

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Ronald Rafaloff
(CRD No.1045883),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013036261002

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between January 2011 and November 2012 (the Relevant Period), Respondent Ronald Rafaloff (Rafaloff), a former registered representative associated with Liberty Partners Financial Specialists LLC (Liberty Partners or the Firm), engaged in a scheme to defraud over \$400,000 from his sole client, an elderly investor whom he befriended. With the promise of exorbitant returns, Rafaloff convinced the customer to invest her retirement savings in companies he controlled, after which he withdrew most of the funds from the companies and converted them for his personal use. He then lied about the private securities transactions to both the Firm and to FINRA during its investigation.

2. Specifically, Rafaloff solicited his customer, CR, a 74-year-old retiree, into investing \$405,000 of her savings into three speculative business entities (collectively, the Companies) for whom he claimed that he performed consulting services. Rafaloff told CR that the Companies were profitable, that he knew the founders of the Companies, that her investments would be safe, and that other individuals had invested in the Companies, including Rafaloff and

his family members. Rafaloff did not disclose that he founded and/or held various executive positions at each of the Companies and had authority to access funds deposited in the Companies' bank accounts.

3. In connection with \$340,000 of her total investment, Rafaloff provided CR with investment contracts purportedly issued by the Companies. The investment contracts, which Rafaloff assisted in drafting, promised CR annual returns of 30 percent to 40 percent and repayment of principal in three years, or one year if CR elected to terminate the investment.

4. To further induce CR to invest in the Companies, Rafaloff provided CR with written guarantees against losses, in which he agreed to personally make payments to CR under the terms of the Investment Contracts in the event that any of the Companies defaulted.

5. Rafaloff's representations to CR about the profitability of the Companies, the safety of her investments in these entities, and the existence of other investors were all false. As Rafaloff was aware, none of the Companies held sufficient funds to cover the return of principal and high rate of returns that Rafaloff expressly promised to CR.

6. At the time of CR's investments, the Companies had no other investors apart from CR. In fact, one of the Companies was a sham corporate entity, formed by Rafaloff and his son approximately one week prior to CR's initial investment.

7. The investments in the Companies that Rafaloff recommended to CR were unsuitable because Rafaloff lacked a reasonable basis for believing that these investments were suitable for any investor. Additionally, Rafaloff's repeated recommendations to invest in the Companies were unsuitable based upon CR's financial goals, risk tolerance and investment experience.

8. Between February 2011 and December 2012, CR received \$120,500 as repayment of her investment principal in payments under the Investment Contracts. However, in January 2013, CR stopped receiving payments from the Companies.

9. Rafaloff converted more than 80 percent of CR's investment by using her investment principal to pay his personal expenses. During the Relevant Period, Rafaloff used his control over the Companies' bank accounts to convert over \$327,000 of CR's investment and use the funds for personal expenses including meals at various Manhattan restaurants, health insurance premiums, rental car expenses, and purchases at retail stores.

10. In addition, during the Relevant Period, Rafaloff never informed Liberty Partners that he was engaging in private securities transactions with CR, nor did he ever seek approval from the Firm to participate in any outside business activities with the Companies. Instead, Rafaloff falsely represented in Liberty Partners compliance questionnaires that he was not engaging in such activities.

11. Rafaloff also made misrepresentations to FINRA staff while under oath, during an on-the-record interview (OTR), concerning his handling of CR's investment in the Companies.

12. As a result of the foregoing misconduct, Rafaloff willfully violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder, and violated FINRA Rules 2020 and 2010 by making materially misleading statements and omissions in recommending to a Customer that she purchase six investment contracts that constituted securities.

13. Rafaloff also violated: (i) FINRA Rule 2010 by converting CR's funds; (ii) NASD Rules 2310 (for conduct prior to July 9, 2012) and FINRA Rules 2111 (for conduct on

and after July 9, 2012) and 2010 by recommending that CR invest in six investment contracts without having reasonable grounds to believe that the investments were suitable for any investors, as well as being unsuitable based upon CR's investment objectives and experience; (iii) FINRA Rules 2150 and 2010 by providing a customer with written guarantees against losses in connection with six investment contracts; (iv) NASD Rule 3040 and FINRA Rule 2010 by participating in six private securities transactions without proving prior written notice to his FINRA registered broker-dealer employer; (v) FINRA Rules 3270 and 2010 by engaging in outside business activities while associated with a FINRA-registered firm; (vi) FINRA Rule 2010 by making false statements to his FINRA-registered firm employer in annual compliance questionnaires concerning his involvement in private securities transactions and outside business activities; and (vii) FINRA Rules 8210 and 2010 by making misrepresentations to FINRA staff during the investigation of this matter.

