

VFINANCE INC  
Form S-1/A  
February 01, 2008

As filed with the Securities and Exchange Commission on January February 1, 2008.

Registration No. 333-138658

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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AMENDMENT NO. 2  
TO  
FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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**vFinance, Inc.**

(Exact name of Registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**6200**  
(Primary Standard Industrial  
Classification Code Number)

**58-1974423**  
(I.R.S. Employer  
Identification No.)

**3010 North Military Trail  
Suite 300  
Boca Raton, FL 33431  
(561) 981-1000**  
(Address and telephone number of principal executive offices)

**Leonard J. Sokolow  
Chief Executive Officer  
3010 North Military Trail  
Suite 300  
Boca Raton, FL 33431  
(561) 981-1000**

(Name, address and telephone number of agent for service)

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**with copies to:  
Leslie J. Croland, Esq.**

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**Fort Lauderdale, Florida 33334-3607**  
**(954) 727-2600**

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**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

#### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be registered (1)	Proposed maximum offering price per unit (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee (2)
Common Stock, \$.001 par value per share	4,935,502	\$ 0.18	\$ 888,390.36	\$ 28

(1) Includes up to 4,935,502 shares of the Registrant's common stock issued to the Selling Stockholder, as defined in the accompanying prospectus, on May 11, 2006. Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), to the extent additional shares of Registrant's common stock may be issued or issuable as a result of a stock split, stock dividend or other distribution declared at any time by the Registrant while this registration statement is in effect, this registration statement is hereby deemed to cover all such additional shares of common stock.

(2) Estimated solely for purposes of calculating the registration fee according to Rule 457(c) under the Securities Act of 1933, as amended, on the basis of the average of the high and low prices of the Registrant's common stock reported on the Over-the-Counter Bulletin Board on January 24, 2008. The Registrant previously paid \$293 in connection with this Registration Statement originally filed on November 13, 2006.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.**



The information in this prospectus is not complete and may be changed. The Selling Stockholder may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED FEBRUARY 1, 2008**

**PROSPECTUS**

**vFinance, Inc.**

**4,935,502 Shares of  
Common Stock**

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This prospectus relates to the resale, from time to time, of up to 4,935,502 shares of our common stock by the selling stockholder named in this prospectus in the section "Selling Stockholder," whom we refer to in this document as the "Selling Stockholder." The 4,935,502 shares of common stock registered for public resale pursuant to this prospectus were issued to Sterling Financial Group of Companies, Inc. as partial payment for certain assets acquired from Sterling Financial Group of Companies, Inc. and Sterling Financial Investment Group, Inc. by our subsidiary, vFinance Investments, Inc. All of the shares of our common stock are included in this prospectus pursuant to registration rights we granted to the Selling Stockholder. The common stock offered by this prospectus shall be adjusted to cover any additional securities as may become issuable to prevent dilution resulting from stock splits, stock dividends or similar transactions. We will not receive any of the proceeds from the sale of any of the shares covered by this prospectus. References in this prospectus to "the Company," "we," "our," and "us" refer to vFinance, Inc.

Our common stock is traded on the Over-the-Counter Bulletin Board under the symbol "VFIN." On January 24, 2008, the last reported sale price for our common stock was \$0.18 per share.

**An investment in shares of our common stock involves a high degree of risk. You should carefully consider the "Risk Factors" beginning on page 2 before you decide whether to invest in shares of our common stock.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

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**vFinance, Inc.  
3010 North Military Trail  
Suite 300  
Boca Raton, FL 33431  
(561) 981-1000**

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**The date of this prospectus is \_\_\_\_\_, 2008**



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**You should rely only on the information contained or incorporated by reference in this prospectus and in any accompanying prospectus supplement. We have not authorized anyone to provide you with different information.**

**We have not authorized the Selling Stockholder to make an offer of these shares of common stock in any jurisdiction where the offer is not permitted.**

