

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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11:34 am, Jul 29, 2016

In the Matter of

RICHARD ROGERS,

Respondent.

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CFTC Docket No. 89-7

**Order Granting Respondent's Petition to Modify the Commission's Previous
Order and Opinion, Dated June 20, 1989**

On June 20, 1989, the Commission entered an Order and Opinion Accepting Offer of Settlement of Respondent Richard Rogers ("1989 Order"). In that 1989 Order, the Commission found that Rogers had violated then Section 4b of the Commodity Exchange Act, 7 U.S.C. 6b, and ordered Rogers to: a) cease and desist from further violations, b) pay a civil monetary penalty, and c) comply with his undertaking not to henceforth seek registration with the Commission. Since July 1988, Rogers has been a registered representative with the Financial Industry Regulatory Authority ("FINRA") or its predecessor, the National Association of Securities Dealers, Inc.

On June 9, 2016, Rogers petitioned the Commission to modify the 1989 Order to remove the provision requiring his compliance with his undertaking not to henceforth seek registration. In his petition, Rogers represents that he does not seek this modification so that he can apply for any registration with the Commission. Rather, he states that he is currently 76 years old, seeks to retire and only seeks this modification so that he can qualify for a special retirement program with his employer, Wells Fargo

Advisors LLC. He further represents that he cannot presently qualify for that special retirement program because, in his current position as a registered representative under the security laws, he is currently subject to "heightened supervision" by FINRA. That status was imposed upon Rogers because of his undertaking not to seek registration in the 1989 Order. Rogers additionally states that if the 1989 Order is modified as requested, he has good cause to petition FINRA to remove this "heightened supervision" status and thus become qualified for the special retirement program.

To date, Rogers has fully complied with the 1989 Order and has not been the subject of any final adverse disciplinary determinations since he became a registered representative in July 1988. Moreover, there are no disciplinary actions currently pending against him.

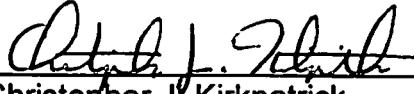
The Commission established the standard for modifying a Commission order with forward-looking sanctions in *In re ADM Investor Services, Inc.*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,236 at 50,459 (CFTC Sept. 30, 2000). In that matter, the Commission adopted the general standard in Rule 60(b)(5) of the Federal Rules of Civil Procedure, which provides, when evaluating requests for relief from judgments, for a determination whether applying sanctions prospectively is no longer equitable. *Id.* at 50,461. In the particular context of a registration sanction, the Commission further stated "if a petitioner makes a reliable showing that [he] no longer poses a substantial risk to the public, there is no persuasive rationale for continuing a registration restriction." *Id.* at 50,462.

The circumstances of this petition appear unique in that Rogers represents that he has no intention to actually seek registration with the Commission, only seeks to

retire, and furthermore will not otherwise engage in any activity subject to the Commission's jurisdiction involving customer trading. Moreover, Rogers only seeks to modify the registration sanction portion of the 1989 Order. In light of these unique circumstances, the Commission finds that Rogers no longer poses a substantial risk to the public. Consequently, we modify the 1989 Order in that Rogers is no longer ordered to comply with an undertaking not to seek registration with the Commission. All other provisions of the 1989 Order remain in effect.

By the Commission.

Dated: July 29, 2016



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission