

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the Act)**

– AND –

IN THE MATTER OF ADRIAN SATURLEY AND ADONIS ASSET MANAGEMENT

REASONS FOR DECISION

Decision	February 16, 2023	
Hearing	October 18, 19, 20 November 17, 2022	
Panel	Valerie Seager Anne Day Michael Deturbide	Commissioner Commissioner Commissioner
Submissions	Christopher I. Robinson	Counsel for the Applicants
	Daniel Boyle	Counsel for the Director of the Nova Scotia Securities Commission

I. BACKGROUND TO THE HEARING

- [1] In September 2021 Adrian Saturley and Adonis Asset Management (“**AAM**”) (collectively, the “**Applicants**”) applied for registration (the “**Application**”) with the Nova Scotia Securities Commission (the “**Commission**”). AAM applied for registration in the category of portfolio manager, and Mr. Saturley applied for registration as Ultimate Designated Person (“**UDP**”), Chief Compliance Officer (“**CCO**”) and sole Advising Representative (“**AR**”) of AAM. A Notice Letter dated October 14, 2021 from Commission staff (“**Staff**”) was sent to the Applicants advising them that Staff would recommend that the Director refuse to grant registration to the Applicants. The Notice Letter advised the Applicants of their right to an Opportunity to be Heard (“**OTBH**”) before the Director, which right the Applicants exercised. Both Staff and the Applicants provided written submissions to the Director in connection with the OTBH. Following the OTBH, the Applicants’ registration request was denied by the Director in a decision dated February 14, 2022 (the “**Director’s Decision**”). By letter dated March 22, 2022 the Applicants requested a hearing and review of the Decision pursuant to subsection 6(2) of the Act (the “**Hearing**”).
- [2] In response to the Applicants’ request, the Commission advised the Applicants that pursuant to subsection 6(2) of the Act the period to request a hearing and review of the Decision expired on March 17, 2022 (thirty days after the mailing of notice of the Decision). The Applicants applied to the Commission under section 151A of the Act for an exemption from section 6(2) with respect to the deadline for filing their request. That exemption request was granted.
- [3] A pre-hearing conference (the “**Pre-hearing Conference**”) was held on June 24, 2022. One of the matters discussed at the Pre-hearing Conference was the record of the proceeding. Section 3.2 of the General Rules of Practice and Procedure of the Commission (the “**Rules**”) states that an applicant requesting a hearing and review of a decision of the Director shall obtain from the Director and file with the Secretary a record of the proceeding relating to the decision which shall include, unless all parties consent to the omission of any documents (i) the application; (ii) the notice of any hearing; (iii) any intermediate order made in the proceeding; (iv) any documentary evidence filed in the proceeding, subject to any applicable limitation; (v) the transcript of any oral evidence; and (vi) the decision that is the subject of the hearing and related reasons.
- [4] Following the Pre-hearing Conference the parties agreed that, pursuant to Section 3.2 of the Rules, the record in this matter (the “**Record**”) included (i) Staff’s letter dated October 13, 2021 advising the Applicants of Staff’s recommendation regarding the Application and the basis for that recommendation; (ii) Staff’s submissions to the Director in connection with the OTBH, which included a compliance report on High Tide Wealth Management Inc. (“**HTW**”) prepared by the Policy and Market Regulation Branch dated July 24, 2020 (the “**Compliance Report**”); (iii) HTW’s OTBH submissions, including a written response to the Compliance Report; and (iv) the Director’s Decision.

- [5] At the Pre-hearing Conference, the Applicants applied for the Commission to make an order (i) compelling the attendance of Staff at the Hearing; and (ii) requiring Staff to answer questions posed by the Applicants' counsel, in each case regarding the Compliance Report. Following receipt of written submissions of the parties on the matter, the Hearing Panel declined to make the requested order (2022 NSSEC 5 (CanLII)).
- [6] The Hearing was held over several days in October and November 2022. Mr. Saturley was the sole witness. Additional post-hearing submissions on an issue raised during the Hearing were provided by the parties, following the Hearing Panel's agreement to accept the Applicants' submission on the matter.