**You should not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the front of the documents.**

## PROSPECTUS SUMMARY

*This summary calls your attention to selected information in this prospectus, but may not contain all the information that is important to you in deciding whether to invest in our common stock. For a more complete description of this offering, and to understand this offering more fully, you should read this entire document carefully, including the "Risk Factors" and the documents referred to under "Where You Can Find More Information."*

### **The Company**

vFinance, Inc. was incorporated in the state of Delaware in February 1992. We are a financial services company that specializes in high growth opportunities. Our three principal lines of business are: (1) offering full service retail brokerage to approximately 12,000 high net worth individuals and institutional clients, (2) providing investment banking and advisory services to micro, small and mid-cap high growth companies, and (3) trading securities, including making markets in over 3,500 micro and small-cap stocks and providing liquidity in the United States Treasury marketplace. In addition to our core business, we offer information services on our website. vFinance Investments, Inc. ("vFinance Investments") and EquityStation, Inc. ("EquityStation"), both subsidiaries of the Company, are broker-dealers registered with the Securities and Exchange Commission ("SEC"), and members of Financial Industry Regulatory Authority ("FINRA") (formerly the National Association of Securities Dealers) and Securities Investor Protection Corporation ("SIPC"). vFinance Investments is also a member of the National Futures Association ("NFA").

Our website, [www.vfinance.com](http://www.vfinance.com), is available to an audience of entrepreneurs, corporate executives and private and institutional investors in over 150 countries with an estimated 35,000 unique visitors monthly. The website provides sales leads to our investment banking, brokerage and institutional services divisions, giving visitors convenient access to a variety of financial services, proprietary business development tools, searchable databases and daily news. The website has over 60,000 "opted in" subscribers that receive a newsletter on private funding several times a week. The website features our database of venture capital firms and angel investors accessible with vSearch, a proprietary web-based data mining tool that allows entrepreneurs to search potential funding sources by different criteria, including geography, amount of funds required, industry, stage of corporate development or keyword. Much of the information on the website is provided free of charge, however, we charge nominal fees for the use of proprietary search engines and premium services such as our business planning services.

### **The Offering**

This prospectus relates to the offer and sale from time to time of up to 4,935,502 shares of our common stock by the Selling Stockholder. We are also registering for sale any additional shares of common stock which may become issuable by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration, which results in an increase in the number of outstanding shares of our common stock.

The Selling Stockholder may sell these shares in the over-the-counter market or otherwise, at market prices prevailing at the time of sale, at prices related to the prevailing market price, or at negotiated prices. We will not receive any proceeds from the sale of shares by the Selling Stockholder.

As of January 24, 2008, there were 54,829,876 shares outstanding, including the 4,935,502 shares of our common stock offered by the Selling Stockholder pursuant to this prospectus. The number of shares offered by this prospectus represents approximately 9.0% of the total common stock outstanding as of January 24, 2008.

### **Recent Developments**



On November 7, 2007, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with National Holdings Corporation ("National") and vFin Acquisition Corporation ("Merger Sub"), a wholly owned subsidiary of National. Under the terms and subject to the conditions set forth in the Merger Agreement, which has been unanimously approved by the special committees of our board of directors and National's board of directors, as well as our board of directors and the boards of directors of National and Merger Sub, Merger Sub will be merged with and into us (the "Merger"). The separate corporate existence of Merger Sub will cease and we will continue as a surviving corporation of the Merger and as a wholly owned subsidiary of National.

Pursuant to the Merger Agreement, upon the closing of the Merger, each share of our common stock outstanding immediately prior to the closing of the Merger (other than shares held by National or us or any of our stockholders who properly exercise dissenters' rights under Delaware law) will automatically be converted into the right to receive 0.14 shares of National common stock, plus any cash in lieu of fractional shares of National common stock.

