INITIAL DECISION RELEASE NO. 360
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12918

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	INITIAL DECISION AS TO
vFINANCE INVESTMENTS, INC.,	:	vFINANCE INVESTMENTS, INC.,
NICHOLAS THOMPSON AND	:	AND RICHARD CAMPANELLA
RICHARD CAMPANELLA	:	November 7, 2008

APPEARANCES: John S. Yun and Steven D. Buchholz for the Division of Enforcement, Securities and Exchange Commission

Carl F. Schoeppl of Schoeppl & Burke, P.A., and Adam H. Smith of Adam H. Smith, P.A. for Respondents vFinance Investments, Inc., and Richard Campanella

BEFORE: Robert G. Mahony, Administrative Law Judge

I. INTRODUCTION

The Securities and Exchange Commission (SEC or Commission) initiated this proceeding with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on January 3, 2008, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act).[1] Respondents vFinance Investments, Inc., (vFinance) and Richard Campanella (Campanella) (collectively, Respondents) filed a joint Answer on March 7, 2008.

The OIP alleges that from 2003 through 2006, vFinance failed to preserve and produce the customer correspondence of one of its registered representatives, Nicholas Thompson (Thompson), in willful violation of Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder. Additionally, the OIP alleges that Thompson willfully aided and abetted and caused vFinance's Section 17(a) violations by corresponding with customers using his personal email account and instant messaging, refusing to produce records when requested by the Division of Enforcement (Division), and destroying records that resided on his personal computer. Finally, the OIP alleges that Campanella willfully aided and abetted and caused vFinance's Section 17(a) violations by failing to restrain Thompson's use of personal email and

[1] Respondent Nicholas Thompson entered into a settlement agreement with the Division of Enforcement, which the Commission accepted. vFinance Investments, Inc., Exchange Act Release No. 58403 (Aug. 21, 2008).

instant messaging for customer communication, failing to design and enforce procedures to capture Thompson's communications, and failing to respond promptly to the Division's records requests.

The Division requests that vFinance and Campanella be ordered to cease-and-desist from committing any violations of the securities laws. In addition, the Division requests that Campanella be suspended for up to six months. Finally, the Division requests imposition of second tier civil penalties against both Campanella and vFinance, in the amounts of $30,000 and $100,000, respectively.

The undersigned held a two-day hearing in Miami, Florida, on July 21-22, 2008. The Division called four witnesses, including Campanella, from whom testimony was taken. The Respondents called two witnesses from whom testimony was taken. The findings and conclusions in this Initial Decision are based on the hearing record.[2] Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981.) All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision were considered and rejected.

II. FINDINGS OF FACT

A. Relevant Individuals and Entities

1. vFinance Investments, Inc.

vFinance is the wholly owned subsidiary of vFinance, Inc., a Delaware corporation. (Answer at 2; Tr. 299.) vFinance is a broker-dealer registered with the Commission pursuant to Exchange Act Section 15(b) and a member of the Financial Industry Regulatory Authority (FINRA). It is a Florida corporation with its principal executive offices in Boca Raton, Florida. It had approximately twenty-five branches and 125 registered representatives during the relevant period. Representatives in branch offices operated as independent contractors and were not employees of vFinance. Each branch was required to have a principal who possessed a Series 24 license. (Tr. 310-11.) The company had written supervisory procedures (WSPs) that delineated a clear chain-of-command to its branch offices. In addition, vFinance branches underwent audits to ensure compliance with regulations and firm policies. (Tr. 311-15.) The company retained fifteen percent of a branch's commissions from retail production. The branches were responsible for their own operating expenses, such as office supplies and computers. (Tr. 348-49.) In some cases, representatives were responsible for their own legal fees. (Tr. 147-48.)

[2] References in this Initial Decision to the hearing transcript are noted as "Tr. ___." References to the Division's Exhibits and Respondent's Exhibits are noted as "DX ___" and "RX ___," respectively.

2. Nicholas Thompson

Thompson was a registered representative associated with vFinance from 2002 until 2006. He worked in vFinance's branch located in Flemington, New Jersey. (Answer at 2.) He worked as a market-maker for the firm, trading in twenty to thirty companies. He was the only vFinance market-maker located outside of Boca Raton. (Tr. 71-72.) Additionally, Thompson worked as a retail broker, and thus an independent contractor, with vFinance. His retail brokerage clients included Hypo Alpe Bank of Liechtenstein (Hypo Bank) and Newport Capital. (Tr. 145-46; DX 84.) He began market-making for the common stock of a company called Lexington Resources, Inc. (Lexington), in late 2003. (Tr. 75-77.) Among other obligations, Thompson's contract required him to "maintain[] . . . all required books and records for his retail securities business." (DX 84.) Further, the contract required that he make those books and records available to the regulatory authorities and vFinance during normal business hours. (Tr. 148-49; DX 84.)

3. Richard Campanella

Campanella is a resident of Boca Raton, Florida. He is a registered representative associated with vFinance since 2001. During the relevant period[3] he served as Chief Operating Officer and Chief Compliance Officer of vFinance. In January 2006, Campanella assumed the post of President, and in July 2006 he became Chief Executive Officer. (Answer at 2.) Campanella's job was to oversee the implementation and execution of vFinance's WSPs. In addition, he was the company's liaison with the regulatory authorities. (Tr. 305-06.) Part of that role was ensuring the company complied with various regulatory requirements. (Tr. 140.) While Campanella was not Thompson's first-line supervisor for his retail brokerage business, he bore ultimate responsibility for overseeing him. (Tr. 317-19.) As Chief Compliance Officer, Campanella had the responsibility to ensure that the firm's business correspondence was retained. (Tr. 142-43.) Campanella has never been named as a respondent in any disciplinary proceeding by any securities regulator at any time in his twenty-five year career. (Tr. 324-25.)

4. William Groeneveld

William Groeneveld (Groeneveld) joined vFinance in approximately November 2001. He holds Series 7, Series 24, Series 27, Series 55, and Series 63 licenses. In early 2003, Groeneveld became the head of the company's wholesale trading unit. Part of his duties involved supervising vFinance's market-makers, including Thompson. (Tr. 70-71; 318.) Groeneveld monitored Thompson's trading activity in Lexington on at least a monthly basis. (Tr. 79.) While monitoring the trading activity, Groeneveld suspected that Lexington's shares were being manipulated. After Lexington's share price had dropped significantly, Groeneveld emailed Campanella and others raising the possibility of manipulation in Lexington stock. (Tr. 85-90; DX 67.) From June 24, 2004, through August 24, 2004, he sent Thompson a series of emails discussing his concerns. As chief of compliance, Campanella was included on the emails.