POSITIONS OF THE PARTIES

THE APPLICANTS' POSITION

- [7] The Applicants rely on the statutory presumption in favour of registration and submit that the Director has not established that the Applicants are not suitable for registration. The Applicants submit that, where a finding by an administrative tribunal, if adverse, would interfere with an individual's right to earn a living for which they are qualified, action can only be taken to do so if there is clear and convincing proof. The Applicants refer to *Stenner v. British Columbia Securities Commission* (1996 CarswellBC 2032) ("**Stenner**") and in particular note the BC Court of Appeal's comments at paragraph 17:

In my view, this broader approach to "suitability" is a salutary development and one in keeping with the general purposes of securities legislation. At the same time, securities commissions have recognized that their authority to refuse registration may well interfere with the right to earn a living for which one is qualified, and have required clear and convincing proof of unsuitability to form the basis for any refusal to register see *Re Sombach* (1994, 4 C.C.L.S. 102 (Sask. Securities Comm.)).

- [8] The Applicants submit the Director has not presented clear and convincing proof sufficient to deny Mr. Saturley the right to earn a living. The Director elected not to have Staff testify at the Hearing regarding the Compliance Report, which formed the basis for Staff's recommendation that the Application be denied. The Applicants submit that the Compliance Report contains inaccuracies, lacks supporting evidence and pertinent exculpatory information, contains opinion and speculation, draws improper conclusions and ignores the realities of market forces in play during the period covered by the Compliance Report.
- [9] The Applicants submit that there is no evidence of Staff's experience, ability or credentials to offer the opinions and conclusions in the Compliance Report upon which the entirety of their recommendation to refuse is based; that Mr. Saturley's testimony refuted Staff's opinions in the Compliance Report and he was extensively cross examined; and that Mr. Saturley's evidence should carry considerably more weight than the standalone written opinions of Staff. The Applicants submit that the Director

has not demonstrated with clear and convincing proof that Mr. Saturley and AAM are not suitable for registration.

- [10] The Applicants submit that the essence of the Director's determination that Mr. Saturley lacked proficiency is her underlying conclusion, as detailed in Staff's recommendation, that because the majority of HTW clients held option positions, many of which were uncovered, they were unsuitable investments. The Applicants submit that this determination was inappropriate and incorrect.
- [11] The Applicants submit that losses sustained by HTW clients due to unprecedented market events in March 2020 are inappropriately being used as a basis for the denial of registration, given that Mr. Saturley was on leave from his position as CCO with HTW beginning January 22, 2020, and that he never returned. The Applicants submit that Mr. Saturley was not responsible for HTW's actions in responding to the market events of March 2020 and that client losses were due to the actions of National Bank Independent Network ("**NBIN**").

THE DIRECTOR

- [12] The Director submits that the Director's decision and the reasoning contained therein is correct.
- [13] The Director submits that, as set out in *Re. Turnpointe Wealth Management Inc. and Fredrick Saturley*, NSSC August 19, 2010 ("**Turnpointe**"), registration is a privilege, not a right. Given the Commission's mandate to protect investors from practices and activities that tend to undermine investor confidence in the fairness and efficiency of the capital markets, an application for registration cannot be rubber stamped.
- [14] The Director submits that, as set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations* ("**NI 31-103**"), education, integrity and proficiency are requirements for registration. The Director agrees that Mr. Saturley meets the education and integrity requirements. The Director disagrees that the proficiency requirement has been met. Proficiency must be demonstrated continually and past conduct is a relevant consideration. The history of Mr. Saturley's involvement with HTW, as demonstrated through the evidence at the Hearing, shows that Mr. Saturley lacked knowledge of Nova Scotia securities laws and his regulatory obligations. The Director submits that Mr. Saturley lacks the proficiency required for the requested registrations and therefore the Application should not be granted.

REGISTRATION AND THE LAW

- [15] The Director's Decision, which forms part of the Record, contains a summary of registration and the law. No party argued that the relevant law was otherwise than as set out therein. We agree with and adopt paragraphs 12 through 28 of the Director's Decision.