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## RISK FACTORS

*You should carefully consider the risks described below before making an investment decision. The risks described below are not the only ones facing our company. Additional risks not presently known to us or that we currently believe are immaterial may also impair our business operations. Our business could be harmed by any of these risks. The trading price of our common stock could decline due to any of these risks and you may lose all or part of your investment. In assessing these risks, you should also refer to the other information contained in this prospectus, including our unaudited condensed consolidated financial statements ("Unaudited Condensed Consolidated Financial Statements") and our consolidated financial statements ("Consolidated Financial Statements") and related notes.*

In addition to other information in this prospectus, the following risks should be considered in evaluating our condition and prospects. These risks may have a material effect on our operating results.

### **Risks Related to Our Company**

***We have a limited operating history and as a result, it may be difficult to evaluate our business and prospects.***

We have a limited operating history despite the fact that we commenced our broker-dealer operations in 1999. As a result of acquisitions of Colonial Direct Financial Group Inc. and First Level Capital, now known as vFinance Investments, in 2001, EquityStation and select assets of Global Partners Securities, Inc. ("Global") in 2004, and select assets of Sterling Financial Investment Group, Inc. ("SFIG") and Sterling Financial Group of Companies, Inc. ("SFGC" and together with SFIG, "Sterling Financial") in 2006, our business has remained in flux. Our business and prospects must be considered in light of the risks, expenses and difficulties frequently encountered by companies in the early stages of development. These risks are particularly severe among companies in new and rapidly evolving markets such as online business development services and those in regulated industries such as the securities industry. It may be difficult or impossible to accurately forecast our operating results and to evaluate our business and prospects based on our historical results.

***We have had substantial losses since inception.***

Prior to 2004, we had sustained substantial losses in each year since our inception due to ongoing operating expenses and a lack of revenues sufficient to offset those operating expenses. We have raised capital to fund ongoing operations by private sales of our securities, some of which sales have been highly dilutive and involved considerable expense. For the year ended December 31, 2004, when we earned a substantial profit for the first time in our history, our results amounted to net income of \$2.2 million, including a \$1.5 million non-cash gain on debt forgiveness. For the years ended December 31, 2005 and 2006 and the nine months ended September 30, 2007, however, our results amounted to net losses of approximately \$1.1 million, \$2.2 million and \$900,000, respectively.

The net losses generated in 2005 and 2006 and the nine months ended September 30, 2007 resulted primarily from increased costs from expanded facilities and staff, as well as amortization expense associated with the acquisition of certain assets of Global and 100% of the issued and outstanding equity securities of EquityStation, all of which were owned by Level2.com, Inc. ("Level2"), a subsidiary of Global (together, the "Global Acquisition") and the acquisition of Sterling Financial, non-cash impairment charges in 2005 and stock option expense in 2006. We expect to continue to make significant capital expenditures to enhance our products and technologies, and to expand domestic and international sales and operations. As a result, we will need to continue to generate significant additional revenue to achieve profitability and generate sufficient working capital to fund our planned spending. Even if we do achieve profitability, we may not be able to maintain or increase profitability on a quarterly or annual basis. If we do not achieve, maintain or increase our profitability, the market price for our common stock may further decline.

Obtaining future financing may be costly and could be dilutive to existing stockholders. If we are not able to obtain financing when and in the amounts needed, and on terms that are acceptable, our operations, financial condition and prospects could be materially adversely affected, and we could be forced to curtail our operations or sell part or all of our assets.

*We may need to raise additional funds, which may not be available when we need them.*

Based on our current spending plans and our projected working capital, we believe that our cash on hand and cash generated from our operations will be sufficient to fund our operations for at least the next 12 months. However, we may attempt to raise additional capital to operate the business, support expansion plans, develop new or enhanced services and products, respond to competitive pressures, acquire complementary businesses or technologies or respond to unanticipated events. We can provide no assurances that additional financing will be available when needed on favorable terms, if at all. If these funds are not available when we need them, we may need to change our business strategy or reduce our operations or investment activities. In addition, any issuance of additional equity securities will dilute the ownership interest of our existing stockholders and the issuance of additional debt securities may increase the perceived risk of investing in us.

