



Financial Industry Regulatory Authority

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April 21, 2017

Via Electronic Mail

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: In the Matter of the Association of Brian J. Mulkeen (CRD # 830870) with TFS Securities, Inc. (CRD # 20626)

Dear Mr. Fields:

Effective April 21, 2017, and pursuant to Rule 19h-1(a)(3)(iv)(A)&(B) of the Securities Exchange Act of 1934 (“SEA” or “Exchange Act”), the Financial Industry Regulatory Authority (“FINRA”) hereby gives notification to the United States Securities and Exchange Commission (“the SEC” or “the Commission”) of the association of Brian J. Mulkeen (“Mulkeen”) as a General Securities Representative, Uniform Securities Agent, and Investment Adviser Representative with TFS Securities, Inc. (“TFS Securities Financial” or the “Firm”). The Firm filed a Membership Continuance Application (“MC-400” or “Application”) with FINRA on July 18, 2016.¹

Mulkeen’s Disqualifying Event

Mulkeen is subject to a statutory disqualification as a result of an SEC Order Instituting Administrative Proceedings and Cease-and-Desist Proceedings issued pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, dated September 30, 2015 (Order).² At that time, Mulkeen was associated as a registered representative with the now-defunct All Funds, Inc. (“All Funds”), a

¹ See MC-400 Application (and related attachments) filed by TFS Securities on July 18, 2016 (attached as Exhibit 1).

² See Exhibit 1 at 121.

broker-dealer formerly registered with FINRA³, holding the title of President, Comptroller, and Chief Compliance Officer. Mulkeen also directly supervised Edward T. Borg (“Borg), owner, officer, and registered representative for All Funds. Mulkeen failed to supervise Borg in any meaningful way, leading to Borg’s manipulation of the market and other misconduct. From 2003 through 2011, Borg engaged in manipulative trading for the common stock of Natural Alternatives International, Inc. (Nasdaq: “NAII”) by executing numerous cross, matched, and wash trades, while he personally owned as much of 22.5% of NAII’s outstanding stock.

As a result of his misconduct, Mulkeen was permanently barred, in a supervisory capacity, from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and fined \$50,000.

Background Information of Brian Mulkeen

Prior SEA Rule 19h-1 and 19d-1 Notices

No prior 19h-1 Notices or Notifications have been filed on behalf of Mulkeen.

Proposed Association, Responsibilities and Compensation

TFS Securities proposes to employ Mulkeen as a General Securities Representative and/or investment advisor of “personal production.”⁴ According to the Application, Mulkeen will “speak to and meet with retail clients and educate them about options for investing in mutual funds, UITs, ETFs and managed accounts under the direction and supervision of TFS Securities, [its] staff and supervisors.”⁵ The Firm further represents that Mulkeen will not serve in any supervisory capacity.

Mulkeen will work the TFS Securities office, located at 437 Newman Springs Road, Lincroft, New Jersey.⁶ TFS Securities represents that Mulkeen’s residence at 1444 Orange Turnpike, Monroe, New York, will be “disclosed as a non-registered branch to be

³ All Funds’ registration with FINRA terminated on February 7, 2012. *See* CRD Snapshot for All Funds (attached as Exhibit 2).

⁴ *See* Exhibit 1 at 141.

⁵ *Id.*

⁶ *Id.*

used for solicitation and client service only.”⁷ The Firm represents that Mulkeen will “service his clients at this location when he is not at the home office or traveling” and that the location will not be held out to the general public as a branch office; further, Mulkeen will not be permitted to meet clients at the location.⁸ The Firm represents that, at this location, Mulkeen will be allowed to receive and return client calls and process trades. If any transactions should occur, Mulkeen is to forward any necessary paperwork immediately to the Firm’s Office of Supervisory Jurisdiction (“OSJ”) or the Firm’s main office. The Firm represents that because Mulkeen is to conduct business through its “NetX360 Pershing Platform,” his supervisors would have immediate access to his transactions.⁹ The Firm further represents that while he will be allowed to bring client paperwork to his residence after a meeting, such paperwork will be required to be time/date stamped and immediately mailed or physically delivered to the Firm’s OSJ. Mulkeen will be prohibited from meeting any clients at his home and his employment will be terminated should he violate this rule.¹⁰

The Firm anticipates that Mulkeen will work from his residence for approximately three to four days per week and proposes the following supervision on those days¹¹:

- Mulkeen will provide the Firm with a calendar of any appointments with clients, along with client name, location, date, time, and topics discussed;
- Mulkeen’s business will be conducted through the Firm’s brokerage platform through which the Firm will review his trades, asset movement, monies disbursed or received, AML reporting, account services (i.e. change of address, social security numbers, or any other pertinent information);

⁷ *Id.* at 167.