RESPONDENT AND JURISDICTION

14. Rafaloff entered the securities industry in 1981 and has been associated with nine present and former FINRA-registered broker-dealers. Rafaloff obtained the following securities licenses between 1982 and 1996: Series 7 (General Securities Representative), Series 24 (General Securities Principal), Series 52 (Municipal Securities Representative), and Series 63 (Uniform Securities Agent). In July 2010, after a period of nearly seven years out of the securities industry, Rafaloff re-qualified for the Series 7 and Series 63 securities licenses.

15. Starting in August 2010, Rafaloff became associated with Liberty Partners, a FINRA-registered broker-dealer, as an independent contractor and general securities representative. Rafaloff remained registered with the Firm until his termination on March 4, 2013.

16. The Firm subsequently reported Rafaloff's termination in a Form U-5 Uniform Termination Notice for Securities Industry Registration filing dated March 12, 2013, which stated that the Firm "discharged" Rafaloff for engaging in sales of investment products outside of the Firm on six occasions. Since his termination from the Firm, Rafaloff has not been associated with any FINRA-regulated broker-dealer.

17. Although Rafaloff is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-laws, because (i) the Complaint was filed within two years after the effective date of termination of Respondent's registration with Liberty Partners, namely March 12, 2013; and (ii) the Complaint charges Respondent with misconduct committed while he was registered or associated with a FINRA member.

THE FACTS

CR is an Elderly Retiree Who, during the Relevant Period, Lacked Financial Sophistication and Had Conservative Risk Tolerance

18. Rafaloff became acquainted with CR in 1982 when he serviced the brokerage accounts of both her and her mother while associated with MV Securities. Rafaloff befriended CR and visited her regularly at her home prior to and during the Relevant Period.

19. In August 2010, at Rafaloff's urging, CR transferred the assets in her brokerage accounts to Liberty Partners.

20. At that time, CR was a 74-year-old retired pharmacist. As Rafaloff was aware, CR's annual income was derived from returns on bonds, certificates of deposit and money market funds, and payments from her pension plan and Social Security. CR lived alone and had no children or dependents.

21. As Rafaloff was aware from CR's new account documentation, CR had an annual income ranging between \$100,000 and \$199,000; a total net worth, excluding her home, of between \$1 million to \$3 million; \$500,000 to \$999,999 in liquid assets; 30 years of "average" investment experience; and an investment objective of "balanced/conservative growth." CR's new account documentation defined "balanced/conservative growth" as a "conservative" investment objective focused on "generating current income and/or long term capital growth."

22. As Rafaloff was aware, all of CR's prior investment experience involved fixed income securities, mostly bonds, and she had no prior experience with private placements or other alternative investment products. Rafaloff was also aware that CR mainly preferred to invest in tax-free municipal bonds.

23. During Rafaloff's three years with Liberty Partners, CR was his sole client. CR trusted Rafaloff and relied upon him for investment advice.

Rafaloff's Outside Business Activities with the Companies

A. PVT Consulting LLC

24. PVT Consulting LLC (PVT), a purported credit card processing business, was incorporated in New York State on or about June 5, 2009, under the name Private Consulting, LLC.

25. During the Relevant Period, Rafaloff was one of the two sole members and managers of PVT, with a 50% ownership in the company.

26. Prior to the Relevant Period, in addition to his duties as member/manager and part-owner, Rafaloff provided management and marketing services to PVT and prospected for clients to use PVT's services. Rafaloff also served as a signatory for PVT's business bank account.

27. After joining Liberty Partners, Rafaloff remained a co-owner and signatory on PVT's business bank account and wrote \$46,300 worth of checks to himself from the PVT account.

28. Notwithstanding the foregoing, Rafaloff did not provide Liberty Partners with any notice, written or otherwise, regarding his activities with PVT during his association with the Firm.

B. Merchant Capital and Credit LLC

29. Merchant Capital and Credit, LLC (Merchant Capital) was purportedly a trade financing business that engaged in factoring (*i.e.*, a financing method in which a business owner sells accounts receivable at a discount to a third-party to raise capital), purchase order funding, cash advances and other related transactions.

30. On or about April 6, 2011, Merchant Capital was incorporated in the State of Nevada. On or about April 8, 2011, Rafaloff and his son, ER, opened a business bank account for Merchant Capital. Rafaloff was identified to the bank as Merchant Capital's office manager, and both Rafaloff and his son had check-writing privileges for the Merchant Capital account.

31. Rafaloff remained a signatory on Merchant Capital's business bank account and continued writing checks on the Merchant Capital's account related to its business activities throughout the Relevant Period and his association with Liberty Partners, including more than \$34,000 worth of checks Rafaloff wrote to himself from Merchant Capital's account.