[3] The relevant period, for the purposes of this Initial Decision, begins October 1, 2003, and goes through April, 2007.

(Tr. 86-88; DX 67.) Groeneveld directed Thompson to stop taking inside bids for Lexington shares. (Tr. 87-88; DX 67.)

5. Leonard J. Sokolow

Leonard J. Sokolow (Sokolow) and a partner founded vFinance in or about 1999. (Tr. 298-99.) Sokolow has served as Chairman of the Board of vFinance since its inception. (Tr. 300.) He met Campanella in 2001 when he interviewed him, and hired him to be vFinance's Chief Compliance Officer. (Tr. 303-04.) Campanella reported directly to Sokolow, who was familiar with Campanella's responsibilities. (Tr. 305.)

6. Patrick Hayes

Campanella hired Patrick Hayes (Hayes) in March 2003 to audit vFinance's branch locations, along with other responsibilities. Hayes' prior experience as a broker-dealer branch examiner began in 1985 at Shearson Lehman Hutton, where he became a principal and served as Compliance Registered Option Principal. At the time, Shearson Lehman Hutton had approximately four hundred branch offices nationwide. (Tr. 367-71.) During his tenure at vFinance, which he left in 2006, he audited each of the company's branch offices. (Tr. 368, 372.) He reported directly to Campanella. (Tr. 378.)

B. Policies and Procedures at vFinance

1. Branch Audit Procedures and Record Retention Policies

In order to ensure branch office compliance with its WSPs and other state and federal regulations, vFinance sent Hayes to audit the branch offices. Hayes generated summary emails and audit reports that he submitted to Campanella. (Tr. 156-57, 311-13.) In 2003, Hayes' visits were announced to the branch ahead of time, but in 2004 the company changed its policy and had Hayes perform his audit with no advance notice to the branch. (Tr. 155-56, 373-74.) Hayes had input into the development of the audit procedures, but Campanella made the determination of which procedures he used. (Tr. 421.)

Hayes usually began an audit by interviewing the branch manager. He had an interview sheet that he reviewed with the branch manager. After the review, Hayes asked the manager to produce certain documents or entire customer files. Hayes also had a fourteen-page questionnaire for the branch manager to fill out. During the time the branch manager worked to fulfill Hayes' requests, he performed a walk-through observation of the office. (Tr. 374-78.) In 2004, the audit procedures were updated to include a review of any computers located at the branch. vFinance had a policy that only the vFinance email system be used for business purposes. (Tr. 314-15.) As part of its email policy, the branch manager audit questionnaire asked whether the vFinance employees were "using only vFinance email system for communicating with the public." (RX 83 at 367.13.) If Campanella knew of violations of the email policy or the instant message (IM) policy, it was his job to stop them. (Tr. 311-12.) Hayes checked computers for IM programs, and reviewed emails and word processing documents. (Tr. 376-78.) His review of the emails generally consisted of starting the Outlook email program,

and then looking at the sent and received items. He did not check to see if anyone used a web-based email account. (Tr. 419-20, 423.)

In fact, Thompson used a private web-based email account from the domain blast.net to communicate with vFinance employees on a few occasions. (Tr. 157-161; RX 5, DX 23, DX 87.) For example, on January 16, 2004, Thompson sent Campanella an email on Thompson's blast.net account. (RX 5.) Campanella responded and told Thompson to stop using this account. (Tr. 158.) Thereafter, on February 3, 2004, Thompson sent Campanella another email on the blast.net account. (RX 6.) Campanella again responded and told Thompson to stop using this account for vFinance communications or he would fine him. (Tr. 159; RX 6.) Thompson sent another email to Campanella on the blast.net account on March 8, 2004, and one of the items mentioned by Thompson was that he was liquidating a client's position in Lexington. (DX 87.)

Another blast.net email from Thompson to Campanella was sent on Saturday, September 17, 2005. In response, Campanella asked Mark Russell (Russell), a vFinance employee: "Can you get together with Nick [Thompson] and start capturing his emails from this domain?" (RX 32.) Campanella stated that blast.net emails sent to anyone at the firm would have been "captured" by vFinance, but if Thompson sent business emails to persons outside the company they would not have been captured. (Tr. 161-62.) However, Campanella wanted both business and personal email "captured" from this account. (Tr. 163.) The next day, September 18th, Thompson sent an email to Campanella advising that he had paid for the blast.net account only until the end of September and was closing it. (RX 32.)

According to vFinance's WSPs, the Chief Financial Officer bore immediate responsibility for record retention. (Tr. 141-42, 195.) The company promulgated various record retention WSPs. In August 2003, the company issued its WSP regarding IMs. The WSP noted that the National Association of Securities Dealers (NASD) stated the use of IM must be consistent with the practices employed for all other communication with the public, including email. (DX 80.) The WSP noted the difficulty in capturing outgoing IMs and the company's efforts to procure technology that would do so. Personnel were directed to print outgoing IMs and place them in the correspondence file or disable the computer's IM capability. The WSP then gave directions on how to print an IM. (DX 80.) vFinance procured a Write Once Read Many (WORM) drive that captured IMs. (Tr. 363.)

2. Audits of the Flemington Branch

Hayes audited the Flemington branch in 2003, 2004, and 2005. (Tr. 378.) In the course of his 2003 audit, which was announced in advance, Hayes reviewed both emails and IMs at the branch. Thompson represented that the IMs were only between him and other traders at vFinance. Thompson also verbally represented to Hayes that he was using only his vFinance email to communicate with the public, which Hayes' review confirmed. (Tr. 382-88.) Thompson's written answers to the branch manager questionnaire confirm that he used only vFinance email for communication with the public. (RX 83 at 367.13.) Thompson's use of IM remained an open item that Hayes referred to Campanella, which Campanella ultimately approved. (Tr. 388-91.)

Hayes conducted an unannounced audit of the Flemington branch in 2004, using the same procedures as 2003. (Tr. 392-93.) Thompson continued to assert that his IM activity was used only to communicate with traders and did not include public communication. (Tr. 396; RX 84 at 368.6.) Thompson also responded affirmatively on the branch manager questionnaire that he used only vFinance email to contact the public. (Tr. 397-99; RX 84 at 368.9.) Also, the 2004 audit revealed little contact with retail customers. Hayes saw nothing unusual about the absence of customer contact at an established branch such as Flemington. Such branches not proactively engaged in new business development had little customer contact. (Tr. 403-04.)