⁸ *See* Email exchange between Tammy Case and Member Regulation, dated September 18, 2016 through December 23, 2016 (attached as Exhibit 3).

⁹ *See* Email from Tammy Case to Member Regulation dated January 18, 2017 with attached letter (attached as Exhibit 4).

¹⁰ *Id.* Member Regulation’s review of FINRA Rule 3110(f)(2)(A) determined that the activity being proposed to be done by Mulkeen at his home is permissible for a non-branch location.

¹¹ *Id.* The Firm also represents that while Mulkeen looks to spend as much time as possible at the Firm’s main office location, due to his long commute and the fact that most his clients and networking resources are near his residence, the Firm made a business decision to allow Mulkeen some flexibility by allowing him to work from his residence. In addition, the Firm represents that Mulkeen has a “family medical situation that requires him to be home or close to home for emergencies.” *Id.*

- Firm will implement rule engines in place so that all activity must be approved by Mulkeen's supervisor at the home office before completing transmittal to the clearing firm;
- Firm will require Mulkeen to provide a written log of all telephone calls with customers and potential customers. The Firm will also require that Mulkeen provide phone records from his telephone carrier upon request to aid in the Firm's review ;¹²
- Firm will monitor Mulkeen's email and social media activities on a daily basis¹³;
- Mulkeen's supervisor will have daily phone calls with Mulkeen to verify his activities; and
- Firm will hold quarterly onsite meetings at Mulkeen's residence.

Mulkeen will be compensated on a commission basis with 59.5% payout¹⁴ of dealer retention on all securities and IAR products, and will not be entitled to any production bonuses while under the heightened supervision plan.¹⁵

Employment and Registration History

Mulkeen has been associated with the following firms during the following periods:¹⁶

<i>Employer</i>	<i>Period of Employment</i>
TFS Securities, Inc.	June 2016 to present
Invest Financial Corporation	October 2012 – November 2015
LPL Financial LLC	September 2011 – October 2012
All Funds, Inc.	December 1976 – February 7, 2012

¹² See Email exchange between Tammy Case and Member Regulation, dated April 17, 2017 through April 19, 2017 (attached as Exhibit 5).

¹³ The Firm represents that it already reviews all of its registered representatives' emails and social media activities on a daily basis.

¹⁴ The Firm represents that for every dollar of gross commission or dealer concession paid to the broker dealer in connection with securities or investment advisor business, Mulkeen will receive 59.5%. See Exhibit 3 at p. 6.

¹⁵ See Exhibit 1 at 141.

¹⁶ See CRD Snapshot of Brian Mulkeen at pp. 3-5 (attached as Exhibit 6).

Mulkeen has been registered as a General Securities Principal (Series 40, n/k/a Series 24) since December 1976 and a Registered Options Principal (Series 4) since January 1979.¹⁷ He also passed the Financial and Operations Principal Exam (Series 27) in March 1987, Equity Trader Examination (Series 55, n/k/a Series 57)¹⁸ in January 1999, Uniform Securities Agent State Law Examination (Series 63) in March 2012, and Uniform Combined State Law Examination (Series 66) in April 2014.¹⁹ Mulkeen is grandfathered in as a General Securities Representative without having taken the Series 7 examination under a policy that allowed him to automatically qualify as such when he became licensed as a General Securities Principal in 1976.²⁰

Regulatory History

On March 24, 1981, Mulkeen was censured and fined by the National Association of Securities Dealers, Inc. (“NASD”) (n/k/a FINRA) due to violations of Article III, Sections 1, 2, and 27 of the Rules of Fair Practice.²¹ Specifically, while working at All Funds, Mulkeen failed to exercise reasonable supervision over registered representatives, including Borg and Borg’s father. Mulkeen, Borg, and All Funds were jointly and severally censured and fined \$5,000.