32. Notwithstanding the foregoing, Rafaloff did not provide Liberty Partners with any notice, written or otherwise, regarding his activities with Merchant Capital during his association with the Firm.

C. Factoring Resources LLC

33. Factoring Resources LLC (Factoring Resources) was purportedly another trade financing business. On or about August 16, 2011, Factoring Resources was incorporated in the State of Nevada. According to its Articles of Organization, Rafaloff was Factoring Resources' sole managing member.

34. On or about August 24, 2011, Rafaloff opened a business bank account for Factoring Resources. In the documents Rafaloff signed to open the business account, Rafaloff identified himself as the sole "beneficial owner" of Factoring Resources. In signed written correspondence with the bank, Rafaloff also identified himself as the President of Factoring Resources.

35. While associated with Liberty Partners, Rafaloff remained a Managing Member of Factoring Resources, as well as a signatory on its business bank account. Rafaloff continued writing checks on Factoring Resources' bank account throughout the Relevant Period and his association with Liberty Partners, including more than \$157,000 worth of checks that he wrote to himself.

36. Notwithstanding the foregoing, Rafaloff did not provide Liberty Partners with any notice, written or otherwise, regarding his activities with Factoring Resources.

FIRST CAUSE OF ACTION

Intentional False and Misleading Statements and Material Omissions of Fact in Connection with the Sale of Securities Violation of Securities Exchange Act of 1934 Section 10(b), Rule 10b-5 Thereunder, and FINRA Rules 2020 and 2010

37. The Department realleges and incorporates by reference Paragraphs 1 through 36 above.

38. Section 10(b) of the Exchange Act states that it is unlawful to “use or employ in connection with the purchase or sale of a security ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission (SEC) may prescribe as necessary or appropriate in the public interest or for the protection of investors.”

39. SEC Rule 10b-5 states that it is unlawful to (a) employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates as a fraud or deceit upon any person in connection with the purchase or sale of any security.

40. FINRA Rule 2020 requires that no FINRA broker-dealer shall effect any transaction in, or induce the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

41. Rafaloff violated these antifraud rules by willfully making misleading statements of material fact, as well as omitting material facts in connection with his recommendation that CR invest \$405,000 in the Companies.

42. During the Relevant Period, Rafaloff solicited CR to invest in the Companies, claiming that the sale of the private placements was limited to a select group of investors, and that he could offer the opportunity to invest to CR because of his friendship with the owners of the Companies.

43. Rafaloff told CR that investing in the Companies was “safe” given that the Companies were profitable and that CR would not lose money by investing. To further reassure her, Rafaloff told CR that both he and his family had also invested in the Companies.

44. CR gave Rafaloff \$405,000 to invest in the Companies on the following dates and amounts:

Date (on or about)	Company	Amount Invested
January 22, 2011	PVT	\$55,000
April 6, 2011	Merchant Capital	\$60,000
August 12, 2011	Factoring Resources	\$30,000
September 28, 2011	Factoring Resources	\$35,000
January 4, 2012	Factoring Resources	\$50,000
February 24, 2012	Factoring Resources	\$50,000
June 12, 2012	Factoring Resources	\$70,000
November 7, 2012	Factoring Resources	\$55,000
	Total Invested	\$405,000

45. In connection with six of her eight investments, Rafaloff provided CR with an Investment Contract, each of which constituted a security.

46. Each Investment Contract identified CR as the “Investor” and stated that she was “providing capital to the Company” and that the proceeds of her investments would be used by each Company to expand its customer base in order to increase revenue and “for general corporate purposes.”

47. According to each of the six Investment Contracts, in exchange for the money she invested, CR was to receive (i) consecutive, equal monthly payments as return of her capital investment, and (ii) a projected percentage of each Company’s “capital appreciation” at the end of the contract term, which was a maximum of 36 months. The capital appreciation of each

Company was to be calculated yearly based on the monthly fees or “residuals” received by the Company.

48. Rafaloff participated in the drafting of the Investment Contracts and prepared amortization schedules that were incorporated into and a part of the Investment Contracts. Pursuant to the terms of the Investment Contracts and the amortization schedules, CR was to receive the following in return for her investments:

Issuer	Contract Date	Amount Invested	Monthly Principal Payment	Projected Capital Appreciation Rate
PVT	1/22/2011	\$55,000	\$1,500	32%
Merchant Capital	4/6/2011	\$60,000	\$1,500	30%
Factoring Resources	12/26/2011	\$50,000	\$1,500	35%
Factoring Resources	2/24/2012	\$50,000	\$1,500	35%
Factoring Resources	6/12/2012	\$70,000	\$2,000	40%
Factoring Resources	11/7/2012	\$55,000	\$2,000	35%
	TOTAL	\$340,000		

49. The Investment Contracts also granted CR a security interest in each Company’s monthly residuals and the right to repossess those residuals and declare the original principal amount invested immediately due and payable, in the event the Company defaulted in making its promised payments.

