

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**  
**January 3, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12918**

**In the Matter of**

**vFinance Investments, Inc.,  
Nicholas Thompson and  
Richard Campanella,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT  
OF 1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against vFinance Investments, Inc. (“vFinance”), Nicholas Thompson (“Thompson”) and Richard Campanella (“Campanella”) (collectively “Respondents”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. SUMMARY**

1. These proceedings involve the failure of a registered broker-dealer to maintain all documents pertinent to its business and provide those documents to the Commission in a prompt fashion for inspection and review.

2. The broker-dealer in this case, vFinance, violated the federal securities laws by failing to preserve and produce the customer correspondence of its registered representative, Thompson. Thompson repeatedly failed to produce records and deliberately deleted data from his hard drive relating to a matter under investigation by the Commission. Campanella failed to respond promptly to the Commission’s document requests and failed to address Thompson’s non-compliance with the firm’s document retention policies.

**B. RESPONDENTS**

3. vFinance is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of the NASD. vFinance is a Florida corporation with its principal executive offices in Boca Raton, Florida, and is a wholly-owned subsidiary of vFinance, Inc., a Delaware corporation whose securities are registered with the Commission pursuant to

Section 12(g) of the Exchange Act. During 2004 and 2005, vFinance had about 25 branch offices and 125 registered representatives nationwide. On April 12, 2005, the Commission entered an Order Instituting Administrative Proceedings *In the Matter of vFinance Investments, Inc.*, Admin. Proc. File No. 3-11895, finding that vFinance had failed reasonably to supervise a trader through the inadequate implementation of supervisory procedures for preventing market manipulation. In settlement of that proceeding, vFinance retained an independent consultant who provided vFinance in early July 2005 with a preliminary report of the need to improve its supervision of traders.

4. Thompson was a registered representative associated with vFinance and the manager of a small vFinance branch in Flemington, New Jersey from 2002 until 2006. During 2004 and 2005, Thompson supervised one other registered representative (his father) and an administrative assistant in the Flemington branch. Thompson is 41 years old and resides in Kintnersville, Pennsylvania. While at vFinance, Thompson was authorized by vFinance's head trader to serve as a market maker of a microcap oil and gas firm, the shares of which were quoted on the OTC Bulletin Board, which became the subject of a Commission investigation into potential violations of the federal securities laws.

5. Campanella has been affiliated with vFinance as a registered representative since 2001 and was vFinance's Chief Operating Officer and Chief Compliance Officer during 2004 and 2005. Campanella became President of vFinance in January 2006 and then President and CEO of vFinance in July 2006. Campanella also is a director of vFinance, Inc. Campanella is 56 years old and resides in Boca Raton, Florida.

#### C. vFINANCE HAD A DUTY TO RETAIN AND PRODUCE DOCUMENTS

6. Section 17(a) of the Exchange Act mandates that broker-dealers "shall make and keep for prescribed periods such records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title." Pursuant to its authority under Section 17(a), the Commission promulgated Rule 17a-4(b)(4), which requires broker-dealers to preserve for at least three years (the first two in an easily accessible place) "originals of all communications received and copies of all communications sent ... relating to its business as such." The Commission also promulgated Rule 17a-4(j), which requires broker-dealers to "furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the [broker-dealer] that are required to be preserved under [Rule 17a-4], or any other records of the [broker-dealer] subject to examination under Section 17(b) of the [Exchange Act] that are requested by the representative of the Commission." The Commission has made clear that it is of "overriding importance" that broker-dealers comply with the requests of regulatory authorities during investigations. *See In the Matter of Wedbush Securities, Inc.*, 48 S.E.C. 963, 971-72 (1988).

7. vFinance had in place certain procedures and policies with respect to document retention, but failed to develop reasonable systems to implement them. vFinance's policies required Thompson to retain copies of all correspondence in his branch in correspondence files.

8. In his role as Chief Operating Officer, Campanella was responsible for vFinance's document retention practices.

9. vFinance had an unwritten policy prohibiting the use of non-vFinance email accounts for work purposes. vFinance adopted a policy in August 2003 requiring that instant messages be printed and saved in paper files. vFinance's systems did not retain instant messages or emails in non-vFinance email accounts.

