

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57727 / April 28, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13024

In the Matter of

VFINANCE
INVESTMENTS, INC.,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against vFinance Investments, Inc. (“vFinance” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Respondent

vFinance is a broker-dealer with its principal place of business in Boca Raton, Florida and offices of supervisory jurisdiction in New York, New Jersey, and Florida. It is a wholly-owned subsidiary of vFinance, Inc., a Delaware public corporation that files periodic reports with the Commission. vFinance is a member of FINRA. During the relevant period, vFinance conducted an investment advisory and general securities business through its registered representatives and traders.

B. Summary

From September 2002 through June 2003, a registered representative then associated with vFinance violated Section 5 of the Securities Act of 1933 ("Securities Act") when he engaged in the illegal distribution of the securities of SHEP Technologies, Inc. ("SHEP") and Sedona Software Solutions, Inc. ("Sedona") by offering and selling restricted shares of the two issuers through the Over-the-Counter Bulletin Board ("OTCBB"). No registration statement was in effect as to those offers and sales, and no valid exemptions from registration were applicable to them. Sedona and SHEP were thinly-traded issuers at the time of the illegal distributions, and had little or no operations or assets. Prior to offering and selling the Sedona and SHEP securities, the registered representative failed to conduct a reasonable inquiry regarding these securities to determine whether vFinance's customer was an underwriter or was otherwise engaged in an illegal distribution of securities.

vFinance failed reasonably to supervise its registered representative's conduct with a view to preventing and detecting his Section 5 violations. vFinance had inadequate procedures in place during the relevant period to require that its registered representative conduct the appropriate due diligence concerning the origin and ownership of thinly-traded securities that vFinance offered and sold on behalf of its customers. vFinance also did not establish reasonable procedures or systems for training its registered representative with regard to compliance with the registration provisions of the Securities Act.

C. Facts

1. Unregistered Sales of Sedona Stock

In January 2003, Sedona was a shell company with no assets and no operations, whose stock was quoted on the OTCBB. Two brothers who were principals of a Bermuda securities firm (the "Bermuda principals" and the "Bermuda firm," respectively) owned approximately

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

ninety-nine percent of Sedona's outstanding shares. All of the Sedona shares owned by the Bermuda principals were restricted because the brothers had purchased the Sedona shares from affiliates of Sedona in an unregistered transaction. Upon acquiring their ninety-nine percent interest, the Bermuda principals became control persons and affiliates of Sedona themselves. The Bermuda firm was a vFinance customer, and the vFinance registered representative was its account representative.

Prior to January 2003, Sedona shares had been quoted at approximately \$.03 per share, and had last traded in May 2002 at that price. On January 16, 2003, the registered representative caused vFinance to register as a market maker in Sedona stock. On the morning of January 21, 2003, Sedona issued a press release announcing a reverse merger with Renaissance Mining Corp., a privately-held company. The Bermuda firm's investment banking affiliate was named in the press release as the underwriter of a \$6 million private placement of Renaissance shares. The press release did not disclose that the Bermuda principals owned the Sedona shell.

Also on the morning of January 21, prior to the market open, the Bermuda principals placed an order with the vFinance registered representative to sell 20,000 shares of Sedona stock at \$9 per share. This sell order was unusual because, prior to the order, there had been no trading volume in Sedona stock for seven months and Sedona stock had never traded for more than pennies per share.

Despite the existence of several red flags – among them, that the Bermuda firm suddenly had a large block of Sedona securities to sell, that the stock had not traded for seven months, and that, prior to January 21, the stock had traded for only pennies per share, but was being offered for sale on that day at \$9 per share – the vFinance registered representative did not conduct a reasonable inquiry, or any due diligence, into the origin and ownership of the Sedona shares before he offered and sold them on behalf of the Bermuda firm and its principals. The vFinance registered representative made no attempt to determine whether a valid registration statement was in effect for the Bermuda firm's sales of Sedona shares. The vFinance registered representative also made no attempt to discover whether the Bermuda principals were acting as underwriters engaged in an illegal distribution of Sedona securities when he offered and sold the Sedona shares on their behalf.

Sedona shares traded in the \$8 - \$9 range for the remainder of the day on January 21, on record volume of over 300,000 shares, raising Sedona's market capitalization to over \$45 million. On that day, the vFinance registered representative offered and sold 70,000 restricted Sedona shares through the U.S. market, or approximately twenty-two percent of Sedona's total daily volume, on behalf of the Bermuda firm and its principals.

From January 22 through January 29, 2003, the vFinance registered representative sold approximately 36,000 shares of restricted Sedona stock into the U.S. market through the OTCBB on behalf of the Bermuda firm and its principals. Altogether, the vFinance registered representative sold approximately 106,000 restricted Sedona shares through the OTCBB on

behalf of the Bermuda firm and its principals. All of these sales were made without a registration statement in effect, and with no valid exemptions from registration.