BACKGROUND TO THE REGISTRATION APPLICATION

- [16] HTW was registered with the Commission as a portfolio manager from September 8, 2008 until it surrendered its registration on January 22, 2021. Mr. Saturley was CCO and an AR at HTW from February 18, 2015 until mid-January, 2020 when he went on medical leave and delegated the compliance function to HTW's UDP.
- [17] Mr. Saturley assumed the CCO role at HTW following a compliance audit conducted by Staff on Turnpointe Wealth (the previous name of HTW) in 2014. That audit indicated a number of significant deficiencies. As CCO Mr. Saturley worked with an independent monitor to address those deficiencies.
- [18] As portfolio manager, HTW was responsible for completing the know your client ("KYC") process for clients, for being knowledgeable about the investment products offered to clients, for creating an investment policy statement for each client and for assessing the suitability of investment products for each client.
- [19] NBIN is a registered dealer and performed back office and custodian functions for HTW. NBIN held HTW's client accounts and effected trades for HTW's clients in accordance with HTW's instructions. In addition to their agreements with HTW, HTW's clients entered into separate agreements with NBIN. The details of the agreements between HTW and NBIN and between NBIN and HTW's clients and the related rights and responsibilities were not available to the Hearing Panel.
- [20] Staff notified HTW in January 2020 that it intended to conduct a compliance field examination on HTW pursuant to section 29E(1) of the Act. Mr. Saturley advised Staff that he would be on medical leave at that time but would make HTW staff and documents available for the examination. Notwithstanding that he was still on medical leave, Mr. Saturley met with Staff on March 9, 2020 to review the major findings from the compliance review. On March 13, 2020 Mr. Saturley participated in a conference call with other HTW personnel and Staff at which Staff reviewed in brief their findings and advised HTW that the full report would be available in April 2020. An employee of HTW took notes during the conference call, referencing the matters discussed. The notes refer to "KYC conflicts," "some unsuitable investments" and some issues with disclosure about fees and options in the compliance documentation, among other matters.
- [21] Mr. Saturley testified that following the March 9 meeting and the March 13 conference call he believed the matters raised by Staff were not significant deficiencies, that some had been referred to as "small things", that many could be addressed through further explanation and that overall Staff considered HTW to be doing a good job although there were some specific issues to be addressed.
- [22] Also in March 2020, the Covid-19 pandemic began to impact financial markets. Global stock markets fell precipitously, particularly in the period from March 9 to 16. A significant number of HTW client accounts were margin accounts and as a result of the declining markets a majority of those accounts fell below their margin requirements. HTW attempted to address the margin deficiencies through trading strategies with limited success. Markets continued to fall and NBIN began making

margin calls on the accounts of HTW clients. At market open on March 16, 2020, NBIN liquidated the positions that were in negative margin. Because many of HTW's clients were not able to meet the margin calls in time, they suffered significant losses (exceeding, in the aggregate, \$80 million) and in some cases incurred additional debt to NBIN.

- [23] Following the market events of March 2020, HTW and NBIN were sued by over 50 former HTW clients in connection with the losses they sustained. That litigation is pending.
- [24] In July 2020 Staff issued the Compliance Report. The Compliance Report was ultimately issued in July rather than April as the compliance review was reopened in March following a complaint received by Staff. The Compliance Report identified substantial weaknesses in HTW's compliance practices and internal controls, as well as numerous significant and repeat deficiencies. The report stated that in light of the seriousness of the deficiencies outlined in the report and previous compliance audits undertaken in respect of HTW and its predecessor, Staff was recommending that HTW's registration and that of its UDP be permanently suspended and that the registration of Mr. Saturley be suspended for one year.
- [25] The deficiencies identified in the Compliance Report included:
- (1) Use of Risky Investment Strategies: HTW used an investment strategy of selling uncovered put options for the vast majority of their clients, even though most of these clients did not have a high risk tolerance. HTW used this investment strategy despite the lack of adequate policies, guidance, restrictions or controls on the use of such risky investment strategies.
 - (2) Margin Call Actions: There was a delay between when NBIN began making margin calls in early March and when HTW began contacting clients. This delay limited the time clients had to address the margin calls and thereby compounded the losses experienced by clients. Further, HTW did not submit trading instructions to NBIN on time and allocations were not completed in a timely manner. The report concluded that "The firm did not prepare for, not contemplate, a market fluctuation such that they would not have the ability to make appropriate trades, at the appropriate time, to mitigate losses."
 - (3) HTW's discretionary management agreement contained several statements that are confusing or misleading.
 - (4) Know Your Product ("KYP"): HTW used an investment strategy that included selling uncovered puts for the vast majority of their clients, even though these clients did not have a high risk tolerance. HTW sold uncovered put options for client portfolios without due consideration of the risks and features of the investment and did not adequately document how each investment or strategy was suitable for each client.