10. Campanella prepared the vFinance instant message policy citing the July 2003 NASD Notice to Members entitled "Instant Messaging," which said "[m]embers that permit instant messaging must use a platform that enables the member to monitor, archive, and retrieve message traffic."

11. vFinance executives knew the firm was required to monitor and maintain customer correspondence in branch offices. On March 22, 2004, the chairman of vFinance, Inc. sent Campanella and vFinance's then-President an email with a link to SEC Staff Legal Bulletin No. 17. The bulletin said, "if firms permit communications with customers from employees' home computers or personal computers not connected to the firm's network, SRO rules require firms to employ systems to monitor those communications." The bulletin specifically cited firms' obligation "to maintain copies of incoming and outgoing correspondence" in branch offices under Section 17(a) of the Exchange Act and Rule 17a-4.

**D. vFINANCE, AIDED AND ABETTED BY CAMPANELLA AND THOMPSON, FAILED TO RETAIN DOCUMENTS**

12. Since at least 2003, Thompson used non-vFinance email accounts and instant messages to communicate with customers and for other business purposes. As previously described, vFinance policies required Thompson to retain in correspondence files copies of all work-related emails and instant messages, including paper copies of all instant messages. Nonetheless, Thompson deleted numerous work-related emails and instant messages from his computer, and did not print out and retain the emails and messages in hard-copy correspondence files. Thompson also periodically deleted all documents from his computer by reformatting the hard drive and wiping it clean.

13. Campanella relied on annual office inspections and branch manager questionnaires to monitor the firm's document retention practices in branch offices. The vFinance employee who visited Thompson's branch office sent notes and reports to Campanella that discussed Thompson's document retention practices. The notes from his first visit to Thompson's office in December 2003 said Thompson had "no written correspondence," which was highly unusual because Thompson was engaged in extensive retail trading and market making activities while at vFinance. In 2003, 2004 and 2005, he reported to Campanella and vFinance that Thompson was using an instant message program for business purposes and not retaining messages in paper files as required. He reported to Campanella and vFinance again in 2005 that his review of Thompson's "incoming and outgoing correspondence, faxes and e-mails revealed very little correspondence with clients" (which was inexplicable given Thompson's extensive retail trading and market making activities).

14. Campanella was separately on notice as early as March 2004 that Thompson was not complying with the firm's policy against using non-vFinance email for work purposes. In March 2004, he received a work-related email from Thompson's personal blast.net account. In

August 2004, Campanella received an email from Thompson's personal account discussing trading in the issuer's stock.

15. On September 1, 2005, vFinance's head trader, whom Campanella directed to collect documents from Thompson in response to the staff's request, copied Campanella on an email he sent to Thompson stating that "the firm definitely captures all emails, except the ones from a personal account like [your blast.net] account ... **you** are required to retain the ones from your personal account."

16. No one at vFinance ever reprimanded Thompson or told him to stop using personal email and instant message accounts to communicate with customers or to print and save instant messages.

E. vFINANCE, AIDED AND ABETTED BY CAMPANELLA AND THOMPSON, FAILED TO PRODUCE DOCUMENTS PROMPTLY

17. In mid-2005, the staff of the Commission was conducting an investigation into possible securities law violations involving a microcap oil and gas company (the "issuer"). On July 18, 2005, the Commission's staff sent a letter to Campanella asking vFinance to preserve all documents relating to the issuer and to produce documents – including trading records and correspondence – regarding the issuer. Only an incomplete and tardy production of documents was made by vFinance in response to that July 18th request, and vFinance failed (through Campanella) to address whether Thompson preserved and produced all documents relating to the issuer.