Rafaloff’s Misrepresentations and Omissions of Material Facts

50. Rafaloff both intentionally misrepresented and omitted material facts while soliciting CR in order to induce her to invest in the speculative Companies.

51. First, Rafaloff’s representations to CR that he had special access to investment opportunities in the Companies because he knew their founders were intentionally misleading given his true role in forming these Companies. Specifically:

- a. Rafaloff was a member and manager of PVT with a 50% ownership interest in the Company.
- b. As an owner, Rafaloff was entitled to periodic payments of 50% of all PVT's cash, regardless of its source, that was not required for its operation or reasonable working capital requirements.
- c. The Articles of Organization that Factoring Resources filed on or about August 16, 2011 with the Secretary of State for Nevada identify Rafaloff as a manager/managing member of the Company.
- d. In August 2011, Rafaloff opened a business banking account for Factoring Resources and, while doing so, identified himself as the Company's President and sole owner.
- e. Bank records for Merchant Capital demonstrate that Rafaloff, as office manager, and his son opened a business banking account for Merchant Capital in April 2011 just two days after CR provided Rafaloff with personal checks funding her initial investment in Merchant Capital.

52. Similarly, while recommending that CR invest in the Companies, Rafaloff also intentionally minimized and misrepresented the level of his involvement with the Companies and failed to disclose material facts such as his ownership interest in PVT and Factoring Resources, his executive position with Merchant Capital, and his control over the business bank accounts for each of the Companies.

53. In addition, Rafaloff's statements to CR regarding the safety of her investments, the profitability of the Companies, and the existence of other investors all constituted intentional misrepresentations.

54. Rafaloff told CR that the Companies were owned by wealthy individuals, that the Companies were bringing in significant revenues, and that she could not lose the money she invested. However, Rafaloff misrepresented the Companies' revenue streams at the time CR made her investments.

55. For example, on or about January 22, 2011, CR invested \$55,000 in PVT. According to the Investment Contract that Rafaloff assisted in drafting, CR was to receive

monthly repayments of principal of \$1,500 and a 32% rate of return. However, unbeknownst to CR:

- a. Between January and December 2010, the average monthly balance in PVT's business banking account that Rafaloff controlled was only \$1,500 and the closing monthly balance for the PVT business banking account as of December 2010 was approximately \$935.
- b. Although the PVT bank account reflects monthly electronic deposits by a third-party entity for "payables", the average amount deposited during 2010 was approximately \$654.
- c. PVT's business bank account does not reflect any deposits of investor funds other than the sums invested by CR.

56. Similarly, on or about April 6, 2011, CR invested \$60,000 in Merchant Capital.

According to the Investment Contract that Rafaloff assisted in drafting, CR was to receive \$1,500 in monthly repayments of principal and a 30% rate of return. However, unbeknownst to CR:

- a. Merchant Capital was incorporated the *same* day she invested in the Company.
- b. Two days after CR made her initial investment, Rafaloff and his son opened Merchant's Capital bank account with the deposit of CR's \$50,000 check, the first of two checks issued by CR to fund her Merchant Capital investment.
- c. Like PVT, Merchant Capital's business bank account does not reflect any deposits of investor funds other than the sums invested by CR.
- d. In addition, during the Relevant Period, there was no other source of deposits reflected on Merchant Capital's bank records other than irregular cash deposits which were sourced in part from ATM withdrawals from the Factoring Resources business banking account.

57. Furthermore, on or about August 12, 2011, CR made her initial investment of \$30,000 in Factoring Resources. Later in or about January 2012, CR made an additional investment of \$50,000, and in return received an Investment Contract promising \$1,500 of monthly principal repayments and a 35% return rate. However, unbeknownst to CR:

- a. Factoring Resources did not become incorporated until on or about August 16, 2011 -- four days *after* CR made her initial investment in Factoring Resources.
- b. Between August 2011, when CR made her initial \$30,000 investment, and on or about January 2012, when she invested an additional \$50,000, there were no other deposits made into the Factoring Resources banking account apart from CR's investment monies.
- c. In February 2012, Factoring Resources began receiving monthly electronic deposits for "commissions"; however, the average amount of "commissions" deposited in the Factoring Resources bank account during 2012 was only approximately \$1,385.