Similar to the 2004 audit, Hayes conducted an unannounced branch audit of the Flemington branch on September 28, 2005. He followed the same procedures, and used the same documentation, as employed in the previous audits. Thompson supplied the same affirmative answer to the question of whether he only used the vFinance email system for communication with the public. (Tr. 405-08; RX 85 at 369.10.) At least once, Hayes failed to realize that Thompson communicated with him using the blast.net email account. (Tr. 424-26; DX 81.) Regarding IM, Hayes noted that Thompson was the only branch manager that had IM capability on his computer, that the files were captured electronically at the branch, and that a review of the IMs revealed that Thompson used IM for trading, not communication with retail clients. (Tr. 409-10; RX 85 at 369.2.) No one at vFinance ever asked Hayes to look for blast.net email accounts at Thompson's office. (Tr. 425.) Thompson again signed an acknowledgement that day, asserting he complied with the vFinance Policies and Procedures Manual as well as federal and state securities laws. (Tr. 412-13; RX 85 at 369.25.)

3. Procedures for Responding to a Regulatory Request

Generally, regulatory requests for documents from vFinance were directed to Campanella. Upon receipt of the request, Campanella marked the request by hand, assigned a deadline, and delegated responsibility for collection of the documents in the request. He then emailed the request to the employees assigned to collect the documents. (Tr. 306-07.) Campanella followed this procedure when responding to requests from the Commission. (Tr. 308.) It was his job to ensure that the tasks he delegated were completed. (Tr. 333-34, 347.) Hayes was never involved in collecting documents pursuant to an SEC request. (Tr. 427.)

C. The Division's Request for Documents from vFinance

In July 2005, the Division contacted Campanella to apprise him of a forthcoming document request regarding Lexington. (Tr. 168-69.) By this time, Campanella knew that Groeneveld was concerned about possible manipulation of Lexington stock by Thompson. (Tr. 85-88; DX 67.) vFinance received a request for documents from the Division by facsimile and mail on July 18, 2005. The request was addressed to Campanella and was passed on by him to Groeneveld. (Tr. 73-74, 168-69; DX 1.) In essence, the Division requested that vFinance identify all employees involved in, and produce all books and records related to, its market-making activity in Lexington from October 1, 2003, to the date of the letter. (DX 1.) The request specifically identified two vFinance trading accounts, KT6-991678 and KTP-800937, in which the Division was interested. (DX 1.)

Thompson sent Campanella an email dated July 22, 2005, in which he stated that he did not have anything to send [to the Division] but asked that "all the correspondence between Billy [Groeneveld] and I be included." (Tr. 169-70; RX 14.) Although Groeneveld received the Division's first request, his responsibility covered market-making and not retail brokerage. Therefore, the portion of the request for client correspondence did not apply to him. Rather, Groeneveld focused on gathering the relevant trading reports generated by vFinance's trading system. (Tr. 93-95.) He sent emails to his staff on July 25 and August 1, 2005, which referenced "key accomplishments" from the prior week that included working on the response to the SEC in the Lexington matter. No detail was mentioned, but Campanella was included in the email. (RX 15, 16.)

On August 2, 2005, Campanella sent a letter to the Division that included responses to the Division's first request. The letter stated that Thompson was the registered representative involved with Lexington. Additional information, including monthly account statements for customers who traded in Lexington, was included on an enclosed compact disc. The letter further advised that Thompson represented that he had no correspondence, phone logs, or notes regarding Lexington. (RX 17.) The Division was further advised that vFinance would supply additional information on August 9, 2005. (RX 17.) Thompson's response did not surprise Campanella, as he did not think Thompson communicated with customers. (TR. 170-71.)

By August 17, 2005, the Division had received two productions from vFinance in response to its July 18th request. On this date, the Division sent vFinance a follow-up request by facsimile and mail for production of books and records not received in vFinance's initial production, and other material related to Thompson, such as his telephone records. With respect to telephone records, the request asked vFinance to "confirm whether vFinance has searched for all its phone records covering Mr. Thompson or any vFinance location in which Mr. Thompson was located between October 1, 2003 and July 18, 2005." The request was directed to Campanella, but he did not receive it until his return from New York to vFinance's home office in early September 2005. This second request also noted the Division's wish to make a forensic image of Thompson's computer hard drive, specifically asking for notification "as soon as possible whether vFinance will provide the staff access to such computers voluntarily, and if so, the location of all such computers." Campanella did not find that request to be extraordinary. (Tr. 96-97, 171-73; DX 4.) The next day, August 18, 2005, the Division sent Campanella a letter requesting that Thompson voluntarily provide testimony in the Lexington matter. (RX 23.)

On August 19, 2005, Groeneveld sent Thompson an email that instructed him to produce all the telephone records from the Flemington office in order to respond to the Division's request. He also instructed Thompson to produce all the contact information associated with account number KTP-800937, and to stop trading Lexington stock for that [the Hypo Bank] account. In telling Thompson to stop trading, Groeneveld understood that this was one of Thompson's most active accounts, but Groeneveld was concerned that the Division was looking into it. Campanella was copied on Groeneveld's email. (Tr. 97-99; DX 69.) On September 12, 2005, Campanella allowed the trading to resume in the Hypo Bank account. (DX 71.)

As Groeneveld attempted to collect these items from Thompson, Thompson became resistant. As a result, Groeneveld put restrictions on Thompson's trading activities. (Tr. 105-06;

DX 69.) Thompson responded in an email dated that same day, telling Groeneveld that he was copying files of the records at his office, that he had ordered the telephone records from the telephone company, and that he had other telephone and email records in hand. He informed Groeneveld that he would forward some material that day and the balance the following week. Additionally, he stated that he wanted the trading restriction to be lifted. (RX 25.)

On August 22, 2005, Groeneveld emailed Thompson a copy of the Division's second request, instructing Thompson to fully comply with the request. The email also informed Thompson that he should obtain advice from an attorney regarding any personal property at issue, such as his personal computer. Campanella was copied on the email. (Tr. 115-16; RX 21.)

On August 29, 2005, Thompson emailed Campanella, with a copy to Groeneveld, asking for a copy of vFinance's response to the Division's first request. He specifically asked for the emails that passed between him and Groeneveld regarding Lexington in 2004. He also asked for a copy of the Division's August 18, 2005, letter requesting his testimony. (RX 27 at vFinance-SEC 85.) The next day, he emailed Groeneveld, with a copy to Campanella, asking for substantially the same information, and to have his telephone records returned. (RX 27 at vFinance-SEC 92-93.)

