

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016160002**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: vFinance Investments, Inc., Respondent
BD No. 44962

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

vFinance Investments, Inc. has been a FINRA member since September 1998. It has approximately 8 branches and employs approximately 40 registered individuals. At the time relevant to this matter, the firm's primary lines of business included retail equity sales, private placements and secondary offerings as well as proprietary trading and market-making. The firm is wholly owned by National Holdings Corporation.

RELEVANT DISCIPLINARY HISTORY

- The Securities and Exchange Commission brought administrative charges against Respondent and its then-president in January 2008 for failing to capture, preserve, and produce e-mail and instant messages sent to and from a firm employee who used an outside e-mail account. In November 2008, after a hearing, an SEC Administrative Law Judge held the firm liable for violations of Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4 thereunder. The firm was censured and fined \$100,000 for failing to retain and produce records pursuant to Sec. 17(a) of the Exchange Act and Rule 17a-4 thereunder, and was ordered to cease and desist



from committing further violations. Initial Decisions Release No. 360 (Nov. 7, 2008). The violations and sanctions were upheld by the SEC. Exchange Act Release No. 62448 (July 2, 2010).

- In 2005, the firm was sanctioned by the Securities and Exchange Commission in a settled matter for failing to supervise a trader who provided assistance to a stock promoter in a manipulation of the stock of a shell company. The firm was censured and ordered to pay a \$50,000 penalty. Exchange Act Release No. 51530 (Apr. 12, 2005).

OVERVIEW

In 2008, Respondent vFinance Investments, Inc. violated Rule 101 of Securities Exchange Act Regulation M by soliciting purchases of an issuer's stock by customers in the open market while Respondent was participating in a distribution of convertible debt on behalf of that issuer. In addition, the firm violated NASD Rule 3010(a) by failing to reasonably supervise the purchases of the stock during the distribution, and failed to disclose under NASD Rule 3070(a)(9) that it was engaged in business activities with a person who had been statutorily disqualified. Finally, Respondent failed to maintain certain e-mails sent to and from a registered representative using a private email account, thereby violating Section 17(a) of the Exchange Act, Exchange Act Rule 17a-4, NASD Rule 3110, and NASD Rule 3010.

FACTS AND VIOLATIVE CONDUCT

1. Regulation M Violations

In the spring of 2008, Respondent acted as the private placement agent for a placement of up to \$5 million in convertible notes issued by a company called PERF Go-Green Holdings, Inc. (PGOG). Between April 22, 2008 and June 10, 2008, 21 investors (19 of whom were Respondent's customers) invested a total of \$5,950,000 in the private placement.

The issuer was on the firm's restricted list for the duration of its participation in the offering. Notwithstanding this, 22 customers of two representatives in Respondent's New York office bought 255,300 shares of common stock of PGOG through accounts at Respondent during the restricted period. A number of the customers were solicited to buy the stock of PGOG while the firm was conducting the private placement described above.

Rule 101(a) of Regulation M, promulgated pursuant to Section 10(b) of the Securities Exchange Act of 1934, prohibits participants in a distribution from inducing or attempting to induce customers to purchase certain securities during the course of the

distribution. Regulation M is designed to prevent manipulative activities by persons with an interest in the outcome of an offering and prohibits activities and conduct that could artificially influence the market for an offered security. By virtue of the conduct described above, Respondent violated Regulation M, and thereby also violated NASD Rule 2110 (now FINRA Rule 2010).

2. Failure to Supervise

Respondent did not adequately supervise the purchases of stocks on the restricted list. The firm's procedures required it to monitor purchases of securities of issuers on its restricted list, including those for which it was conducting offerings. The firm failed to enforce those procedures adequately and instead authorized purchases of PGOG by customers without conducting an adequate inquiry into the facts and circumstances surrounding those purchases. Therefore, the firm failed to reasonably supervise activity in PGOG's stock in a manner reasonably designed to achieve compliance with Regulation M. Respondent thus violated NASD Rule 3010(a), and thereby also violated NASD Rule 2110 (now FINRA Rule 2010).

