

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 72171 / May 15, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15871**

**In the Matter of**

**RAFFERTY CAPITAL  
MARKETS, LLC,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b)(4) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934, MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Rafferty Capital Markets, LLC (“Rafferty” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b)(4) and 21C of the Exchange Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Summary

1. These proceedings concern the participation of Rafferty in unregistered broker-dealer activity by an unregistered entity (“Company A”) and Rafferty’s failure to make and keep accurate books and records.

2. Rafferty, a broker-dealer registered with the Commission, entered into a written agreement to facilitate the clearing and execution of securities transactions introduced by Company A. Beginning in 2009, Company A began introducing trades in fixed income securities to Rafferty. Although five employees of Company A became registered representatives of Rafferty and executed trades introduced by Company A, Company A itself never registered with the Commission.

3. Under its arrangement with Rafferty, from May 2009 through February 2010, Company A introduced approximately 100 trades in asset-backed securities that generated over \$4 million in compensation. Based on the agreement, Rafferty retained fifteen percent of this compensation, which totaled approximately \$640,000; at Company A’s direction, paid approximately \$550,000 to the registered representatives; and remitted the balance, approximately \$3,200,000, to Company A.

4. During the course of this arrangement, Rafferty did not preserve communications to or from the Rafferty registered representatives working on behalf of Company A, and it did not ensure that Company A did so. Due in part to Rafferty’s lack of recordkeeping, one of these registered representatives was able to conceal two trades from Rafferty, which caused Rafferty’s books and records to be inaccurate.

## Respondent

5. Rafferty Capital Markets, LLC, a New York company headquartered in Garden City, NY, is a broker-dealer registered with the Commission.

## Other Relevant Entities

6. “Company A,” a Delaware company headquartered in New York, NY, has never been registered with the Commission in any capacity.

## Rafferty Offers Crucial Assistance to an Unregistered Broker-Dealer

7. In early 2009, Company A entered into a business relationship with Rafferty to allow Company A employees to trade fixed income assets. In an early email, a Rafferty executive proposed: “We can act as B/D of record for your [*i.e.*, Company A’s] registered reps. We would hold the licenses and assume those potential liabilities. We would keep a fair percentage of the commissions, I’d cover my own clearing personnel, you would be responsible for the associated clearing costs, and retain the remain[ing] commissions to pay the salesman and cover your overhead. Fails and/or mistakes (hooks) would be on your end. . . . we’d need to be comfortable with your personnel and you’d manage the business yourselves.”

8. Consistent with this proposal, in April 2009, Rafferty and Company A signed a “Services and Cost Sharing Agreement,” under which Rafferty agreed to “provide clearing and trade processing for trades introduced by [Company A],” and to “provide the necessary compliance and review associated with such trades.” Rafferty further agreed to register employees of Company A or its affiliates as “independent representatives” of Rafferty. For these services, Company A agreed to pay Rafferty fifteen percent of the transaction- based compensation from trades processed under this arrangement.

9. Shortly after the execution of this agreement, five employees of Company A registered as representatives of Rafferty and began to execute trades for customers introduced to Rafferty by Company A.

10. Company A exercised control over the five “independent representatives” of Rafferty, all of whom worked out of Company A’s offices. Company A had authority over their trading decisions and determined their compensation. Rafferty was not involved in these trading or compensation decisions.

11. Despite the lack of registration, Company A held itself out as a broker-dealer. A Company A executive distributed marketing materials to industry contacts that stated: “The [Company A] Broker/Dealer trades securities, focusing on highly structured consumer and non-consumer ABS, CMBS, and RMBS. It also originates new and existing securitizations.”

12. From May 2009 through February 2010, Company A introduced approximately 100 trades in asset-backed securities, *i.e.*, approximately 100 purchases and 100 sales, that generated over \$4 million in compensation. Rafferty retained \$294,147 in 2009 and \$343,468 in 2010.

### **Rafferty Fails to Keep Accurate Books and Records**

13. The five employees of Company A who became registered representatives of Rafferty used Company A’s email addresses and Bloomberg messaging addresses. Although they became Rafferty registered representatives in July 2009, Rafferty did not preserve the electronic communications to or from these external addresses related to its business, and it did not ensure that Company A did so.

14. In addition, in March 2010, an employee of Company A registered with Rafferty bought and sold a bond on two occasions but purposefully delayed submitting tickets for the two purchases to Rafferty. As a result, Rafferty failed to make and keep current its books and records by failing to timely reflect these transactions in its trade blotters.

15. As a result of the conduct described above, Rafferty willfully violated Section 17(a) of the Exchange Act and Rules 17a-3(a)(1) and 17a-4(b)(4) thereunder and willfully aided and abetted and caused Company A’s violation of Section 15(a) of the Exchange Act.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b)(4) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 15(a) and 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

B. Respondent is censured.

C. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of \$637,615, prejudgment interest of \$82,011, and a civil monetary penalty of \$130,000 to the United States Treasury. If timely payment is not made, additional interest on the disgorgement interest and prejudgment interest amounts shall accrue pursuant to SEC Rule of Practice 600, and additional interest on the civil monetary penalty shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Rafferty Capital Markets, LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Celeste A. Chase, Assistant Regional Director, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

By the Commission.

Jill M. Peterson  
Assistant Secretary