- (5) Compliance System: Compliance processes and policies and procedures necessary to ensure that HTW is complying with securities laws were deficient.
- (6) Know Your Client and Suitability: HTW's KYC and suitability processes were found to be deficient. The report cited, among other things, conflicting information and risk tolerances that did not align with other information. Staff based their conclusions on a review of the most recent KYC and investment policy statement ("IPS") documentation for 141 HTW clients (compiled in a document identified as "Appendix B"), which uncovered KYC and suitability deficiencies in 129 client relationships. Due to the speculative nature and significant downside risk of holding uncovered put options, a client would require a high risk tolerance; however, most clients did not have a high risk tolerance.

- [26] Mr. Saturley did not return to his CCO position at HTW following his medical leave. HTW ceased operations in January 2021. The Applicants submitted the Application in September 2021.
- [27] In conducting its review of the Application, Staff relied on the Compliance Report, including the deficiencies noted therein, to conclude that Mr. Saturley had failed to meet his regulatory obligations as described in sections 5.2 and 11.1 of NI 31-103 and section 39A(2) of the Act. As a result, Staff recommended that the Applicants' registration request not be granted. Staff indicated a willingness to consider an application by Mr. Saturley for registration as an AR if he is sponsored by a firm with a strong compliance system and is properly supervised. Following an opportunity to be heard the Director accepted the recommendation of Staff and refused to grant the requested registrations.

DISCUSSION

- [28] As set out in *Turnpointe*, the hearing and review of a decision of the Director pursuant to section 6 of the Act is a hearing de novo. The Hearing Panel is not bound in any way by the Director's Decision. The purpose of the Hearing was to consider the Application and to determine if sufficient evidence exists to rebut the statutory presumption that the Applicants are suitable for registration. The Hearing was not an enforcement action, it was not a forum to consider complaints from HTW clients and it was not an adjudication of any dispute among HTW, its clients, and NBIN.
- [29] Because the Hearing considered only the Application, the evidence before the Hearing Panel consisted only of the Record, exhibits provided by the Applicants and Mr. Saturley's testimony on direct and cross examination. The Hearing Panel did not hear from Staff (except through documents forming part of the Record), HTW clients or NBIN. Likewise, the Hearing Panel was not privy to any agreements between HTW and NBIN or any agreements between HTW clients and NBIN.
- [30] The sole issue before the Hearing Panel is whether the Applicants are suitable for registration. Mr. Saturley's conduct as CCO of HTW is material to consideration of that issue. Matters involving HTW prior to Mr. Saturley assuming the CCO role in 2015 have no relevance; matters involving HTW during Mr. Saturley's tenure are of material

relevance. Evidence relating to those matters was available to the Hearing Panel through the Record and Mr. Saturley's testimony and exhibits.

[31] The Compliance Report is important because it forms the bulk of the evidence behind Staff's recommendation and the Director's decision not to approve the Application. The Director found that the Compliance Report demonstrates that Mr. Saturley does not have the requisite experience and knowledge of Nova Scotia securities laws and the obligations of a CCO, UDP and AR necessary to perform those functions.

[32] The Compliance Report identified numerous deficiencies, many of which were deemed significant. In the Hearing Panel's view, the most relevant of these deficiencies from the perspective of assessing suitability for registration are (i) the use of risky investments; (ii) the failure to implement and maintain an appropriate compliance system; (iii) a demonstrated lack of proficiency in performing the CCO functions; and (iv) a failure to meet the regulatory requirements to comply with KYC, KYP and suitability obligations.

