

STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
Telephone: (973) 504-3600

IN THE MATTER OF:

TFS Securities, Inc.
(CRD# 20626)

Respondent.

CONSENT ORDER

BEFORE CHRISTOPHER W. GEROLD, BUREAU CHIEF

Pursuant to the authority granted to Christopher W. Gerold, Bureau Chief of the New Jersey Bureau of Securities ("Bureau Chief"), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 to -89 ("Securities Law"), and after investigation, careful review, and due consideration of the facts and statutory provisions set forth below, the Bureau Chief hereby finds that there is good cause and it is in the public interest, to enter into a Consent Order ("Consent Order") with TFS Securities, Inc. ("TFS"), and TFS hereby agrees to resolve any and all issues in controversy regarding the specific conduct described herein on the terms set forth in this Consent Order.

WHEREAS, the New Jersey Bureau of Securities (the "Bureau") is the State agency with the responsibility to administer and enforce the Securities Law;

WHEREAS, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are necessary to carry out the provisions of the Securities Law, upon a finding that the action is necessary and appropriate in the public interest or for the protection of investors or consistent with the purposes fairly intended by the provisions of the Securities Law;

WHEREAS, the Bureau has conducted an investigation into certain activities of TFS as set forth in this Consent Order;

WHEREAS, TFS has fully cooperated with the Bureau by conducting an internal review at considerable expense related to the Bureau's investigation and reported to the Bureau the results of that review to and by providing such other documents and information as requested by the Bureau;

WHEREAS, TFS has adopted changes to its books and records, compliance and written supervisory procedures;

WHEREAS, TFS and the Bureau Chief wish to resolve these issues without the expense and delay that formal proceedings would involve;

WHEREAS, TFS consents to the form, content, and entry of this Consent Order. Accordingly, TFS waives the following rights:

- a. To be afforded an opportunity for hearing on the Bureau Chief's findings of fact and conclusions of law in this Consent Order; and
- b. To seek judicial review of, or otherwise challenge or contend, the validity of this Consent Order;

WHEREAS, TFS agrees that solely for the purposes of settling this matter, or any future proceedings by the Bureau solely related to the conduct herein, this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to N.J.S.A. 52:14B-1 to - 31; and

WHEREAS, this Consent Order concludes the investigation and action by the Bureau Chief and any civil or administrative action that could be commenced, pursuant to the Securities Law, on behalf of the Bureau Chief, as it relates to seeking civil monetary penalties or other relief against TFS for the specific conduct described herein solely as it relates to TFS.

The Bureau Chief makes the following findings of fact and conclusions of law, which TFS neither admits nor denies:

FINDINGS OF FACT

Respondent

1. TFS Securities, Inc. (CRD No. 20626), has been registered with the Bureau as a broker-dealer since November 30, 1987. TFS is also an investment adviser registered with the Securities and Exchange Commission and notice filed in New Jersey. TFS maintains a main address of 437 Newman Springs Road, Lincroft, New Jersey.

Background

2. As part of its business, TFS agents sell non-traded alternative investments (each an “AI” and collectively “AIs”) to TFS customers. AIs include non-traded real estate investment trusts (“non-traded REIT” or “non-traded REITs”), non-traded business development companies

(“non-traded BDC” or “non-traded BDCs”), non-traded closed-end and interval funds, hedge funds, managed futures, private equities and other illiquid pass through investments.

3. Between 2008 and July 2019 (“Relevant Time Period”), TFS sold securities in at least fifteen (15) different AI offerings for a total of 605 transactions. The AI transactions were comprised of: three hundred eighty-seven (387) non-traded REIT transactions (63.97%); two hundred nine (209) non-traded BDC transactions (34.55%); and nine (9) secured debentures closed-end fund transactions (1.49%).

4. These AI transactions represented sales to approximately three hundred forty (340) customers. During the Relevant Time Period, TFS received a gross commission of between seven percent (7%) to eight percent (8%) from sales of AIs by TFS agents to customers.