On January 29, 2003, the Commission suspended trading in Sedona securities for ten days because of questions concerning the accuracy and completeness of information about Sedona on Internet websites, in press releases, and in other sources publicly available to investors concerning, among other things, Sedona's announced merger with Renaissance, the assets and business operations of Renaissance, and the trading in Sedona stock in connection with the announced merger.

2. Unregistered Sales of SHEP Stock

From September 2002 through June 2003, the same vFinance registered representative engaged in an illegal distribution of the securities of SHEP when he offered and sold approximately three million shares of restricted SHEP stock through the OTCBB on behalf of the Bermuda firm, its principals, and two of its customers. SHEP stock was quoted on the OTCBB at all relevant times.

At the start of these sales in September 2002, the Bermuda principals and two of their clients (the "SHEP group") owned approximately ninety percent of SHEP's (or its predecessor's) outstanding shares, which they had purchased from affiliates of SHEP or its predecessor. As a result, all of those shares were restricted. Upon acquiring those shares, the members of the SHEP group became control persons and affiliates of SHEP themselves. All of vFinance's offers and sales of these SHEP shares were made without a registration statement in effect, and with no valid exemptions from registration.

As with Sedona, the vFinance registered representative did not conduct a reasonable inquiry or any due diligence concerning the origin and ownership of the SHEP shares. The vFinance registered representative made no attempt to discover whether he was selling the SHEP shares on behalf of an underwriter, or was otherwise engaged in an illegal distribution of SHEP securities. The vFinance registered representative also made no attempt to determine whether a valid registration statement was in effect for the Bermuda firm's sale of SHEP shares.

As a result of his conduct with regard to Sedona and SHEP described above, the vFinance registered representative violated Section 5 of the Securities Act, which prohibits the offer or sale of securities, through the means or instruments of transportation or communication in interstate commerce or of the mails, without a registration statement in effect.

3. vFinance Failed Reasonably to Supervise its Registered Representative

During the period from September 2002 through June 2003, vFinance did not establish reasonable procedures for conducting due diligence in connection with offering or selling substantial blocks of thinly-traded securities on behalf of customers. vFinance also did not establish reasonable procedures or systems regarding compliance with Section 5, including

training its registered representative with respect to engaging in distributions of securities into the U.S. public markets. By not having such procedures or systems in place, vFinance failed reasonably to supervise its registered representative in order to prevent and detect the registered representative's participation in illegal distributions of securities.

vFinance had inadequate procedures in place to ensure that its registered representative performed due diligence with regard to thinly-traded securities prior to offering or selling such securities into the U.S. public markets on behalf of customers. For example, under Securities Act Rule 144(g)(3), such reasonable inquiry "should include, but not necessarily be limited to, inquiry as to the following matters: (a) The length of time the securities have been held by the [customer] . . . ; (b) The nature of the transaction in which the securities were acquired by [the customer]; (c) The amount of securities of the same class sold during the past three months by [the customer]; (d) Whether [the customer] intends to sell additional securities of the same class through any other means; (e) Whether [the customer] has solicited or made any arrangement for the solicitation of buy orders in connection with the proposed sale of securities; (f) Whether [the customer] has made any payment to any other person in connection with the proposed sale of the securities; and (g) The number of shares or other units of the class outstanding, or the relevant trading volume."

vFinance also did not establish reasonable systems to train its registered representative with regard to compliance with the Securities Act registration provisions. The registered representative, for example, had not been trained to recognize the red flags raised by the circumstances surrounding the sales of the SHEP and Sedona shares. These red flags should have alerted the registered representative to conduct a thorough inquiry into the ownership and origin of the shares to assess whether he was engaging in an unlawful distribution when he offered and sold the shares on behalf of the Bermuda firm and its principals. However, vFinance had not trained the registered representative with regard to Section 5 compliance, and failed to establish and enforce reasonable procedures to require the registered representative to conduct a reasonable inquiry of the type described above. If vFinance had developed reasonable procedures and systems for Section 5 compliance, it is likely that the firm would have prevented and detected the registered representative's Section 5 violations.

D. Violations

Section 15(b)(4)(E) of the Exchange Act provides that the Commission may sanction a broker or dealer who "has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to [its] supervision." *In the Matter of Robertson Stephens, Inc.*, Exchange Act Rel. No. 47144, Admin. Proc. File No. 3-11003 (Jan. 9, 2003). "The Commission has repeatedly emphasized that the duty to supervise is a critical component of the federal regulatory scheme." *In the Matter of Oechsle International Advisors, LLC*, Advisers Act Rel. No. 1966, Admin. Proc. File No. 3-10554, 2001 S.E.C. LEXIS 1619, at *11 (Aug. 10, 2001).

