal holiday.

17 13. The Department shall have the burden of setting forth a *prima facie*  
18 case, then Respondent Inofin shall have the burden of showing compliance  
19 with applicable law by a preponderance of the evidence.

20 14. Respondent Inofin's failure to appear at the time, date, and place  
21 specified may result in the hearing being held *in absentia* and/or default  
22 ruling in favor of the Department, without further notice or opportunity to  
23 be heard.

24 15. The entirety of all verbal proceedings shall be recorded verbatim by the  
25 Department. Upon request of any party, or upon the Presiding Officer's own  
initiative, such record shall be transcribed by a certified court reporter

1 designated by the Presiding Officer, and that all costs shall be borne  
2 solely by the requesting party.

3 16. Each party has the right to have the Department provide a certified  
4 short hand reporter at the requesting party's expense.

5 17. All documents shall be filed with the Presiding Officer in the form of an  
6 original and one (1) copy and shall bear a certification that a copy is being  
7 delivered to Hearings Examiner and any other parties to this matter in  
8 accordance with applicable laws. All documents shall be filed by mailing or  
9 delivering them to the New Hampshire Banking Department, ATTN: Presiding  
10 Officer 11-001, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by  
11 facsimile or electronic transmission shall not be accepted.

12 18. The parties may submit Proposed Orders, which shall include findings of  
13 fact and conclusions of law, separately stated, no later than ten (10) days  
14 following conclusion of the hearing(s) in this matter.

15 19. Routine procedural inquiries may be made by telephoning Maryam Torben  
16 Desfosses, Hearings Examiner at (603)271-3561, but all other communications  
17 with the Presiding Officer and with the Department shall be in writing and  
18 shall be filed as provided above. *Ex parte* communications are forbidden by  
19 statute.

20 20. A copy of this Notice of Hearing shall be mailed to Respondent Inofin at  
21 the address of record and that a copy shall also be delivered to Maryam  
22 Torben Desfosses, Hearings Examiner, and to the Presiding Officer at the New  
23 Hampshire Banking Department.

24 **SO ORDERED,**

25 \_\_\_\_\_  
/s/  
Robert A. Fleury  
Deputy Bank Commissioner

\_\_\_\_\_  
May 10, 2011  
Date