[33] As CCO of HTW Mr. Saturley had the following responsibilities:

5.2 Responsibilities of the chief compliance officer – the chief compliance officer of a registered firm must do all of the following:

(a) establish and maintain policies and procedures for assessing compliance by the firm and individuals acting on its behalf, with securities legislation;

(b) monitor and assess compliance by the firm, and individuals acting on its behalf, with securities legislation;

(c) report to the ultimate designated person of the firm as soon as possible if the chief compliance officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, may be in non-compliance with securities legislation and any of the following apply:

(i) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to a client;

(ii) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to the capital markets;

(iii) the non-compliance is part of a pattern of non-compliance.....

[34] Mr. Saturley was thus responsible for implementing policies, procedures and controls that were consistent with securities laws, including NI 31-103, and ensuring all of HTW's representatives complied with these policies, procedures and controls. This included complying with the KYC, KYP and suitability obligations set out in Sections 13.2 and 13.3. of NI 31-103:

13.2 Know your client

(2) A registrant must take reasonable steps to

(a) establish the identity of a client and, if the registration had cause for concern, make reasonable inquiries to the reputation of the client,

(b) establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded,

(c) ensure that it has sufficient information regarding all of the following to enable it to meet its obligations under section 13.3 [suitability] or, if applicable, the suitability requirement imposed by an SRO:

(i) the client's investment needs and objectives,

(ii) the client's financial circumstances;

(iii) the client's risk tolerance, and

(d) establish the creditworthiness of the client if the registered firm is financing the client's acquisition of a security.

.....

(4) A registrant must take reasonable steps to keep the information required under this section current.

13.2.1 Know your product

(1) A registered firm must not make securities available to clients unless the firm has taken reasonable steps to:

(a) assess the relevant aspects of the securities, including the securities' structure, features, risks, initial and ongoing costs and the impact of those costs,

(b) approve the securities to be made available to clients; and

(c) monitor the securities for significant changes.

(2) A registered individual must not purchase or sell securities for, or recommend securities to, a client unless the registered individual takes steps to understand the securities, including the securities' structure, features, risks, initial and ongoing costs and the impact of those costs.

(2.1) For the purpose of subsection (2), the steps required to understand the security are those that are reasonable to enable the registered individual to meet their obligations under section 13.3 [suitability determination].

.....

13.3 Suitability

(1) A registrant must take reasonable steps to ensure that before it makes a recommendation to or accepts an instruction from a client to buy or sell a security, or makes a purchase or sale of a security for a client's managed account, the purchase or sale is suitable for the client.

(2) If a client instructs a registrant to buy, sell or hold a security and in the registrant's reasonable opinion, following the instruction would not be suitable for the client, the registrant must inform the client of the registrant's opinion and must not buy or sell the security unless the client instructs the registrant to proceed nonetheless.

- [35] The Companion Policy to NI 31-103 (**CP 31-103**) provides detailed guidance as to how the foregoing obligations should be met. Though CP 31-103 does not itself create or impose any legal requirements, where it is cited below it is because we find that it is an accurate statement of the obligations in NI 31-103.
- [36] Through his submissions and testimony, Mr. Saturley disagreed with most of the conclusions in the Compliance Report. A significant part of his testimony consisted of a point-by-point rebuttal of the weaknesses and deficiencies raised in the Compliance Report. He also detailed the extensive work he had done to update HTW's compliance documents, forms, procedures and policies when he had been appointed CCO of HTW.