On August 30, 2005, Groeneveld sent Thompson an email instructing him not to make his own production directly to the Division. He told Thompson to send the documents to the vFinance home office so that the company could make copies of Thompson's material before producing them. The email queried Thompson about his forthcoming response to the other items in the Division's request, asking when vFinance could expect the items or what Thompson's counsel had instructed him to do with regards to these other items. Groeneveld also told Thompson that Campanella was in New York, and that Thompson would get a copy of the Division's August 18, 2005, letter requesting his testimony when Campanella returned. He informed Thompson that the trading restriction was still in place and that Thompson should take the matter up with Campanella. (RX 27 at vFinance-SEC 87.)

Thompson responded to Groeneveld's email later that day, reiterating his request for the cover letter from vFinance's first response, the email exchange between him and Groeneveld regarding Lexington in 2004, and all materials from the first response, so that his attorney could respond to the Division. Campanella was copied on the email. Groeneveld sent an email to Campanella requesting that he direct someone to respond to Thompson, so that Thompson would "give the answers to comply with the request from the SEC." Groeneveld said that he would provide the emails from 2004 regarding Lexington to Thompson. (RX 27.) Two emails, with three attachments, were sent to Thompson by Groeneveld later that day. (RX 27 at vFinance – SEC 94-95.)

On August 31, 2005, Thompson replied to both Groeneveld and Campanella, asserting that Groeneveld's prior emailed attachments were not what he wanted, and did not reference Lexington trading. He reiterated his request for vFinance's first response and the emails from 2004. (RX 27 at vFinance–SEC 96.) Groeneveld replied to Thompson on September 1, 2005, stating that the 2004 emails were part of the first attachment he had sent and that he was

forwarding the email again. Groeneveld stated that in any event, Thompson should have saved the emails at his office. He told Thompson that the cover letter from vFinance's first production had nothing to do with Thompson's obligation to produce the materials requested by the Division's first and second requests, but that the cover letter would be forthcoming anyway. In a response dated that day, Thompson asserted to Groeneveld that he understood vFinance's email system captured his emails, and that he had no responsibility to keep them. Groeneveld responded that the firm captured emails sent through the firm's email accounts, but that it was Thompson's responsibility to keep copies of any emails sent over personal email accounts. (Tr. 117-18; DX 70; RX 27 at vFinance–SEC 97.) Thompson also emailed Groeneveld that day stating that he had received the recent email with the attachment that contained the 2004 emails. He reiterated his promise to send the telephone records and other documents to the vFinance home office when he got them. (RX 27 at vFinance–SEC 102.)

On September 6, 2005, the Division sent a letter by facsimile and mail to Robert G. Stevens, Esq. (Stevens), counsel to Thompson. The letter referenced a conversation between the Division and Stevens that occurred on August 24, 2005, in which Stevens apprised the Division that he was Thompson's counsel and that he had received the Division's document request and a further request that Thompson testify voluntarily. The letter requested that Thompson schedule a time to testify, that he produce substantially the same documents requested from vFinance in the first and second requests, and that he give the Division access to his computer for imaging the hard drive. The Division requested that Stevens notify them by September 12, 2005, whether Thompson would testify and whether he would make the computers available for imaging. (RX 28.)

On September 8, 2005, the Division sent a letter by facsimile and mail to Campanella requesting documents related to several trading accounts and the order management system reports[4] for Lexington during the relevant period. (DX 7.) On September 12, 2005, Jon Matthai (Matthai), vFinance's assistant compliance manager, replied for vFinance to the Division's second request of August 17th. The reply contained Thompson's telephone records for the relevant period, as well as the order management system reports for Lexington. (RX 29.) On September 16, 2005, vFinance produced more order management system reports regarding Lexington. (RX 31.) On September 22, 2005, vFinance produced documents related to the accounts listed in the Division's September 8, 2005, requests, as well as emails between Groeneveld and Thompson. (RX 33.)

On September 12, 2005, Stevens sent a letter to the Division, in response to the Division's letter of September 6, 2005. The letter noted that Stevens and the Division had "several telephone conversations" about the Lexington matter, to the effect that Thompson had forwarded documents to vFinance on September 8, 2005, for production in compliance with the Division's request, and asked for additional time in complying with "other requests." (DX 9.)

[4] vFinance employs a ticketless order entry system that tracks various trading data. The system generates various reports. These reports fulfilled the Division's request for order tickets and other trade data. (Tr. 95; DX 1.)

On September 22, 2005, the Division sent a letter by facsimile and mail to Stevens, stating that the Division had not received any paper or electronic correspondence regarding Thompson's communication with clients who were trading in Lexington stock. The letter acknowledged that vFinance produced telephone records. The letter asked that the Division be allowed to image Thompson's hard drive or be informed if Thompson would not cooperate in this matter. The letter also requested that Thompson testify in New York on October 13 and 14, 2005. (DX 11.)

On September 23, 2005, Stevens sent a letter to the Division noting receipt of the Division's September 22, 2005, letter. In the letter, Stevens acknowledged the Division's request, and stated that responsive documents were sent to vFinance but that he did not know what vFinance had produced. Stevens noted that in a conversation on September 21, 2005, he asked the Division to provide him with copies of vFinance's transmittal letters and a general inventory of the items produced, so that his client could avoid the expense of a double production. Stevens indicated that nonetheless, he would procure and produce copies of client correspondence regarding trading in Lexington stock. (RX 35.)

On September 30, 2005, Stevens sent a letter to the Division, noting that he had not received a response to his September 23, 2005, letter. The letter noted that he was forwarding Thompson's cellular telephone records from March 2003 through March 2005, and that he would continue to produce information as Thompson provided it to him. Stevens stated that Thompson was "having difficulties accessing some of the correspondence." (RX 37.)

On October 5, 2005, Stevens sent the Division a letter that included paper copies of email correspondence between Thompson and third parties regarding Lexington. The emails produced covered the period from March 28, 2005, until September 27, 2005. The letter also noted that Thompson was continuing his review and more documents were forthcoming. Lastly, the letter reiterated Stevens' request for an inventory of the documents produced by vFinance, or at least copies of the transmittal letters. (RX 41.) The majority of emails produced along with this letter were authored by Thompson and sent from his blast.net account. (DX 16.)

