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BEFORE THE ARKANSAS SECURITIES COMMISSIONER  
CASE NO. S-18-0110  
ORDER NO. S-18-0110-19-OR01

IN THE MATTER OF:  
MARK STEVEN ROGERS

RESPONDENT

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act (“Act”), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509, the Rules of the Arkansas Securities Commissioner promulgated pursuant to the Act (“Rules”), and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann §§ 25-15-201 through 25-15-219, in accordance with an agreement between the Staff of the Arkansas Securities Department (“Staff”) and the Respondent, Mark Steven Rogers (“Rogers”).

The Respondent admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives his right to a formal hearing and appeal, consents to the entry of this Order, and agrees to abide by its terms in full and final settlement of all claims that could be brought against him on the basis of the facts set forth herein.

Findings of Fact

1. Rogers (CRD No. 4197673) is currently registered as an investment adviser representative and broker-dealer agent with LPL Financial LLC (CRD No. 6413). Rogers has been registered with LPL Financial LLC since February 14, 2018. Rogers was registered as an investment adviser representative and broker-dealer agent with SII Investments, Inc. (CRD No. 2225) from October 2012 until February 14, 2018. Rogers operates his investment adviser and broker-dealer business under the name Rogers Wealth Management located at 7221 West 17<sup>th</sup> Street Little Rock, Arkansas 72204. At all times relevant to this Order, Rogers was

employed as a broker-dealer agent and investment adviser representative with SII Investments, Inc.

2. The Staff conducted an examination of Rogers and Rogers Wealth Management on March 8, 2018. The findings of this Order are based on the information discovered during the Staff's March 8, 2018 examination.

3. The Staff's examination revealed that the purchases and product holdings in several client investment advisory accounts are not in line with the investment objectives and risk tolerances set out by the clients in violation of Rule 308.02(a). Under Rule 308.02(a), recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of the information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable analysis of the client's information and records as may be provided to the investment adviser shall constitute fraudulent or deceptive practices.

4. Of the accounts reviewed many had a large portion of the portfolio in non-investment grade bonds. The majority of these accounts holding non-investment grade bonds had a stated risk tolerance of low risk.

5. According to Moody's Investment Services, long-term bond ratings are opinions of the relative credit risk of financial obligations with an original maturity of one year or more. They address the possibility that a financial obligation will not be honored as promised. Such ratings reflect both the likelihood of default and any financial loss suffered in the event of

default. Obligations rated Ba are judged to have speculative elements and are subject to substantial credit risk. Obligations rated Caa are judged to be of poor standing and are subject to very high credit risk. Obligations rated Ca are highly speculative and are likely in, or very near, default, with some prospect of recovery of principal and interest. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category. Bonds with a rating of Ba, B, Caa, Ca, or C are considered non-investment grade bonds or junk bonds.

6. The following are examples of purchases and product holdings based on Rogers' unsuitable recommendations and actions. These holdings are not in line with the investment objectives and risk tolerances set out by the clients:

a. Account number XXXXXXXX06 (A Rollover IRA Account)

On March 1, 2013, Rogers recommended and purchased a corporate bond in the amount of \$10,000 from Peabody Energy Corporation for this client. At the time of purchase, Peabody Energy Corporation bonds were rated Ba2 by Moody's and considered non-investment grade. This bond was held until April 6, 2017.

On July 23, 2014, Moody's downgraded Peabody's rating to Ba3. On February 27, 2015, Moody's downgraded Peabody's rating to B2. On June 25, 2015 Moody's downgraded Peabody's rating to B3. Moody's continued to downgrade Peabody's rating and on March 24, 2016 Peabody's rating was downgraded to Ca. On April 13, 2016, Peabody Energy Corporation filed for bankruptcy and its rating was withdrawn.

Rogers continued to hold this bond in the client's investment advisory account despite its increasingly negative outlook. The client's losses due to holding this bond amount to \$8,017.97. In addition, the client's account also holds the following non-investment grade bonds: PHI Inc (rating B3), Century Link Inc (rating B2), Commercial Metals (rating Ba2), Mack-Cali Rlty L P (rating Ba1), and US West Communications (rating Ba2). These non-investment grade bonds total 91% of the client's portfolio holdings. The client's stated risk tolerance is low risk.

b. Account number XXXXXXXXX95

On December 7, 2012 Rogers recommended and purchased a corporate bond in the amount of \$40,000 from Peabody Energy Corporation for this client. At the time of purchase, Peabody Energy Corporation bonds were rated Ba2 by Moody's and considered non-investment grade. This bond was held until the account was closed on March 1, 2017.