AIs Are Complex Illiquid Investment Products

5. A “REIT” is an entity that generally owns and often manages, income-producing real estate.

6. A “BDC” is an entity that generally invests in small and mid-sized businesses.

7. REITs and BDCs are either publicly traded on a public securities exchange, non-traded with disclosures, based on its prospectus or entirely private offerings.

8. Non-traded REITs and non-traded BDCs, those which are not traded on public securities exchanges, have certain characteristics that make them riskier for investors. For instance:

- a. Non-traded REITs and non-traded BDCs are generally illiquid as they have no public trading market and a liquidity event typically occurs within 5-7 years of an offering’s inception. While the prospectuses contain repurchase

provisions, the non-traded REIT or non-traded BDC may not be able to satisfy all repurchase requests, and typically, there is a limitation on the number of repurchases per year. Additionally, repurchase provisions are restrictive. Often, there is a one year holding period, requests that are satisfied in the first several years are done so at a price below the original offering price, and repurchase programs can be suspended or terminated.

- b. Many non-traded REITs and non-traded BDCs pay distributions from invested capital back to investors, or from debt, as opposed to providing distributions on earnings from real estate holdings. Once an investor has invested, distributions commence, which some investors may confuse for a yield on the investment. These distributions are often a return of investor capital, which may reduce the investor's return on investment or borrowings, which must later be repaid.

TFS's BOOKS AND RECORDS VIOLATIONS

(A) Failure to Update Customer Profiles

9. The Securities Law provides that, “[e]very registered broker-dealer and investment adviser shall make and keep those accounts, correspondence, memoranda, papers, books and other records as the bureau chief by rule prescribes...” N.J.S.A. 49:3-59(b).

10. N.J.A.C. 13:47A-1.10 prescribes “[a]ll broker-dealers shall keep at their principal place of business, open to inspection of the Bureau of Securities of the State of New Jersey, all

books and records required to be kept by the Securities and Exchange Commission or by the Bureau of Securities.”

11. 17 CFR 240.17a-3 dictates what books and records are required to be made by broker-dealers. It states:

For each account with a natural person as a customer or owner ...

An account record including the customer’s or owner’s name... employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and the account’s investment objectives...17 CFR 240.17a-3(a)(17)(i)(A).

It further states:

A record indicating that ... [t]he member, broker or dealer has furnished to each customer or owner within three years of the effective date of this section, and to each customer or owner who opened an account after the effective date of this section within thirty days of the opening of the account, and thereafter at intervals no greater than thirty-six months, a copy of the account record or an alternate document with all information required by paragraph (a)(17)(i)(A) of this section...The member, broker or dealer shall include with the account record or alternative document provided to each customer or owner an explanation of any terms regarding investment objectives. The account record or alternate document furnished to the customer or owner shall include or be accompanied by prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the member, broker or dealer, and that the customer or owner should notify the member, broker or dealer of any future changes to information contained in the account record. 17 CFR 240.17a-3(a)(17)(i)(B)(1).

12. Of the 605 AI customer transactions reviewed by the Bureau, TFS failed to update at least six (6) New Jersey customer profiles every thirty-six (36) months as required by 17 CFR 240.17a-3. These six customer profiles were utilized to substantiate a total of 8 AI transactions with aggregate principal of \$299,300.

13. For example, TFS customer EC opened an account on December 10, 2003 and selected an investment objective of “Long-Term Growth” and a risk exposure of “Moderate”. EC proceeded to purchase a non-traded REIT in 2009. TFS was unable to produce either account statements or specific letters timely confirming the customer’s investment objective or any change made, no more than thirty-six (36) months prior to the transaction.

(B) TFS’s Books and Records Were Incomplete, Incorrect or Missing Entirely

14. TFS WSP - “Maintenance of Books, Records and Accounts”, require that, “[b]ooks, records and accounts concerning all securities transactions and related activities undertaken by this firm must be maintained in clear, full detail; must accurately reflect all transactions and all activities.”

15. Of the 605 customer transactions reviewed by the Bureau, Bureau staff identified thirteen (13) instances aggregating \$545,900 in purchases in which TFS’s transaction documentation was either incomplete, incorrect or missing entirely.