18. In August 2005, the Commission's staff asked vFinance (through Campanella) for the contents of Thompson's computer hard drive and made the same request of Thompson's legal counsel in September 2005. vFinance and Campanella failed to take any action at that time to provide the Commission with Thompson's computer hard drive. Additionally, rather than producing and saving all materials relating to the issuer, Thompson deleted from his computer, files and correspondence relating to the issuer and other companies for which Thompson's firm was a market maker. Furthermore, in or around November 2005, Thompson ran a special disk wiping program designed to eliminate all traces of the erased files on his hard drive. Thompson then loaded specially selected emails and messages that he had set aside back onto his computer before producing it to the Commission's staff on February 14, 2006, without telling the Commission staff about his deletions.

19. Campanella was the person at vFinance responsible for responding to the staff's document requests on behalf of vFinance, first as Chief Compliance Officer and Chief Operating Officer, and then as President. Campanella repeatedly told the staff that vFinance would not physically go to Thompson's vFinance branch office to look for documents because Thompson's employment status was that of an independent contractor rather than an employee. In fact, Thompson's independent contractor agreement required Thompson to give vFinance access to all business records in his office upon request.

20. In response to the staff's July 2005 document request, Campanella sent the staff some records electronically stored at vFinance's headquarters office for some (but not all) of the accounts that traded in the issuer's stock, and told the staff that Thompson had no correspondence

related to the issuer. vFinance produced a small number of additional documents in September and October 2005 in response to the staff's request, but the documents still did not include any of Thompson's customer correspondence. On November 18, 2005, Campanella incorrectly certified that vFinance's document production was complete.

21. After the Commission issued a formal order of investigation relating to the issuer in May 2006, the staff issued subpoenas to Thompson and vFinance covering the same documents that had been requested in July 2005 and extending the relevant time period to the date of the subpoenas. Thompson produced no additional documents. When Thompson resigned from vFinance in August 2006, vFinance did not attempt to retrieve his vFinance documents.

22. vFinance ultimately produced additional documents, but not until December 2006, after the staff told vFinance that the staff had learned from other sources that there were at least three additional vFinance accounts that had traded in the issuer's securities during the relevant time period. In February 2007, nineteen months after the staff's first document request, vFinance produced account records for all accounts that had traded the issuer's stock. At the same time, vFinance also produced a small number of Thompson's instant messages that it claimed to have recently discovered – nineteen months after the staff's initial document request – and told the staff these were the only instant messages of Thompson's it had retained.

23. In March 2007, Campanella finally searched Thompson's office for documents. Campanella located additional responsive documents from Thompson's paper customer files, but could not find Thompson's emails and instant messages.

#### F. VIOLATIONS

24. As a result of the conduct described above, vFinance willfully violated Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder when it failed to retain for at least three years (the first two in an easily accessible place) Thompson's electronic communications relating to vFinance's business as such, and failed to furnish promptly to the staff upon request records that vFinance was required to maintain.

25. As a result of the conduct described above, Thompson willfully aided and abetted and caused vFinance's violations of Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder. Thompson knowingly provided substantial assistance to vFinance in furtherance of vFinance's violations by communicating with customers using accounts outside the vFinance network, only keeping copies of those communications on his computer, and periodically deleting all documents from his computer by reformatting and wiping it clean. Thompson delayed producing his hard drive for six months, and never provided any documents from his paper customer files to vFinance or the staff in response to the staff's requests.

26. As a result of the conduct described above, Campanella willfully aided and abetted and caused vFinance's violations of Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder. Campanella, who as Chief Operating Officer was responsible for vFinance's document retention practices, knowingly provided substantial assistance to vFinance in furtherance of vFinance's violations by taking no action to retain Thompson's electronic communications after learning that Thompson was using accounts outside the vFinance network for business purposes and

failing to retain copies of the communications. Campanella never instructed Thompson to stop using email and instant message accounts outside the vFinance network for work purposes, nor did he ensure that vFinance had a system or procedures for retaining Thompson's work-related communications in those accounts. Campanella, who as Chief Operating Officer/Chief Compliance Officer and then as President was responsible for vFinance's prompt production of documents requested by the staff, knowingly provided substantial assistance to vFinance in furtherance of its failure promptly to furnish the requested documents by insisting that vFinance was not responsible for producing documents from Thompson's office and failing to produce account records and paper customer files relating to the issuer for nineteen months.

### **III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder.

### **IV.**

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris  
Secretary