58. Rafaloff also knew that the business locations provided in the Investment Contracts for PVT, and one of the four Investment Contracts for Factoring Resources, were not accurate. However, Rafaloff did not advise CR of these facts, in part because he used the offices maintained by the Companies to operate his Liberty Partners branch office, a fact that could have revealed his actual relationships with the Companies.

59. Moreover, the fact that the Companies appeared to be temporary operations and that certain addresses in the Investment Contracts were inaccurate was information that an investor like CR would consider important and material. It was especially important here, because the Investment Contracts granted CR a security interest that would be difficult, if not impossible, to enforce if the Companies ceased operations or were unable to be located at the addresses CR was given by Rafaloff.

60. The misrepresentations and omissions set forth above addressed facts a reasonable investor would have considered material before deciding to invest in the Companies by purchasing the Investment Contracts.

61. Rafaloff's failure to convey this information to CR was intentional.

62. During the course of conduct alleged above, Rafaloff, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities

of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly: employed devices, schemes, or artifices to defraud; engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; and/or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

63. By virtue of the foregoing, Rafaloff willfully violated §10(b) of the Exchange Act and Rule 10b-5 thereunder, and also violated FINRA Rules 2020 and 2010.

SECOND CAUSE OF ACTION
Guaranteeing against Losses
Violation of FINRA Rules 2150(b) and 2010

64. Enforcement realleges and incorporates by reference Paragraphs 1 through 63 above.

65. FINRA Rule 2150(b) requires that: "No member or person associated with a member shall guarantee a customer against loss in connection with any securities transaction or in any securities account of such customer."

66. Shortly after making the April 2011 investment in Merchant Capital, CR informed Rafaloff that she was concerned about the potential losses she might suffer if the Companies were to default on the Investment Contracts and asked Rafaloff if he would guarantee in writing that she would not lose any money.

67. Rafaloff told CR he would guarantee her investments and, on July 7, 2011, executed written personal guarantees (collectively, the Personal Guarantees) in favor of CR for the PVT Investment Contract executed in January 2011 and the Merchant Capital Investment Contract executed in April 2011. For each subsequent investment CR made in Factoring

Resources, Rafaloff also issued CR a Personal Guarantee at the time the Investment Contract was executed.

68. In total, Rafaloff issued the following Personal Guarantees:

Issuer	Investment Date	Written Guarantee Date
PVT	1/22/2011	7/7/2011
Merchant Capital	4/15/2011	7/7/2011
Factoring Resources	12/26/2011	12/26/2011
Factoring Resources	2/24/2012	2/24/2012
Factoring Resources	6/8/2012	6/8/2012
Factoring Resources	11/9/2012	11/9/2012

69. Each of the Personal Guarantees identified Rafaloff as the Guarantor, CR as the Lender, and one of the respective Companies as the Debtor. According to the terms of the Personal Guarantees, Rafaloff personally guaranteed “the prompt, full and complete performance of any and all existing duties and obligations of [the Companies] to the Lender [CR] and the payment of any and all indebtedness due to the Lender by the Debtor” up to the maximum amount of the principal CR invested.

70. Rafaloff also guaranteed that the Companies would “promptly pay the full amount of principal and interest” as and when it became due and owing under the terms of the Investment Contracts CR executed.

71. Further, pursuant to the Personal Guarantees, Rafaloff waived any defenses, counterclaims or offsets legally available to him as guarantor, and expressly agreed that CR could look to him in the first instance, and without proceeding against the Companies, to recoup her invested principal.

72. After the Companies ceased making repayments of investment principal to CR, she demanded payment from Rafaloff in accordance with the terms of his Personal Guarantees. However, Rafaloff refused to make any payments to CR.

73. By virtue of the foregoing, Rafaloff violated FINRA Rules 2150(b) and 2010.

THIRD CAUSE OF ACTION
Conversion
Violation of FINRA Rules 2150 and 2010

74. Enforcement realleges and incorporates by reference Paragraphs 1 through 73 above.

75. FINRA Rule 2150(a) prohibits an associated person from making “improper use of a customer’s ... funds.” Conversion, a form of improper use, occurs when an associated person intends to permanently deprive the customer of the use of his or her funds.

76. As alleged above, Rafaloff recommended and CR invested \$405,000 in the Companies during the Relevant Period. Each of the personal checks written by CR to fund her investment in the Companies was deposited by Rafaloff into the Companies’ accounts. CR was the only investor in the Companies during the Relevant Period, and her investments constituted the majority of the holdings in the Companies’ bank accounts.