Section 15(b)(4)(E) provides that a broker-dealer may discharge this responsibility by having "established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect" such violations. "Where there has been an

underlying violation of the federal securities laws, the failure to have or follow compliance procedures has frequently been found to evidence a failure reasonably to supervise the primary violator.” *In the Matter of William V. Giordano*, Exchange Act Rel. No. 36742, Admin. Proc. File No. 3-8933, 1996 S.E.C. LEXIS 71, at *11 (Jan. 19, 1996).

With regard to the vFinance registered representative’s Section 5 violations, the Commission has made clear in guidance regarding sales of unregistered securities by broker-dealers that:

“when a dealer is offered a substantial block of a little-known security... where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for. The problem becomes particularly acute where substantial amounts of a previously little known security appear in the trading markets within a fairly short period of time and without the benefit of registration under the Securities Act of 1933. In such situations, it must be assumed that these securities emanate from the issuer or from persons controlling the issuer, unless some other source is known....”

Distribution by Broker-Dealers of Unregistered Securities, 27 Fed. Reg. 1415, Securities Act Rel. No. 4445, Exchange Act Rel. No. 6721 (Feb. 2, 1962), *cited in In the Matter of Terry T. Steen*, 53 S.E.C. 618, 620 (June 1, 1998). The Commission has also previously held that “in light of the cardinal role occupied by broker-dealers in the securities distribution process, we cannot overemphasize the importance of their obligation to take all reasonable steps to avoid participation in distributions violative of the registration ... provisions of the Securities Act.” *In the Matter of Jacob Wonsover*, 54 S.E.C. 1, 33 (Mar. 1, 1999) (quoting *In the Matter of L.A. Frances, Ltd.*, 44 S.E.C. 588, 593 (June 22, 1971)), *petition for review denied, Wonsover v. SEC*, 205 F.3d 408 (D.C. Cir. 2000).

As a result of the conduct described above, vFinance failed reasonably to supervise its brokers with a view to preventing and detecting the registered representative’s violations of Section 5 of the Securities Act.

E. Undertakings

1. Respondent has undertaken to:

a. Retain, within forty-five (45) days of the date of this Order, at vFinance’s expense, an Independent Consultant, not unacceptable to the Commission’s staff, to conduct a review of vFinance’s existing procedures regarding its compliance with Section 5 of the Securities Act. The Independent Consultant will review whether the procedures have been effectively implemented, maintained, and followed. The Independent Consultant also will recommend such other procedures (or amendments to existing procedures), if any, as are necessary and appropriate to prevent and detect violative activity by traders and registered representatives. The Independent Consultant will submit, within 120 days of the date of this

Order, to vFinance and the Commission's staff, a written report (the "Initial Report") describing the review performed, his or her findings, and any recommendations;

b. Adopt and implement, within 150 days of the date of this Order, at vFinance's expense, such procedures recommended by the Independent Consultant in the Initial Report, except as set forth in Section III.E., paragraph 1.c., below;

c. Advise in writing, within 150 days of the date of this Order, the Independent Consultant and the Commission's staff, of the recommendations from the Initial Report it considers unnecessary or inappropriate, if any. vFinance shall propose an alternative procedure, designed to accomplish the same objective, for any procedure to which it objects. The Independent Consultant will evaluate reasonably such alternative procedure and, if appropriate, either approve the alternative procedure or amend his or her recommendation. The Independent Consultant will submit, within 180 days of the date of this Order, to vFinance and to the Commission's staff, a written report identifying the alternative procedures or amended recommendations, if any, of which he or she approves, the reasons for the Independent Consultant's decision, and the time period within which vFinance will adopt and implement them (the "Supplemental Report"). vFinance will abide by the decision of the Independent Consultant;

d. Cooperate fully with the Independent Consultant, including obtaining the cooperation of vFinance employees or other persons under vFinance's control;

e. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from the completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with vFinance, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission's staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with vFinance, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

2. Respondent has also undertaken to, in connection with this action and any related judicial or administrative proceeding commenced by the Commission or to which the Commission is a party: (i) agree to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials; (iii) appoint Respondent's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony

reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; (v) consent to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena; and (vi) consent to the production by any third party of any documents, records, or other information in the third party's possession, custody, or control that the Commission seeks from the third party, by subpoena or otherwise.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent vFinance's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent vFinance be, and hereby is, censured pursuant to Section 15(b)(4) of the Exchange Act;

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement in the amount of \$19,787 and prejudgment interest of \$6,772 to the Securities and Exchange Commission. Such payment shall be (1) made by United States postal money order, certified check, bank cashier's check, or bank money order; (2) made payable to the "Securities and Exchange Commission"; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter that identifies vFinance Investments, Inc. as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Room 8519, Washington, DC 20549-8549; and

C. Respondent vFinance shall comply with its undertakings enumerated in Section III.E., paragraphs 1 and 2, above.

By the Commission.

Nancy M. Morris
Secretary