On the same day, the Division sent Stevens a letter in response to his letters of September 23 and September 30, 2005. The letter reiterated that no correspondence between Thompson and his clients who trade in Lexington stock had been produced. The letter acknowledged the production of telephone records, but noted that the records were produced without a summary of the contents or identifying markings. Also, the letter asked that Stevens inform the Division whether Thompson intended to voluntarily allow his computer hard drive to be imaged. (DX 15.) On October 7, 2005, Campanella sent a letter to the Division that included emails regarding Lexington. (DX 17.)

On November 10, 2005, the Division sent a letter by facsimile and mail to Campanella. The letter stated that the Division believed vFinance had not produced all responsive documents. Specifically, the Division believed that more IM and email communications regarding Lexington existed at Thompson's office that had not been produced. The letter also requested that the Division be given access to Thompson's computer so that it can image his hard drive. It requests the production of the missing emails and attachments, including

those for the months of April and July 2004. Other items requested in the letter include client account documents, client contact information, personnel listings for every vFinance employee involved in trading, market-making, or placing orders for Lexington stock, vFinance's penny stock compliance documents related to Lexington, the WSPs for the relevant period, and documentation about an internal review of Lexington's trading. (DX 18.)

On November 18, 2005, Matthai sent the Division a letter enclosing missing email attachments. The letter also stated that no responsive emails were found for April and July 2004. The letter noted that vFinance produced documents related to some of the accounts mentioned in the Division's November 10, 2005, letter, but some of the accounts did not exist at vFinance. The letter stated that Thompson is an independent contractor and therefore his computers are his personal property and were outside the control of vFinance. (RX 43.). Accordingly, Thompson's counsel had advised him not to make the computer hard drive available for imaging. The letter also provided client contact information. The letter concluded that "[t]o the best of our abilities vFinance Investments, Inc. certifies that it has conducted a search for all material and information responsive to all the staffs request." (sic) (RX 43 at SEC 04484.)

On December 22, 2005, the Division sent a letter to Matthai that asked for additional information including wire transfer documents, account documents for a specific account, and compensation amounts for three vFinance employees who received commissions in connection with the trading of Lexington stock. (RX 44.) On January 5, 2006, Matthai sent the Division an email that attached some of the requested account information. Matthai stated that vFinance would continue to work on the balance of the December 22nd request. (RX 45.) In a letter dated January 6, 2005 (sic), vFinance advised the Division that the checks it requested were in storage, and it was necessary to sort through in excess of fifty boxes to obtain them. (RX 47.) On January 10, 2006, Stevens sent the Division a letter that enclosed relevant emails. (RX 48.) By letter dated February 6, 2006, vFinance forwarded the remaining account information. (RX 50.)

On January 5, 2006, Campanella sent Thompson an email informing him that vFinance intended to terminate him for cause for his failure to produce documents and make his computer available to the SEC. The email noted that Thompson had provided assurances to vFinance that he was working with his attorney to fulfill the SEC's requests. (RX46.) On January 18, 2006, Thompson replied to Campanella that his attorney had not had any contact with the Division, and that as far as Thompson knew, he was in compliance. (RX 46 at vFinance-SEC 184.)

On July 21, 2006, the Division sent a subpoena to Adam Smith (Smith), vFinance's attorney, requesting, for the most part, documents that were requested in the letters to vFinance in July and August 2005. (DX 37.)

On January 18, 2007, the Division advised Smith by letter that the document production that began in July 2005 remained incomplete, as documents were still outstanding for accounts that traded Lexington shares. (DX 41.) On January 5, 2007, Campanella sent the Division copies of the 2004 and 2005 Flemington office audits. (RX 57.) On January 19th, Campanella sent the Division the 2003 audit of the Flemington branch. (DX 42.)

On January 31, 2007, Smith sent the Division a letter by facsimile advising that certain documentation would be provided that set out all transactions in Lexington stock for the period October 1, 2003, through July 21, 2006. The letter went on to state, "Finally, we will be providing all emails sent by or to Nick Thompson, using his vFinance.com email address, during the requested time period." Smith apologized for any misunderstanding about previous document requests: "I believe that vFinance intended to fully comply with your requests, and I expect that you will receive complete production of the above referenced documents on or before Tuesday, February 6, 2007." (DX 43.) However, when production of the emails was made, it appeared to be incomplete. For October 2003, eleven of Thompson's emails were produced. None were produced for the period October 29 to December 8, 2003. Thirteen of Thompson's emails on January 2, 2004, were produced, but none for the period January 7 to February 16, 2004. Four emails were produced for the period March 4 to July 19, 2004. (DX 88.) On February 8, 2007, Smith emailed to the Division the IMs vFinance had retained for Thompson, but the emails were only for August 2005. (DX 45.)

Also, on January 31, 2007, Campanella emailed Matthai, Russell, and Tess Vaughan (Vaughan), telling them that "[t]his request must be completed ASAP, even if it means using people from other departments or hiring temps." Campanella requested the collection of "[a]ll emails from and to Nick Thompson." Later that day, Russell emailed Campanella that all firm email records had been searched, retrieved, and stored. Vaughan emailed Campanella that she performed a diligent search of seventeen accounts for client documents and statements for the period October 2003 to July 2006. (RX 61 at vFinance 269, 273-74.)

In March 2007, Campanella went to Thompson's office to look for documents that were responsive to the Division's requests. Other than an audit visit by Hayes in 2005 that did not involve looking for responsive documents, this was the first time anyone from vFinance went to Thompson's office to look for such documents. Although Thompson was no longer an employee of vFinance, he met Campanella at the office and let him in. Campanella copied all documents he could find pertaining to Lexington and turned them over to the Division on April 16, 2007, even though they may have been produced previously. (Tr. 189-92; DX 48.)

D. Thompson's Destruction of Records

On February 10, 2006, the Division wrote to Stevens confirming that Thompson agreed to allow the Division to image the electronic storage devices for each computer used by Thompson to search for correspondence, trading, or activity otherwise related to Lexington between October 1, 2003, and September 6, 2005. The imaging process took place on February 14, 2006, by SEC information technology employee Frederico Campbell (Campbell) (Tr. 205-06, 209; DX 94; RX 51.)