77. Rafaloff withdrew CR’s investment principal and used it to pay for shopping sprees, meals at restaurants, health insurance premiums, travel and related personal expenses, such as car rental services and more than \$12,000 in health insurance premiums. In fact, through a series of ATM withdrawals, debit card charges and checks issued to Rafaloff personally, Rafaloff used at least 75 percent or approximately \$303,000 of CR’s total investment in the Companies to pay for his personal expenses.

78. For example, Rafaloff received and cashed checks that he issued from the Companies' accounts and signed personally as a representative of the Companies. Rafaloff had a debit card issued in his individual name for the Merchant Capital account and used that debit card, along with the debit cards associated with Factoring Resources' and PVT's bank accounts to pay for his personal expenses. The types and amount of charges incurred on the debit cards linked to the Companies' business banking accounts included charges at Men's Wearhouse, Best Buy, Apple Store, AT&T, Target, Sun Glass Hut, American Eagle Outfitters, Foot Locker and Sports Authority.

79. The following chart illustrates the amount of funds Rafaloff converted from Customer CR's investment in the Companies just during the years she invested:

Company	Year	Total Sum Invested by CR	Received by Rafaloff			Total Sum Received by Rafaloff
			Checks	ATM	Debit Charges	
Factoring Resources	2011	\$65,000	\$38,325	\$7,850	\$2,842	\$49,017
	2012	\$225,000	\$94,071	\$26,787	\$14,403	\$135,261
PVT Consulting	2011	\$55,000	\$46,300	\$0	\$22,959	\$69,259
Merchant Capital	2011	\$60,000	\$31,578	\$4,400	\$13,463	\$49,441
		\$405,000				\$302,978

80. CR never permitted or authorized Rafaloff to use her funds to pay his personal expenses. The Investment Contracts CR signed expressly provided that the funds she invested would be used "to expand [the Companies] customer base to increase its residuals and fees and for general corporate purposes."

81. By the conduct described above, Rafaloff converted approximately \$303,000 from CR.

82. By virtue of the foregoing, Rafaloff violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION
Private Securities Transactions
Violation of NASD Rule 3040 and FINRA Rule 2010

83. Enforcement realleges and incorporates by reference Paragraphs 1 through 82 above.

84. NASD Rule 3040 requires associated persons to provide written notice to their FINRA-registered broker-dealer employer prior to participating in any private securities transaction. The notice must describe in detail the proposed transaction and the person's proposed role therein, and state whether he/she has received or may receive selling compensation in connection with the transaction.

85. A private securities transaction is defined in Rule 3040 as "any securities transaction outside the regular course or scope of an associated person's employment with a member."

86. On or about September 30, 2011 and November 9, 2012, Rafaloff completed and signed Liberty Partners' Annual Compliance Certifications (the 2011 and 2012 Certifications) in which he certified that he received and read the Firm's written supervisory procedures. In the 2011 and 2012 Certifications, Rafaloff also certified that he had not conducted any private securities transactions during the past year, including any outside securities transactions conducted beyond the course and scope of the Firm.

87. Rafaloff was associated with Liberty Partners at the time he recommended and sold the six Investment Contracts to CR in 2011 and 2012. The Investment Contracts solicited and/or sold by Rafaloff to CR were securities. Despite his familiarity with the Firm's WSPs concerning unapproved private securities transactions, and without providing any written notice to the Firm, Rafaloff nonetheless sold or otherwise participated in the sale of the Investment Contracts to CR.

88. Rafaloff participated in these securities transactions by (i) soliciting money from CR for the investments; (ii) meeting with CR and introducing her to the Companies; (iii) negotiating the Investment Contract terms by telephone from CR's home; (iii) aiding in drafting the Investment Contracts, and (v) delivering the executed securities contracts to CR.

89. By virtue of the foregoing, Rafaloff violated NASD Rule 3040 and FINRA Rule 2010.

FIFTH CAUSE OF ACTION
Unsuitable Recommendations
Violation of NASD Rules 2310 and 2010 and FINRA Rules 2111 and 2010

90. Enforcement realleges and incorporates by reference Paragraphs 1 through 89 above.

91. NASD Rule 2310 (applicable to conduct prior to July 9, 2012, including five of the six Investment Contracts) and FINRA Rule 2111 (effective on July 9, 2012 and applicable to one of the Investment Contracts) require associated persons to have reasonable grounds to believe that a recommended transaction or investment strategy involving a security could be suitable for at least some customers. In making this determination, associated persons must conduct a reasonable inquiry concerning the security and acquire the material facts necessary to understand the potential risks and rewards of recommending the security.