3. Failure to Disclose Involvement of a Statutorily Disqualified Person

An individual who had been subject to a statutory disqualification worked closely with employees of Respondent in connection with the private placement, communicating directly with Respondent's investment banking department and others. The individual was statutorily disqualified as a result of a bar from association with any broker/dealer, imposed in 2002.¹

NASD Conduct Rule 3070(a) (now FINRA Rule 4530) required during the relevant period that "Each member shall promptly report to the Association whenever such member or person associated with the member: ...(9) is associated in any business or financial activity with any person who is subject to a 'statutory disqualification' as that term is defined in the Act, and the member knows or should have known of the association. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification...." Subsection (b) further required the member to make such a report within 10 business days of learning of a condition set forth in subsection (a). Respondent never filed a report, as required by the provision, disclosing its business activities with this individual.

By virtue of that failure, Respondent violated NASD Conduct Rule 3070(a), and thereby also violated NASD Rule 2110 (now FINRA Rule 2010).

¹ The disqualification resulted from a criminal case in which the individual pled guilty to a charge of conspiracy to commit securities fraud by inducing unsuspecting investors to purchase speculative high risk securities through the use of fraudulent and deceptive sales practices and the concealment of such practices from regulatory authorities

4. Failure to Retain and Review Email Sent Through Outside Accounts

One of the registered representatives involved in the solicitation of purchases of PGOG used his personal e-mail account to solicit purchases of PGOG and for other business purposes from at least February 1 through June 12, 2008. He forwarded or addressed some of his securities-related e-mails to the firm e-mail addresses of several of Respondent's other employees including, in a few instances, managerial-level employees. Other than emails sent to or from other firm employees, the representative's emails were not captured by the firm's e-mail system for retention and review.

In January 2008, shortly before the events discussed herein, the Securities and Exchange Commission brought administrative charges against Respondent and its president for failing to capture, retain and produce e-mail sent to and from another firm employee who used an outside e-mail account and instant messaging. Respondent should therefore have been on heightened awareness of its obligations to supervise the use of external email accounts.

Section 17(a) of the Exchange Act requires broker-dealers to "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..." One of the rules implementing that section, Exchange Act Rule 17a-4(b)(4), requires broker-dealers to preserve "originals of all communications received and copies of all communications sent ... relating to its business as such" for three years. This requirement, which had been incorporated into NASD Rule 3110(a) (now FINRA Rule 4511), includes e-mail and other electronic communications.² Furthermore, NASD Rule 3110(c) (now FINRA Rule 4512) required firms to retain copies of all securities and investment banking related correspondence.

In addition, NASD Rule 3010(d)(2) requires that broker-dealers create and implement procedures reasonably designed to review incoming and outgoing securities-related and investment banking-related correspondence. The rule specifically includes electronic correspondence. The firm did not adequately supervise of employees' outside e-mail accounts, as required by NASD Rule 3010(d)(3).

By failing to retain emails, the firm violated Section 17(a) of the Exchange Act, Rule 17a-4 thereunder, and NASD Rules 3010(d), 3110, and 2110. By failing to review the emails, the firm violated NASD Rules 3010(d)(2) and 2110.

* * *

² *Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*, Exchange Act Release No. 38245, 1997 SEC LEXIS 266 (Feb. 5, 1997).

As a result of the foregoing conduct, Respondent vFinance Investments, Inc. violated Section 17(a) of the Securities Exchange Act of 1934, Rule 101 of Securities Exchange Act Regulation M (17 C.F.R. §242.101), Securities Exchange Act Rule 17a-4 (17 C.F.R. §242.17a-4), and NASD Rules 2110, 3010, 3070, and 3110.

B. Respondent also consents to the imposition of the following sanctions:

- 1) a censure; and
- 2) a fine of \$65,000.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which

FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

2/13/2013
Date

William Chavens
vFinance Investments, Inc.
By [name]: William Chavens
[title]: PRESIDENT

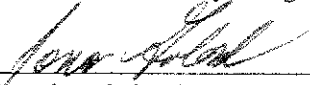
Reviewed by:

Jan Slinn
Jan Slinn, Esq.
Counsel for Respondent
Golbeck Roth, PLLC
1001 4th Ave., Suite 3200
Seattle, WA 98154

Accepted by FINRA:

March 1, 2013
Date

Signed on behalf of the
Director of ODA, by delegated authority



Jonathan Golomb
Senior Special Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20850

STATEMENT OF CORRECTIVE ACTION

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

This statement outlines the corrective action vFinance Investments, Inc. has taken relating to the matters covered by this AWC.

1. The activities resulting in this AWC took place in April, May and June 2008. The representative involved with the email violations was terminated in June 2008; the then President of the firm left in September 2008 and the Chief Compliance Officer left the firm in mid 2010.
2. The Firm no longer conducts investment banking activities, and only conducts institutional business.