

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015045191001**

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

RE: vFinance Investments, Inc. ("vFinance" or the "Firm"), Respondent
CRD No.44962

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, the Firm 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Firm 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 has been registered as a FINRA regulated broker-dealer since September 1998. The Firm's principal place of business is in Boca Raton, Florida. The Firm has approximately 36 registered representatives and six branch offices and conducts a general retail securities business.

OVERVIEW

In September 2014, vFinance conditioned settlement of a dispute with a customer on the customer's agreement to consent to, or not to oppose, a request for expungement of all reference to the customer dispute information from the individual respondent's Central Registration Depository ("CRD") record. FINRA Rule 2081 (the "Rule"), which became effective on July 30, 2014, prohibits conditioning settlement on a customer's agreement not to object to, or oppose any efforts to seek, expungement. As a result of its conduct, vFinance violated FINRA Rules 2081 and 2010.

From July 30, 2014 until May 5, 2015 (the "Relevant Period"), vFinance failed to have a supervisory system, including written procedures, reasonably designed to ensure compliance with FINRA Rule 2081. As a result, vFinance violated NASD

Rule 3010(a) from July 30, 2014 through November 30, 2014, FINRA Rule 3110(a) from December 1, 2014 until May 5, 2015, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Violation of FINRA Rules 2081 and 2010

FINRA Rule 2081, which became effective July 30, 2014, provides that “[n]o member or associated person shall condition or seek to condition settlement of a dispute with a customer on, or to otherwise compensate the customer for, the customer’s agreement to consent to, or not to oppose, the member’s or associated person’s request to expunge such customer dispute information from the CRD system.” A violation of FINRA Rule 2081 is inconsistent with high standards of commercial honor and just and equitable principles of trade and, therefore, also constitutes a violation of FINRA Rule 2010.

In or around December 2013, vFinance customer EB filed an arbitration with FINRA Dispute Resolution against the Firm and one of its former registered representatives, Jeffrey Howard Auerbach (“Auerbach”). On or around September 15, 2014, vFinance and Auerbach entered into a signed settlement agreement with EB (the “Settlement Agreement”). The Settlement Agreement prepared by the Firm’s counsel required that EB consent to the entry of an attached stipulated award containing a proposed order that “pursuant to FINRA Rule 2130, this arbitration and any reference to it shall be expunged from the records of each of the Respondents, including the Form U-4, and all other such records as maintained with the Central Registration Depository.” The Settlement Agreement prepared by the Firm’s counsel also required that EB “consent to the application for expungement.”

In January 2015, a FINRA arbitration panel held a hearing on Auerbach’s request for expungement. In April 2015, the arbitration panel denied Auerbach’s request for expungement and referred this matter to FINRA’s Department of Enforcement for investigation.

Through the foregoing, vFinance violated FINRA Rules 2081 and 2010.

Violation of NASD Rule 3010 and FINRA Rules 3110 and 2010

NASD Rule 3010(a), which was effective until November 30, 2014, and FINRA Rule 3110(a), which became effective on December 1, 2014, require Firms to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules. A violation of NASD Rule 3010 and FINRA Rule 3110 is inconsistent with high standards of commercial honor and just and equitable principles of trade and, therefore, also constitutes a violation of FINRA Rule 2010.

On July 25, 2014, vFinance became aware that the Securities and Exchange Commission had approved FINRA Rule 2081. In Regulatory Notice 14-31, FINRA announced that FINRA Rule 2081 was effective as of July 30, 2014. Despite the effective date of Rule 2081, the Firm failed to establish any systems or procedures to comply with the Rule from July 30, 2014 until May 5, 2015, ten months after the Rule's effective date. On May 5, 2015, vFinance finally implemented systems and procedures to address Rule 2081's prohibition.

Through the foregoing, vFinance violated NASD Rule 3010(a) (from July 30, 2014 through November 30, 2014) and FINRA Rules 3110(a) (from December 1, 2014 until May 5, 2015) and 2010.

- B. The Firm also consents to the imposition of the following sanctions:

A censure and a \$35,000 fine.

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

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm 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, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

The Firm 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

The Firm understands that:

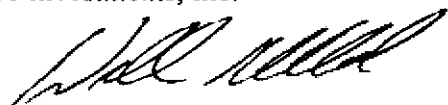
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
 - 1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. the Firm 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. The Firm 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 the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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 the Firm, 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 the Firm 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 the Firm to submit it.

vFinance Investments, Inc.

1/11/2016
Date (mm/dd/yyyy)

By: 

Reviewed by:



Richard Roth
Counsel for Respondent
The Roth Law Firm, PLLC
295 Madison Ave, 22nd Floor
New York, NY 10017
Phone: 212-542-8882

Accepted by FINRA:

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

1/26/16
Date


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