If we do not secure substantial additional funding to meet our capital needs, we may have to issue additional shares of common stock. If additional funds are raised through the issuance of equity or convertible debt securities, the percentage ownership of our current stockholders will be reduced and these securities may have rights and preferences superior to those of our current stockholders. If we raise capital through debt financing, we may be forced to accept restrictions affecting our liquidity, including restrictions on our ability to incur additional indebtedness or pay dividends.

***We are currently subject to extensive securities regulation and the failure to comply with these regulations could subject us to penalties or sanctions.***

The securities industry and our business are subject to extensive regulation by the SEC, state securities regulators and other governmental regulatory authorities. We are also regulated by industry self-regulatory organizations, including FINRA, the NFA and the Municipal Securities Rulemaking Board. The regulatory environment is also subject to change, and we may be adversely affected as a result of new or revised legislation or regulations imposed by the SEC, other federal or state governmental regulatory authorities, or self-regulatory organizations. We also may be adversely affected by changes in the interpretation or enforcement of existing laws and rules by these governmental authorities and self-regulatory organizations.

vFinance Investments and EquityStation are registered broker-dealers with the SEC and members of FINRA. Broker-dealers are subject to regulations which cover all aspects of the securities business, including:

- sales methods and supervision;
- trading practices among broker-dealers;
- use and safekeeping of customers' funds and securities;
- capital structure of securities firms;
- record keeping; and
- the conduct of directors, officers and employees

Compliance with many of the regulations applicable to us involves a number of risks, particularly in areas where applicable regulations may be subject to varying interpretation. The requirements imposed by these regulators are designed to ensure the integrity of the financial markets and to protect customers and other third parties who deal with us. Consequently, these regulations often serve to limit our activities, including through net capital, customer protection and market conduct requirements. Much of the regulation of broker-dealers has been delegated to self-regulatory organizations, principally FINRA Regulation, Inc., the regulatory arm of FINRA. We are primarily regulated by FINRA and the SEC. FINRA Regulation Inc. adopts rules, subject to approval by the SEC, that govern its members and conducts periodic examinations of member firms' operations.

If we are found to have violated any applicable regulation, formal administrative or judicial proceedings may be initiated against us that may result in:

- censure;
- fine;
- civil penalties, including treble damages in the case of insider trading violations;

- the issuance of cease-and-desist orders;
- the deregistration or suspension of our broker-dealer activities;
- the suspension or disqualification of our officers or employees; and/or
- other adverse consequences.

The imposition of any of these or other penalties could have a material adverse effect on our operating results and financial condition.

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***We are subject to various risks associated with the securities industry.***

As securities broker-dealers, we are subject to uncertainties that are common in the securities industry. These uncertainties include:

- the volatility of domestic and international financial, bond and stock markets, as demonstrated by past disruptions in the financial markets;
- extensive governmental regulation;
- litigation;
- intense competition;
- substantial fluctuations in the volume and price level of securities; and
- dependence on the solvency of various third parties.

As a result of these risks, revenues and earnings may vary significantly from quarter to quarter and from year to year. We are much smaller and have much less capital than many of our competitors in the securities industry. Accordingly, we could be impacted by these risks to a larger degree. In the event of a market downturn, our revenues would likely decline and, if we were unable to reduce expenses at the same pace, our profit margins would quickly erode.

***Our business could be adversely affected by a breakdown in the financial markets.***

As a securities broker-dealer, our business is materially affected by conditions in the financial markets and economic conditions in general, both in the United States and elsewhere around the world. Many factors or events could lead to a breakdown in the financial markets including war, terrorism, natural catastrophes and other types of disasters. These types of events could cause people to begin to lose confidence in the financial markets and their ability to function effectively. If the financial markets are unable to effectively prepare for these types of events and ease public concern over their ability to function, our revenues may decline and our operations could be adversely affected.