Rogers continued to hold this bond in the client's account despite its increasingly negative outlook. At the time of the account's closing, the client's losses due to holding this bond amounted to \$25,492.91. In addition, the client's account also held the following non-investment grade bonds: Cliff Natural Resources (rating Caa1) and Northern Oil & Gas (rating Caa3). These non-investment grade bonds totaled 61% of the client's portfolio holdings. The client's stated risk tolerance was low risk.

c. Account number XXXXXXXXX57

On June 25, 2013 Rogers recommended and purchased a Puerto Rico Sales Tax municipal bond in the amount of \$30,000 for this client. At the time of purchase, these municipal bonds were rated A2 by Moody's and considered upper-medium-grade and subject to low credit

risk. After several negative rating updates, this bond's rating reached Caa3 on July 1, 2015. This bond was held in the client's account until December 28, 2017.

Rogers continued to hold this bond in the client's account despite its increasingly negative outlook. The client's realized losses due to holding this bond amount to \$28,974.00. In addition, the client's account also holds the following non-investment grade bonds: BMC Software Inc (rating Caa2), Petrobras Intl (rating Ba3), Navient Corp (Ba3), Avis Budget Car Rent LLC (rating B1), Mack-Cali Rlty L P (rating Ba1), Avis Budget Car Rent LLC (rating B1) and US West Communications (rating Ba2). These non-investment grade bonds total 48% of the client's portfolio holdings, with an additional 3% of the client's portfolio holdings having withdrawn ratings. The client's stated risk tolerance is low risk.

7. The holdings in the accounts above are inconsistent with the clients' objectives and risk tolerance in violation of Rule 308.02(a). In addition, the Staff's examination revealed that the product holdings in several other client accounts are not in line with the stated investment objectives and risk tolerances. Of the fifteen accounts that were reviewed by the Staff for the examination, eight have purchases and holdings that are unsuitable given the investment objectives and risk tolerances of the clients.

8. Rule 308.02(j) states, in part, that charging a client an advisory fee that is unreasonable in light of the type of service to be provided constitutes a fraudulent, deceptive, dishonest, or unethical practice of investment advisers. The practice of an investment adviser or investment adviser representative placing an investor's funds in a fee-based account, providing limited services, effecting few trades in the account (even when transactions are called for), while charging a fee based on the assets held in the account despite the availability of alternative,

more appropriate fee structures, violates Rule 308.02(j). This practice has been referred to as reverse churning by securities regulators.

9. Rogers recommended and opened fee-based advisory accounts for several clients that implemented a buy and hold investment strategy. Rogers opened these fee based advisory accounts, recommended and bought securities in the accounts, continued to hold the positions without additional trades, and failed to adequately monitor the fee-based accounts for inactivity. On December 15, 2016 and March 6, 2017, SII Investments Advisory Compliance requested that Rogers review 19 fee-based accounts as a result of 12 to 18 months of inactivity. Rogers collected \$14,833.65 in fees from these accounts during the 12 to 18 months of inactivity prior to the review. After the review, 14 accounts were converted to commission-based broker-dealer accounts, 4 accounts remained as fee-based advisory accounts, and 1 account was closed. Clients did not receive refunds for the \$14,833.65 collected in fees during the 12 to 18 months of inactivity.

10. Despite the review requested by SII Investments Advisory Compliance, and the restructuring of several accounts as a result of that review, the Staff's examination found that Rogers continued to place investor's funds in fee-based advisory accounts with little to no activity during the period of time subject to the Staff's examination. Staff's examination found the following:

a. Account number XXXXXXXXX06

In account number XXXXXXXXX06, Rogers executed one trade between January 1, 2017 and January 31, 2018, and charged a fee of 1%, amounting to \$1,305.57, during this period.

b. Account number XXXXXXXXX85

In account number XXXXXXXXX85, Rogers executed two trades between January 1, 2017 and January 31, 2018, and charged a fee of 1%, amounting to \$1,999.23 during this period.