16. For example, certain subscription agreements provided did not contain the initials of either of the joint purchasers certifying understanding, agreement and compliance with the New Jersey Prospectus Suitability Standard.

(C) TFS’s Supervisory Lapses Resulted in Books and Records Violations

17. “It is unlawful for any person to make or cause to be made, in any document filed with the bureau or in any proceeding, investigation or examination conducted under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.” N.J.S.A. 49:3-54. Due to TFS’ failure to reasonably supervise, TFS failed to maintain accurate books and records.

18. For example, certain AI Disclosure Forms contained incorrect LNW values, and as such, inaccurate books and records.

CONCLUSIONS OF LAW

19. TFS’s failure to update customer’s profiles as required constitutes a failure to make and keep accurate books and records pursuant to N.J.S.A. 49:3-59(b).

20. TFS’s failure to maintain an adequate supervisory system constitutes a failure to make and keep accurate books and records pursuant to N.J.S.A. 49:3-59(b).

21. Pursuant to N.J.S.A. 49:3-70.1, each violation described above constitutes a basis for the assessment of a civil monetary penalty against TFS.

22. The Bureau Chief finds the following relief appropriate and in the public interest.

THEREFORE, it is on this 19 day of Oct, 2021, **ORDERED** and **AGREED** that:

23. TFS cease and desist from further violations of the Securities Law.

24. TFS is hereby assessed and shall pay a civil monetary penalty in the amount of \$75,000, due and payable upon execution of this Consent Order to “State of New Jersey, Bureau of Securities” 153 Halsey Street, 6th Floor, Newark, New Jersey 07102, or to be mailed to “New

Jersey Bureau of Securities”, P.O. Box 47029, Newark, New Jersey 07101. The civil monetary payment shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1.

ADDITIONAL PROVISIONS

25. This Consent Order shall not bind any person not a party hereto, except as provided herein.

26. Each of the undersigned has read this Consent Order, understands it, and agrees to be bound by its terms.

27. This Consent Order is not intended to be a final order based upon a violation of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct and is not intended by the Bureau to subject TFS or any of its affiliates (including any of their current or former officers, directors or employees) to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands, or under the rules or regulations of any securities or commodities regulatory or self-regulatory organization.

28. This Consent Order shall not disqualify TFS or any of its affiliates from any business that they otherwise are qualified, licensed or permitted to perform under applicable securities laws of New Jersey. Any disqualifications from relying upon this state’s registration exemptions or safe harbor provisions that arise from the Consent Order are hereby waived.

29. TFS shall cooperate with the Bureau in this investigation or any related litigation, investigation, order, and/or proceeding. Cooperation with the Bureau is material and shall include, but is not limited to:

- a. voluntarily and promptly appearing, without a subpoena and at their own

expense, to serve as a witness and testify completely and truthfully in any related litigation, investigation, order, and/or proceeding;

- b. voluntarily and promptly attending and fully participating in any meetings requested by the Bureau;
- c. agreeing to and complying with the terms of the Consent Order; and
- d. voluntarily and promptly responding to the Bureau's requests for documents or information.

30. TFS has read this Consent Order, understands it, and agrees to be bound by its terms. TFS understands that they had the right and opportunity to consult with an attorney regarding this Consent Order.

31. No employee, official of or person representing the Bureau or the State of New Jersey has made any additional promise or representation to TFS regarding this Consent Order. Nothing contained herein shall in any manner be construed to limit or affect any position that the Bureau, any other government, or any person, including investors, may take in any future or pending action not specifically encompassed herein.

32. In the event that TFS violates this Consent Order, the Bureau Chief may vacate this Consent Order and take further action against TFS under the Securities Law.

NEW JERSEY BUREAU OF SECURITIES

By:



Christopher W. Gerold
Bureau Chief

TFS SECURITIES, Inc.

DATED:

October 6, 2021

By: 
Name: Thomas P. Hyland Sr.
Title: President