***We have incurred, and may in the future incur, significant losses from trading and investment activities due to market fluctuations and volatility.***

We generally maintain trading and investment positions in the equity markets. To the extent that we own assets, i.e., have long positions, a downturn in those markets could result in losses from a decline in the value of such long positions. Conversely, to the extent that we have sold assets that we do not own, i.e., have short positions in any of those markets, an upturn could expose us to potentially unlimited losses as we attempt to cover our short positions by acquiring assets in a rising market.

We may, from time to time, have a trading strategy consisting of holding a long position in one asset and a short position in another from which we expect to earn revenues based on changes in the relative value of the two assets. If, however, the relative value of the two assets changes in a direction or manner that we did not anticipate or against which we are not hedged, we might realize a loss in those paired positions. In addition, we maintain trading positions that can be adversely affected by the level of volatility in the financial markets, i.e., the degree to which trading prices fluctuate over a particular period, in a particular market, regardless of market levels.

***Our revenues may decline in adverse market or economic conditions.***

Unfavorable financial or economic conditions may reduce the number and size of the transactions in which we provide underwriting services, merger and acquisition consulting and other services. Our investment banking revenues, in the form of financial advisory and underwriting fees, are directly related to the number and size of the transactions in which we participate and would therefore be adversely affected by a sustained market downturn. Additionally, a downturn in market conditions could lead to a decline in the volume of transactions that we execute for our customers and, therefore, to a decline in the revenues we receive from commissions and spreads. Customer relationship intangible assets comprised approximately 35% and 30% of our total assets as of December 31, 2006 and September 30, 2007, respectively. We must review customer relationships for impairment at least annually, or more frequently if events or circumstances indicate that impairment may be present, which may result in a material, non-cash write down of customer relationships. A significant decrease in revenues or cash flows derived from acquired customer relationships could result in a material, non-cash write-down of customer relationships. Such impairment would have a material adverse impact on our results of operations and shareholders' equity.

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***Our risk management policies and procedures may leave us exposed to unidentified risks or an unanticipated level of risk.***

The policies and procedures we employ to identify, monitor and manage risks may not be fully effective. Some methods of risk management are based on the use of observed historical market behavior. As a result, these methods may not accurately predict future risk exposures, which could be significantly greater than the historical measures indicate. Other risk management methods depend on evaluation of information regarding markets, clients or other matters that are publicly available or otherwise accessible by us. This information may not be accurate, complete, up-to-date or properly evaluated. Management of operational, legal and regulatory risks requires, among other things, policies and procedures to properly record and verify a large number of transactions and events. We cannot be assured that our policies and procedures will effectively and accurately record and verify this information.

We seek to monitor and control our risk exposure through a variety of separate, but complementary financial, credit, operational and legal reporting systems. We believe that we are able to evaluate and manage the market, credit and other risks to which we are exposed. Nonetheless, our ability to manage risk exposure can never be completely or accurately predicted or fully assured. For example, unexpectedly large or rapid movements or disruptions in one or more markets or other unforeseen developments can have a material adverse effect on our results of operations and financial condition. The consequences of these developments can include losses due to adverse changes in inventory values, decreases in the liquidity of trading positions, higher volatility in earnings, increases in our credit risk to customers as well as to third parties and increases in general systemic risk.

***Credit risk exposes us to losses caused by financial or other problems experienced by third parties.***

We are exposed to the risk that third parties that we use money, securities or other assets will not perform their obligations. These parties include:

- trading counterparties;
- customers;
- clearing agents;
- exchanges;
- clearing houses; and
- other financial intermediaries as well as issuers whose securities we hold.

These parties may default on their obligations owed to us due to bankruptcy, lack of liquidity, operational failure or other reasons. This risk may arise, for example, from:

- holding securities of third parties;