92. NASD Rule 2310(a) and FINRA Rule 2111(a) also require that, in recommending the purchase, sale, or exchange of any security, a registered representative shall have reasonable grounds for believing that the recommendation is suitable for the particular customer based upon the facts, if any, disclosed by the customer as to her other security holdings, financial situation, and needs.

93. During the Relevant Period, Rafaloff recommended that CR purchase the Investment Contracts.

94. As alleged above, Rafaloff was aware that the Companies were, in most cases, created a few days before CR elected to invest. Rafaloff also knew, by virtue of his access to and control over the Companies' bank accounts, that the Companies' average monthly revenues at the time CR invested would not permit the Companies to repay CR's principal investment or the promised returns.

95. Rafaloff therefore lacked an adequate and reasonable basis for recommending the Investment Contracts to CR.

96. Moreover, the Investment Contracts that Rafaloff sold to CR were unsuitable based on her stated investment profile.

97. CR's Liberty Partners account application, as described above, indicates that CR was a conservative investor. Rafaloff also knew that CR only wanted tax-free municipal bonds in her portfolio, and did not want to invest in corporate bonds, stocks, mutual funds, or ETFs.

98. The Investment Contracts did not contain any risk disclosures and, notwithstanding his intimate knowledge of the Companies' operations and finances, Rafaloff did not provide any written disclosures of risk to CR in connection with her purchase of the Investment Contracts.

99. As Rafaloff knew or reasonably should have known, the Investment Contracts were speculative and illiquid investments -- not "conservative." In order for CR to receive the return of her \$405,000 in capital and any of the promised profits, the Companies had to remain in business and generate substantial revenues. Rafaloff had no factual basis for believing that the Companies would continue operating or generate such revenues. In fact, Rafaloff knew that two of the Companies, Merchant Capital and Factoring Resources, were newly formed and expressly relying on CR's investment as start-up capital.

100. In light of the foregoing, Rafaloff also knew that the Investment Contracts were unsuitable for CR given her age, financial resources, expressed risk tolerance and prior investment experience, and therefore lacked an adequate and reasonable basis for recommending the Investment Contracts to her.

101. By virtue of the foregoing, Rafaloff violated NASD Rule 2310 and FINRA Rules 2111 and 2010.

SIXTH CAUSE OF ACTION
Outside Business Activities
Violation of FINRA Rules 3270 and 2010

102. Enforcement realleges and incorporates by reference Paragraphs 1 through 101 above.

103. FINRA Rule 3270 requires, in relevant part, that a registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her FINRA registered broker-dealer, unless he or she provides prior written notice to the broker-dealer.

104. Liberty Partners' written supervisory procedures in effect during the Relevant Period required employees to disclose to the Firm, in writing, any outside business activities prior to engaging in such activities and prohibited its registered representatives from accepting compensation of any kind without receiving prior written approval from the Firm. Liberty Partners' written supervisory procedures also expressly prohibited its registered representatives from raising money for any business enterprise without the prior written approval of the Firm.

105. As alleged above, during the Relevant Period, Rafaloff was an owner of PVT, a manager of Merchant Capital, and the sole owner and managing member of Factoring Resources, and he undertook a variety of business activities for the Companies including:

- a. opening and controlling the Companies' business bank accounts;
- b. writing checks from each of the Companies' accounts to himself and certain other third parties; and
- c. obtaining employee medical insurance through Factoring Resources.

106. Rafaloff did so without providing any notice whatsoever to Liberty Partners of his affiliation and outside activities with PVT, Merchant Capital and Factoring Resources. Moreover, the foregoing activities were not within Rafaloff's regular course or scope of employment with Liberty Partners.

107. By virtue of the foregoing, Rafaloff violated FINRA Rules 3270 and 2010.

SEVENTH CAUSE OF ACTION
False Statements to FINRA-Registered Broker-Dealer Employer
Violation of FINRA Rule 2010

108. Enforcement realleges and incorporates by reference Paragraphs 1 through 107 above.

109. FINRA Rule 2010 requires each FINRA member "in the conduct of its business, [to] ... observe high standards of commercial honor and just and equitable principles of trade."

110. On August 2, 2010, in connection with his joining Liberty Partners, Rafaloff signed and submitted a new hire Outside Activity Disclosure Form (the August 2010 Outside Activity Disclosure) in which he affirmatively indicated that he had no outside employment, received no outside compensation and had no involvement in any outside business as an owner, proprietor, partner, officer, director or trustee. Rafaloff did so, even though he had been a 50% owner of, and had worked for, PVT since June 2009.