Other than the matters cited above, Member Regulation is unaware of any legal, disciplinary or regulatory actions brought against Mulkeen.

¹⁷ The Registered Principal Examination (Series 40) was replaced by the General Securities Principal Examination (Series 24) in January 1979.

¹⁸ The Equity Trader Examination (Series 55) was replaced by the Securities Trader Examination (Series 57) on January 4, 2016.

¹⁹ See Exhibit 6 at p. 5.

²⁰ Mulkeen passed the Series 40 exam and qualified as a General Securities Principal in December 1976 and automatically qualified as a Series 7 General Securities Representative. In June 1977, Series 7 General Securities Representative exam was added as a prerequisite for the Series 40 exam. See FINRA Qualification Examination History at p. 7 of FINRA Qualification Exam Program Restructure and Web Delivery of CE Material (attached as Exhibit 7). In addition, because the Firm has requested that Mulkeen be registered for Series 7, Series 63, and Series 66 licenses only, Mulkeen does not and will not hold any principal or supervisory registrations in the future, keeping in line with his permanent supervisory bar. *Id.*

²¹ See Exhibit 4 at pp. 11-13.

Outside Business Activities

Mulkeen lists his outside business activities (“OBA”) as working at JP Landscaping in New York, New York. He represents that from April through November, he works as a Residential Landscaper/Laborer for about 32 hours per month doing part-time work on Saturdays only.²²

The Firm is a dually-registered broker dealer and investment advisor. The Firm also proposes that Mulkeen work for the investment advisory arm of the Firm as an investment advisor. Mulkeen will not be permitted to act in a supervisory capacity while working as an investment advisor and will be subject to the plan of heightened supervision delineated in this notification.²³

Background Information of TFS Securities

TFS Securities is based in Lincroft, New Jersey and has been a member of FINRA since December 1987. The Firm has 114 branch offices and 6 OSJs.²⁴ The Firm employs approximately 300 employees, of which 42 are registered principles and 220 are registered representatives.²⁵ The Firm is approved to engage in, among other things, a broker or dealer retailing corporate equity securities, underwriter/selling group member, mutual fund retailer, and investment advisory services.²⁶

Member Regulation is unaware of any legal, disciplinary or regulatory actions brought against TFS Securities in the past five years.

Proposed Supervisor

Primary Supervisor – Anthony Victor Lopez (CRD No. 722149)

The Firm proposes that Mulkeen will be supervised onsite by Anthony Victor Lopez (“Lopez”), a General Securities Principal at TFS Securities. Lopez has been employed at

²² *Id.* at pp. 7-8.

²³ *See* Exhibit 3.

²⁴ *See* Exhibit 1 at 143.

²⁵ *Id.*

²⁶ *See* CRD Snapshot of TFS Securities at p. 5 (attached as Exhibit 8).

the Firm since June 2013 and works from the Firm's main office in Lincroft, New Jersey.²⁷

Lopez passed the General Securities Representative Examination (Series 7) in January 1981, Uniform Securities Agent State Law Examination (Series 63) in March 1995, General Securities Principal Examination (Series 24) in November 1997, and Equity Trader Examination (Series 55, n/k/a Series 57)²⁸ in May 1999.²⁹

Lopez has been associated with the following firms, during the following periods:³⁰

TFS Securities, Inc.	June 2013 – present
Buckman, Buckman & Reid, Inc.	October 2011 – May 2013
SJ Levinson & Sons LLC	January 2010 – September 2011
Jesup & Lamont Securities Corp.	March 2009 – December 2009
Pershing LLC	April 2006 – January 2009
National Financial Services LLC	January 1997 – October 2005
Mayer & Schweitzer, Inc.	August 1995 – January 1997
Wheat, First Securities, Inc.	August 1993 – August 1995
Merrill Lynch, Pierce, Fenner & Smith Inc.	May 1983 – July 1993

Lopez does not report any outside business activities.³¹

Member Regulation is unaware of any legal, disciplinary or regulatory actions brought against Lopez.