11. Rogers placed these clients in fee based advisory accounts despite being licensed as both a registered investment advisor representative and broker-dealer agent with the option of opening commission based brokerage accounts for these clients. Rogers failed to determine whether fee-based accounts were appropriate for the particular customers in light of the services provided, the projected cost to the customer, and alternative fee structures available.

#### **Conclusions of Law**

12. Under Rule 308.02(a), recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of the information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable analysis of the client's information and records as may be provided to the investment adviser shall constitute fraudulent or deceptive practices.

13. As detailed in paragraph 6, the Staff's examination revealed several accounts with holdings that are inconsistent with the clients' objectives and risk tolerance in violation of Rule 308.02(a).

14. Rule 308.02(j) states, in part, that charging a client an advisory fee that is unreasonable in light of the type of service to be provided constitutes a fraudulent, deceptive,

dishonest, or unethical practice of investment advisers. The practice of an investment adviser or investment adviser representative placing an investor's funds in a fee-based account, providing limited services, effecting few trades in the account (even when transactions are called for), while charging a fee based on the assets held in the account despite the availability of alternative, more appropriate fee structures, violates Rule 308.02(j). This practice has been referred to as reverse churning by securities regulators.

15. As detailed in paragraphs 9 and 10, Rogers' placement of certain clients in fee based advisory accounts despite being licensed as both a registered investment advisor representative and broker-dealer agent with the option of opening commission based brokerage accounts for these clients, and his failure to determine whether fee-based accounts were appropriate for the particular customers in light of the services provided, the projected cost to the customer, and alternative fee structures available constitute a violation of Rule 308.02(j).

16. Ark. Code Ann. §23-42-308(h) provides that matters may be resolved by consent order in lieu of formal proceedings.

17. Ark. Code Ann. § 23-42-308(a)(2)(G) provides in part that the Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he finds that a registrant has engaged in dishonest or unethical practices in the securities business. The facts set forth above demonstrate that the violations committed by Rogers constitute dishonest or unethical practices in the securities business and that the imposition of a license suspension or revocation against Rogers is appropriate pursuant to Ark. Code Ann. § 23-42-308(a)(2)(G).

### Undertaking

18. In settlement of this matter:
- a. Rogers agrees to the revocation of his registration as a broker-dealer agent and investment adviser representative upon entry of this Order;
  - b. Rogers agrees to not apply for registration pursuant to the Act in any capacity, including as an investment adviser representative or as a broker-dealer agent until a period of at least two years from the date of this Order has elapsed; and
  - c. If Rogers applies for registration after the two-year period, the approval of Rogers' registration shall be conditional upon the broker-dealer and/or investment adviser's agreement to on-site heightened supervision of Rogers for a period of one year in accordance with a heightened supervision plan approved by the Staff.

### Opinion

19. This order is in the public interest. The facts set out in paragraphs 1 through 11 support the violations of the Act and Rules set out in paragraphs 12 through 17.

### Order

IT IS THEREFORE ORDERED that:

1. The registration of Rogers as an investment adviser representative and broker dealer agent is revoked upon entry of this Order.

2. In accordance with Rogers' undertaking, no application for registration pursuant to the Act will be accepted or granted until a period of two years from the date of this Order has elapsed.

3. Should Rogers apply for registration after the two-year period has elapsed as either an agent of a broker-dealer or an investment adviser representative, no application will be accepted unless and until the broker-dealer or investment adviser has agreed to on-site heightened supervision of Rogers for a period of one year in accordance with a heightened supervision plan approved by the Staff.

WITNESS MY HAND AND SEAL this 15<sup>th</sup> day of February, 2019.

  
B. EDMOND WATERS  
Arkansas Securities Commissioner

**Consent to Entry of Order**

I hereby agree to the entry of this Consent Order and consent to all terms, conditions, and orders contained therein; and waive any right to appeal from this Order.

  
Mark Steven Rogers, Respondent  
CRD No. 4197673

Approved as to content and form:

  
Aislinn Andrews, Staff Attorney  
Arkansas Securities Department