111. During the Relevant Period, Rafaloff also submitted the 2011 and 2012 Certifications to Liberty Partners in which he again represented that he had not: (i) engaged in any outside business activity, which included any outside employment, acting as a general

partner, finder, director, referrer, or any activity outside his usual responsibilities at the Firm; (ii) received any compensation, including salary, director's fees, referral fees, stock options, finder's fees or anything else of present or future value; and (iii) conducted any private securities transactions during the past year, including any outside securities transactions conducted beyond the course and scope of the Firm. Rafaloff certified that he had not engaged in any of these activities, notwithstanding his ongoing roles with and receipt of compensation from the Companies and his solicitation and sales of the Investment Contracts to CR during the Relevant Period.

112. As alleged above, Rafaloff's answers in the August 2010 Outside Activity Disclosure and the 2011 and 2012 Certifications concerning his outside business activities, his receipt of compensation, and his engaging in private securities transactions away from Liberty Partners were false.

113. In making such false and inaccurate representations, Rafaloff engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade.

114. By virtue of the foregoing, Rafaloff violated FINRA Rule 2010.

EIGHTH CAUSE OF ACTION
Providing False and Misleading Information to FINRA
Violation of FINRA Rule 2010

115. Enforcement realleges and incorporates by reference Paragraphs 1 through 114 above.

116. FINRA Rule 8210 requires a "person subject to FINRA's jurisdiction ... to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter ... with respect to any matter involved in the investigation, complaint, examination or

proceeding.” Rule 8210 prohibits a person subject to FINRA’s jurisdiction from providing false or misleading information to FINRA in connection with an examination or investigation.

117. On June 17, 2013 and June 20, 2013, pursuant to FINRA Rule 8210, Rafaloff appeared at FINRA’s offices and provided sworn, on-the-record testimony (the June OTR). During the June OTR, Rafaloff appeared with and was represented by counsel.

118. At the outset of the June 2013 OTR, Enforcement instructed Rafaloff concerning his obligation under Rule 8210 to answer FINRA’s questions completely and truthfully. Enforcement further instructed Rafaloff that his failure to do so could be the basis for the initiation of a disciplinary proceeding that could lead to the imposition of sanctions, including a bar from the securities industry. Rafaloff stated on the record that he understood these instructions.

119. During the June OTR, Rafaloff answered Enforcement’s questions about his roles and relationship with PVT, Merchant Capital and Factoring Resources.

120. Specifically, Rafaloff testified that he was a part-owner of PVT during 2009 and 2010, that he only became a part-owner of Factoring Resources after Liberty Partners terminated his employment, and that he was not invested in Merchant Capital at any time.

121. Rafaloff also answered Enforcement’s questions about which individuals operated the Companies. Specifically, Rafaloff testified that MR was the owner of Merchant Capital and Factoring Resources and that ES was an officer of Merchant Capital, but that he did not know what ES’ position was and that he was not very familiar with ES.

122. However, as alleged above, Rafaloff not only held executive positions with each of the Companies, but was also a part-owner of PVT, the sole managing member and owner of Factoring Resources, and controlled the business bank accounts for each of the Companies.

Moreover, given his status as owner and operator of the Companies, Rafaloff knew or should have known the positions MR and ES held. As a result, Respondent's testimony alleged above is false.

123. Rafaloff also answered Enforcement's questions about his access to the Companies' business bank accounts, testifying that he only had access to the bank accounts for PVT and Factoring Resources. Rafaloff testified that he did not see the books and records, or bank statements for Merchant Capital prior to CR's investment.

124. However, as alleged above, Rafaloff opened and had access to the bank account for Merchant Capital. As an owner and officer, Rafaloff had both check-writing and withdrawal privileges, and a debit card, for that account. As a result, Respondent's testimony regarding Merchant Capital alleged above is false.

125. Rafaloff also answered Enforcement's questions about the use of the funds invested by CR. Specifically, Rafaloff testified that CR's investment was not the source of start-up funds for Merchant Capital.

126. However, as alleged above, Merchant Capital was formed the very same day that CR provided Rafaloff with personal checks funding her investment in the Company and the account was opened with the deposit of CR's investment capital. As a result, Respondent's testimony alleged above is false.

127. Such acts, practices and conduct described above constitute violations of FINRA Rules 8210 and 2010.

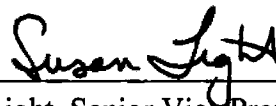
RELIEF REQUESTED

WHEREFORE, Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Rafaloff committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Rafaloff be required to make full and complete restitution, together with interest;
- C. order that Rafaloff bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;
- D. make specific findings that Rafaloff willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and
- F. grant all further relief, legal or equitable, that is warranted under the circumstances.

FINRA DEPARTMENT OF ENFORCEMENT

Date: June 16, 2014



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