Campbell returned the imaged hard drive to his laboratory at the SEC and performed a forensic examination of the image. As he examined the unallocated space,[5] he determined that it

[5] Unallocated space refers to space on the hard drive that is available for use by the computer's operating system. Once a user deletes a file, it may still exist as an artifact in the unallocated space. (Tr. 215-16.)

contained a pattern, and not the normal random data dispersal. (Tr. 214-16; DX 95.) Further examination revealed that on November 11, 2005, the computer downloaded a program capable of destroying artifact data residing in the unallocated space. When Campbell ran the data destruction program on another hard drive, the pattern matched the one he discovered on Thompson's hard drive. (Tr. 216-17; DX 95 at SEC 24597.) Upon completion, the program displays a dialog box that says, "Congratulations! You have successfully free space wiped your drive. Data that has been previously erased will be unrecoverable." The same message was found on Thompson's hard drive. (Tr. 220-21; DX 95 at SEC 24597.) Campbell's examination also discovered Thompson's hard drive had been reformatted, and the operating system had been reinstalled, on November 7, 2005. (Tr. 219-22.) Additionally, the examination revealed that Thompson had accessed two other computers using the computer that he made available to the SEC. (Tr. 221; DX 95 at SEC 24597-98.) Finally, the examination recovered emails from both before and after the November 7, 2005, hard drive reformatting and the date of the imaging, but did not recover any IMs with a date prior to November 7th. (Tr. 221-25; DX 95 at SEC 24598.)

The SEC hired Warren G. Kruse II (Kruse) of Encore Legal Solutions, Inc., to review the hard drive image and render an opinion about what had been done to the drive. (Tr. 246-47; DX 97A.) His findings confirmed that a program capable of destroying artifact data in unallocated space was installed on the hard drive on November 16, 2005. (Tr. 264-65; DX 97A at 2.) In addition, he found that on February 4, 2006, the Nicholas Thompson user account ran the program Disk Defragmenter, which is also a destructive program. (DX 97A at 3.) The program Disk Cleanup, also a data destruction program, was run by the Nicholas Thompson user account on February 11, 2006. That action destroyed temporary Internet files that would have retained data about web-based email account use. (Tr. 266-67; DX 97A at 3.) Also, Kruse discovered that Thompson's email was configured to download emails from the vFinance server instead of making a copy and leaving the email on the server. One of the effects of this setting is that vFinance may not have captured all correspondence sent to Thompson's work email before vFinance changed email systems in July 2005. (Tr. 269; DX 97A at 4.)

Kruse's analysis further disclosed that for October 2003, vFinance produced only eleven emails sent by Thompson. No emails sent by Thompson were produced for the period October 29 to December 9, 2003. Thirteen emails sent by Thompson on January 2, 2004, were produced, but none were produced for the period January 7 to February 16, 2004. Finally, for the period March 4 to July 19, 2004, only four emails sent by Thompson were produced. Through at least the summer of 2005, Thompson used his Outlook Express program for his vFinance.com emails. The program had a capacity of 850 megabytes, and all but twenty-five emails were deleted. (DX 97A at Opinion 4.)

In November 2005, Thompson deleted his AOL and Yahoo IM chat logs that related to Thompson's trading including Lexington. Kruse determined that 375 chat logs existed for the four-month period November 8, 2005, to February 14, 2006. However, only 148 existed for the ten-month period January 3 to November 4, 2005. (DX 97A at Opinion 7.) Thompson's hard drive had 208 blast.net emails with a computer "creation date" of November 29, 2005. They relate to Lexington for the period February 2004 to August 2005. Kruse opines that Thompson saved these emails to another hard drive and then reloaded them onto his reformatted hard drive

on November 29, 2005. The report also concludes that Thompson used multiple internet-based IM programs, including his blast.net account, for work-related purposes. (DX 97A at 6-8.)

III. CONCLUSIONS OF LAW

A. vFinance's Violations of Exchange Act Section 17(a)(1) and Rules 17a-4(b)(4)and 17a-4(j)

vFinance is alleged to have committed primary violations of books and records provisions of the Exchange Act. Section 17(a)(1) requires, in pertinent part, registered brokers or dealers to make and keep for prescribed periods records that the Commission deems necessary or appropriate in the public interest for the protection of investors. 15 U.S.C. § 78q(a)(1). Exchange Act Rule 17a-4(b)(4) requires a broker-dealer to maintain for at least three years all business communications with the public and, for the first two years, in an easily accessible place. 17 C.F.R. § 240.17a-4(b)(4). Exchange Act Rule 17a-4(j) provides that "[e]very member, broker, or dealer subject to this section shall furnish promptly to a representative of the Commission such legible, true and complete copies of those records of the member, broker or dealer, which are required to be preserved under this section, as are requested by the representative of the Commission." 17 C.F.R. § 240.17a-4(j).

The initial request from the Division for documents and other information for trading in Lexington stock was sent to vFinance on July 18, 2005. Campanella delegated the production task to Thompson. (Tr. 166; DX 1.) Although there were additional requests from the Division and numerous responses from vFinance over the following months, the production remained incomplete as late as January 31, 2007. On that date, vFinance counsel wrote to the Division and advised that documentation of all transactions in Lexington stock for the period October 1, 2003, through July 21, 2006, would be provided by February 6, 2007. Counsel further indicated that vFinance would provide all emails sent by or to Thompson using his vFinance email account.

Also on January 31, 2007, Campanella emailed vFinance staff and said, "[t]his request must be completed ASAP, even if it means using people from other departments or using temps." (RX 61 at vFinance 269.) Therefore, any additional production by Campanella was unjustifiably delayed about eighteen months after the Division's initial request. This extraordinary length of time to produce documentation is clearly not what the plain language of the statute and rules contemplate. Therefore, I conclude that vFinance did not maintain the required information in an easily accessible place for two years and did not turn it over to the Division promptly as required by Exchange Act Section 17(a)(1) and Rules 17a-4(b)(4) and 17a-4(j).

In addition to its failure to produce the relevant books and records in a timely manner, the evidence conclusively establishes that vFinance is also responsible for Thompson's destruction of many relevant documents that he improperly created in his personal blast.net email account for vFinance business purposes. (DX 97A at Opinion 8.) The destruction of the documents obviously prevented them from being retained and provided to the Division.

Because vFinance can only act through its agents, the common law doctrine of respondeat superior serves as a basis for vicarious liability of a broker-dealer in matters brought under the Exchange Act. See A.J. White & Co. v. SEC, 556 F.2d 619, 624 (1st Cir. 1977); Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1576-77 (9th Cir. 1990). A broker-dealer cannot escape vicarious liability simply because the registered representative is an independent contractor. See id. at 1574. However, a broker-dealer is liable for the actions of its registered representative only if the representative was acting within the scope of his representative status. Tatum v. Legg Mason Wood Walker, Inc., 83 F. 3d 121, 123 (5th Cir. 1996).