Alternate Supervisor – Jennette Fraler (CRD No. 4241814)

In the event that Lopez is not available, the Firm proposes that Jennette Fraler (“Fraller”) will serve as Mulkeen’s alternate supervisor.³² Fraler has been employed with TFS

²⁷ See CRD Snapshot of Anthony Lopez (attached as Exhibit 9).

²⁸ The Equity Trader Exam (Series 55) was replaced by the Securities Trader Examination (Series 57) on January 4, 2016.

²⁹ See Exhibit 9 at pp. 3-9.

³⁰ *Id.* at pp. 6-9.

³¹ *Id.* at p.11.

³² See Exhibit 3 at p. 6.

Securities since July 2000. Fraler works from the Firm's main office in Lincroft, New Jersey.³³

Fraller passed the General Securities Representative Examination (Series 7) in August 2000, General Securities Principal Examination (Series 24) in December 2000, Uniform Securities Agent State Law Examination (Series 63) in January 2001, Municipal Securities Principal Examination (Series 53) in June 2001, Financial and Operations Principal Examination (Series 27) in August 2008, and Registered Options Principal Examination (Series 4) in December 2009.³⁴

Fraller has not been associated with any other firms apart from TFS Securities.³⁵

Fraller does not report any outside business activities.³⁶

Member Regulation is unaware of any legal, disciplinary or regulatory actions brought against Fraller.

Basis for FINRA's Filing of the 19h-1 Notification

SEA Rule 19h-1(a)(3)(iv)(A)&(B) reads, in part:

A notice need not be filed with the Commission pursuant to this rule if . . .

- A. The disqualification previously – (A) was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and (B) was considered by the Commission in determining a sanction against such person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such person in the capacity now proposed or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed[.]

³³ See CRD Snapshot of Jennette Fraller (attached as Exhibit 10).

³⁴ *Id.* at p. 7.

³⁵ *Id.* at p. 6.

³⁶ *Id.* at p. 7.

It is appropriate for FINRA to file this notification pursuant to SEA Rule 19h-1(a)(3)(iv)(A)&(B), because this Application meets all applicable conditions of this rule. Mulkeen's disqualification was previously the basis for the institution of an administrative proceeding pursuant to the federal securities laws, and the proceeding did not restrict or limit his future securities activities as a General Securities Representative (Series 7) and investment advisor. Rather, it limited his ability to act in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent.

TFS Securities represents that Mulkeen will not be working in the prohibited capacity and FINRA knows of no other conduct or other circumstances that would cause Mulkeen's association with TFS Securities to be inconsistent with the public interest or the protection of investors. FINRA therefore believes that this form of notification, to the Commission, is appropriate.

TFS Securities is not a member of any other self-regulatory organization.

Sincerely,

Lorraine Lee-Stepney

Lorraine Lee-Stepney
Manager, Statutory Disqualification Program

Enclosures

cc: Tammy Case (Via Electronic Mail)
Chief Compliance Officer
TFS Securities, Inc.

Natasha Greiner (Via Electronic Mail)
Office of Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission

Robert C. Cushmac (Via Electronic Mail)
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Daniel M. Sibears
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Exhibits)

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Andrew Love
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Exhibits)

Shannon Grant
Senior Regulatory Analyst
Registration and Disclosure
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(Via Electronic Mail & w/out
Exhibits)

List of Exhibits

1. MC-400 Application and related attached filed by TFS Securities, Inc. on July 18, 2016
2. CRD Snapshot of All Funds, Inc.
3. Email exchange between Tammy Case and Member Regulation, dated September 18, 2016 through February 2, 2017
4. Email from Tammy Case to Member Regulation, dated January 18, 2017, with attached letter
5. Email exchange between Tammy Case and Member Regulation, dated April 17, 2017 through April 19, 2017
6. CRD Snapshot of Brian Mulkeen
7. FINRA Qualification Program Restructure and Web Delivery of CE – Qualification Examination History
8. CRD Snapshot of TFS Securities, Inc.
9. CRD Snapshot of Anthony Lopez
10. CRD Snapshot of Jennette Fraler