I conclude that Thompson was acting within the scope of his employment as a registered representative and a branch manager of vFinance when he improperly communicated with customers using his blast.net email account. Communication with vFinance customers was authorized only with vFinance computer systems. (Tr. 158-59.) Thereafter, Thompson willfully[6] failed to preserve these customer documents that related to Lexington as required by Section 17(a)(1) and Rule 17a-4(b)(4).

I further conclude that Thompson was acting within the scope of his employment at vFinance when he willfully undertook to delay the prompt production of his computer for imaging of the hard drives by the Division, as required by Rule 17a-4(j), until February 2006. The Division's request to have access to Thompson's computer was made on August 17, 2005. (Tr. 205-06, 209; DX 4, RX 51.) This request brought the responsibility to ensure the safe keeping and production of Lexington documents located at the Flemington branch within the scope of Thompson's duties as branch manager. Thompson's acts are imputed to vFinance. See Hollinger, 914 F.2d at 1576-77. Thus, I conclude that vFinance willfully violated Section 17(a)(1) of the Exchange Act, and Exchange Act Rules 17a-4(b)(4) and 17a-4(j).

B. Campanella's Aiding and Abetting; Causing

Campanella is alleged to have willfully aided and abetted vFinance's books and records violations. For "aiding and abetting" liability under the federal securities laws, three elements must be established: (1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. See Graham v. SEC, 222 F.3d 994, 1000 (D.C. Cir. 2000); Woods v. Barnett Bank of Ft. Lauderdale, 765 F.2d 1004, 1009 (11th Cir. 1985); Investors Research Corp. v. SEC, 628 F.2d 168, 178 (D.C. Cir. 1980); IIT v. Cornfeld, 619 F.2d 909, 922 (2d Cir. 1980); Woodward v. Metro Bank of Dallas, 522 F.2d 84, 94-97 (5th Cir. 1975); SEC v. Coffey, 493 F.2d 1304, 1316-17 (6th Cir. 1974); Russo Sec. Inc., 53 S.E.C. 271, 278 & n.16 (1997); Donald T. Sheldon, 51 S.E.C. 59, 66 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995); William R. Carter, 47 S.E.C. 471, 502-03 (1981). Inaction is insufficient to

[6] "Willfully" as used in this Initial Decision means intentionally committing the act which constitutes the violation. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

demonstrate substantial assistance unless the inaction furthers the primary violation. SEC v. Treadway, 430 F. Supp. 2d 293, 339 (S.D.N.Y. 2006).

A person cannot escape aiding and abetting liability by claiming ignorance of the securities laws. See Sharon M. Graham, 53 S.E.C. 1072, 1084 n.33 (1998), aff'd, 222 F.3d 994 (D.C. Cir. 2000). The "knowledge or awareness" requirement can be satisfied by recklessness when the alleged aider and abettor is a fiduciary or active participant. See Ross v. Bolton, 904 F.2d 819, 824 (2d Cir. 1990); Cornfeld, 619 F.2d at 923, 925; Rolf, 570 F.2d at 47-48; Woodward, 522 F.2d at 97. That is, it must be established that a respondent either acted with knowledge or that he "encountered 'red flags' or 'suspicious events creating reason for doubt' that should have alerted him to the improper conduct of the primary violator," or if there was a danger so obvious that he must have been aware of it. Howard v. SEC, 376 F.3d 1136, 1143 (D.C. Cir. 2004). If Campanella ignored red flags or suspicious events that indicated a primary violation was occurring, or if the danger of the primary violation was so obvious that he must have been aware of it, he possessed the requisite scienter. Id.

It was obvious to Campanella that cooperation by Thompson to produce the required documentation was not forthcoming. Campanella waited almost six months after the Division's request in July 2005 to threaten Thompson with termination. On January 5, 2006, Campanella emailed Thompson that he would be terminated for cause for failure to produce documents and make his computer available to the Division. (RX 46.) However, it was not until August 4, 2006, that Thompson resigned. (RX 93.) It appears that Campanella never terminated him as the January 5, 2006 letter intimated. This inaction in dealing promptly with Thompson's stalling on document production substantially furthered the delay by vFinance in complying with the Division's requests. In addition, Campanella, as the chief compliance officer, did virtually nothing to generate prompt action by vFinance to get the documentation until January 31, 2007, when he emailed the staff to complete the search "ASAP." Finally, Campanella never designated anyone besides Thompson to collect relevant documents from the Flemington branch. (Tr. 166-67.) No one from vFinance visited the Flemington office until Campanella went there in March 2007, which was long after Thompson had resigned. (Tr. 189-92; RX 93.)

Campanella's inaction substantially assisted Thompson's improper use of his personal email account for business purposes and it substantially assisted the destruction by Thompson of documents that vFinance was required to retain. As early as January 2004, Campanella knew that Thompson used his blast.net email account for business purposes because he received emails from that account. Although he told Thompson to stop using the account in February 2004, Campanella received another email from the same account. This time Campanella told Thompson to stop using the blast.net account or he would fine him. However, there is no evidence that Campanella fined Thompson for continued use of the blast.net account that apparently was not closed until September 2005. At that time, Campanella directed that all Thompson's emails from the blast.net account be captured, but, again, there is no evidence that he ever followed through on that order. I conclude that Campanella substantially assisted vFinance's primary violations. I further conclude that he acted with the requisite scienter. Campanella knew vFinance was committing the primary violations discussed above and failed to act to prevent them.

For "causing" liability, three elements must be established: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the respondent knew, or should have known, that his conduct would contribute to the violation. Robert M. Fuller, 56 S.E.C. 976, 984 (2003), pet. denied, No. 03-1334 (D.C. Cir. 2004). A respondent who aids and abets a violation also is a cause of the violation under the federal securities laws. See Graham, 53 S.E.C. at 1085 n.35. Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. See KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1175 (2001), recon. denied, 74 SEC Docket 1351 (Mar. 8, 2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002), reh'g en banc denied, 2002 U.S. App. Lexis 14543 (July 16, 2002). Because I have concluded that Campanella aided and abetted vFinance's violations, he is also a cause of the violations.

IV. SANCTIONS

1. Cease-and-Desist Orders

Section 21C(a) of the Exchange Act authorizes the Commission to impose a cease-and-desist order on any person that is, was, or would be a cause of a violation, due to an act or omission the person knew or should have known would contribute to such violation. 15 U.S.C. § 78u-3(a). The Division is requesting cease-and-desist orders be imposed on both vFinance and Campanella.

I have already concluded that vFinance willfully violated Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder, and that Campanella willfully aided and abetted and caused vFinance's violations. Therefore, I must now determine whether cease-and-desist orders are appropriate.

In making this determination, the Commission considers the following factors:

> [T]he egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that the respondent's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). No one factor controls. See SEC v. Fehn, 97 F.3d 1276, 1295-1296 (9th Cir. 1996).

In addition to the Steadman factors discussed above, in determining whether to impose a cease-and-desist order, the Commission considers whether there is a risk of future violations, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings. KPMG Peat Marwick, 54 S.E.C. at 1183-89. The Commission explained that the Division must show some risk of future violations. Id. However, it also ruled that such a showing should be "significantly less than that required for an injunction," and that, "absent evidence to the contrary," a single past violation ordinarily suffices to raise a sufficient risk of future violations. Id. at 1185, 1191.

I agree with the Division that vFinance's conduct was egregious and willful. Thompson, whose behavior is imputed to vFinance, was more than just a rogue representative. He was a branch manager, and a market maker at vFinance. His actions display a total disregard for the Commission's books and records requirements. He also engaged in a deliberate attempt to frustrate a Commission investigation. These illegal acts injure the marketplace and frustrate the Commission's investigative responsibilities. vFinance has provided no assurance against future violations. A broker-dealer as large as vFinance will continue to have interactions with the Commission on an ongoing basis. Imposing a cease-and-desist order on vFinance will ensure that the organization takes its obligations to the Commission more seriously.

I also agree with the Division that Campanella's conduct was egregious and willful. Campanella barely sought to check Thompson's use of personal email for business purposes, and only did so by threatening to fine Thompson. Most egregiously, Campanella never dispatched anyone to collect documents responsive to the Lexington investigation. Instead, he relied on Thompson, who was a target of the investigation, to collect documents on behalf of vFinance. The harm to the marketplace is similar as for vFinance. The Commission's ability to effectively police the marketplace is hamstrung when a broker-dealer's management shirks its duty. Campanella has provided no assurances against future violations and has not recognized the wrongfulness of his conduct. He relies on a defense based on delegation of tasks. Delegation, however, is insufficient without effective follow-up which he failed to do in any meaningful way. Campanella has moved to the top of vFinance's management structure, and a cease-and-desist order will ensure that he enforces the Commission's rules.

2. Censure of Campanella

Section 15(b)(4)(E) of the Exchange Act permits the Commission to sanction persons associated with a broker or dealer if it finds that the sanction is in the public interest and such persons have willfully aided and abetted violations of the Exchange Act, or the rules and regulations thereunder. Id. § 78o(b)(4)(E). Specifically, the Commission may censure a broker or associated person, place limitations on the activities or functions of such person, suspend such person for a period not exceeding twelve months, or bar such person from being associated with a broker or dealer. Id. § 78o(b)(4)(A). The Division has requested the Campanella be suspended for up to six months. Campanella has never faced any disciplinary action from any regulatory agency. I decline to suspend Campanella, but I censure him for his failure to act in this matter to ensure compliance with the statutory and regulatory requirements described above.

3. Civil Penalties as to vFinance and Campanella

As a further sanction, the Division seeks second-tier penalties pursuant to Section 21B of the Exchange Act. 15 U.S.C. § 78-u2(a). Civil monetary penalties may be assessed if a Respondent has willfully violated or aided and abetted a violation of the Exchange Act or the rules and regulations thereunder. Id. at § 78-u2(a)(1)-(2). Imposition of a penalty must be in the public interest. To determine if a civil monetary penalty is in the public interest, the following factors are considered: (1) presence of fraud and deceit and disregard for the regulatory requirement; (2) presence of harm to others; (3) whether there was unjust enrichment; (4) prior

violations; (5) deterrence; and (6) other matters that justice may require. Id. at § 78-u2(c). Not all factors may be relevant in a given case, and the factors need not carry equal weight.

Section 21B(b) of the Exchange Act sets out a three tier system to determine the civil monetary penalties. Id. at § 78-u2(b). The maximum amount of a second tier penalty is $50,000 for a natural person and $250,000 for a corporation. To impose a second-tier penalty, the violations must have involved fraud, deceit, manipulation or a deliberate or reckless disregard of a regulatory requirement. 15 U.S.C. §§ 78-u2(b)(2). The violations that vFinance and Campanella committed did involve a reckless disregard for the regulatory requirements. I grant the Division's request and impose second-tier civil penalties against vFinance and Campanella, in the amounts of $100,000 and $30,000, respectively. Both have displayed a disregard for regulatory requirements, and civil penalties will serve to deter both from future violations of the securities laws. No evidence has been presented suggesting inability to pay. See id. at § 78-u2(d).

CERTIFICATION OF THE RECORD

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on September 16, 2008.

ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED THAT, pursuant to Section 21C of the Securities Exchange Act of 1934, vFinance Investments, Inc., shall cease-and-desist from committing or causing any violations or future violations of Section 17(a) of the Securities Exchange Act of 1934, and Rules 17a-4(b)(4) and 17a-4(j) thereunder;

IT IS FURTHER ORDERED THAT, pursuant to Section 21C of the Securities Exchange Act of 1934, Richard Campanella, shall cease-and-desist from aiding and abetting or causing any violations or future violations of Section 17(a) of the Securities Exchange Act of 1934, and Rules 17a-4(b)(4) and 17a-4(j) thereunder;

IT IS FURTHER ORDERED THAT, pursuant to Section 15(b)(4)(E) of the Securities Exchange Act of 1934, Richard Campanella is censured;

IT IS FURTHER ORDERED THAT, pursuant to Section 21B of the Securities Exchange Act of 1934, vFinance Investments, Inc., shall pay a civil monetary penalty in the amount of ONE HUNDRED THOUSAND DOLLARS ($100,000); and

IT IS FURTHER ORDERED THAT, pursuant to Section 21B of the Securities Exchange Act of 1934, Richard Campanella shall pay a civil monetary penalty in the amount of THIRTY THOUSAND DOLLARS ($30,000).

Payment of the money penalty and disgorgement shall be made on the first business day following the day this Order becomes effective by certified check, U.S. Postal money order, bank cashier's check, or bank money order payable to the Securities and Exchange Commission. The check and a cover letter identifying the Respondent and Administrative Proceeding No. 3-12918, should be delivered by hand or courier to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. A copy of the cover letter and the instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact, or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Robert G. Mahony
Administrative Law Judge