Option Use

- [37] Mr. Saturley rejected the conclusion in the Compliance Report and the Director's Decision that options are a high-risk investment and should be limited to clients with a high risk tolerance. He noted that a relatively small portion of client portfolios were allocated to options and that option use within HTW had declined during his tenure as CCO from 14.4% of invested assets in 2014 to 7% in 2020. In Mr. Saturley's view the use of uncovered put options for the vast majority of HTW clients was not inappropriate given the risk tolerance of those clients.¹
- [38] Mr. Saturley agreed that in some circumstances options can be a high-risk investment, but maintained it depends on the nature of the particular investment and how it is structured. He believed that the HTW option strategy adequately managed the underlying risk and thus was suitable for a wide range of investors.
- [39] Mr. Saturley testified that HTW did not use options to speculate in an attempt to create massive returns, but rather used options to create regular income and cashflow:

Mr. Saturley: "So when you say things like a significant downside risk of holding uncovered options and speculative nature, it's not necessarily speculative when you're creating a system of cashflow that you accomplish over multiple years. By holding a single option, one share for a dollar in one option, they say

¹ The Compliance Report and the Director's Decision referred to HTW's strategy of selling uncovered put options for the vast majority of their clients, even when those clients did not have a high risk tolerance. It is not clear to what extent uncovered put options were purchased for HTW clients as opposed to other forms of options, or the extent to which the use of uncovered put options contributed to the losses suffered by HTW clients. The documentary evidence and Mr. Saturley's testimony referred variously to "uncovered put options", "put options" and "options". The level of risk and potential for loss when investing in options will vary depending upon the nature of the specific option structure used. However, it is clear from the evidence that options formed part of the investment strategy for a substantial number of clients, and similarly a substantial number of those clients purchased uncovered put options. Margin accounts were required for those clients for whom options formed part of their investment strategy.

that requires high risk. And I'm saying that there is a manifest ocean between full speculation and using them accordingly to bring in cashflow."

[40] Generally, an investment in options requires a margin account. Mr. Saturley acknowledged that margin accounts are necessary to invest in options but maintained that HTW's "hedging" strategy managed the margin risk by holding sufficient cash in the accounts relative to the option allocation to cover any potential margin calls. As long as a client had sufficient cash in their account to cover any losses and related margin calls, Mr. Saturley maintained that options were not a risky investment. He explained:

Mr. Saturley: "There are margin requirements and we would be extremely over the necessary amount of margin. So you could have a significant amount of cash available and have no effect on your positions. And you could take your withdrawal out, you know, 50, 60% of the account and still have no problems with the options in the account so long as you have the margin available. So as long as the margin's there, you're fine."

[41] The March 2020 market decline resulted in a failure of this cash "hedging" strategy and for many HTW clients margin was no longer available. Details about individual client accounts and how margin was used were not available to the Hearing Panel. However, to the extent those accounts held uncovered puts, other risky investments or securities bought on margin, the risk for substantial losses was magnified. When the margin calls made by NBIN were not met, NBIN liquidated the client positions to cover the losses in the accounts and many clients suffered significant financial loss.

[42] It was apparent from Mr. Saturley's testimony that he did not view this chain of events as a failure of the "hedging" strategy or evidence that the actual risk assumed by clients was in excess of the risk tolerances determined through the HTW KYC process. (We put "hedging" in quotations here and throughout because we agree with Staff that the HTW strategy was not a "hedging" strategy. Hedging typically involves taking an offsetting position in a security to manage the risk of loss in another position. Maintaining cash in a margin account to cover margin calls or to buy the underlying asset if a put is assigned is not hedging.) In Mr. Saturley's view the losses occurred because of (i) the "unprecedented" "once in a generation" market decline that occurred in March 2020; and (ii) NBIN's failure to act reasonably in allowing HTW clients sufficient time to cover their margin calls.

[43] In his testimony, Mr. Saturley downplayed the risk an investor incurs when they hold riskier investments, which includes uncovered put options, in a margin account and for whatever reason use the available margin. The risk is not solely related to the securities – it may well be that in "normal" market cycles the risk of the specific securities held by HTW clients was managed. But a margin account by definition creates a higher level of risk than a cash account, particularly when the account holds more volatile or riskier investments. A margin account shortfall may require the investor to obtain cash from new sources to cover a margin call in a short period of time, it may result in all or part of the investor's position being liquidated by the margin

account holder without consultation and it can result in the investor losing more money than originally invested. A margin account can have the effect of crystallizing losses that in a cash account remain “paper” losses unless the underlying securities are sold. A margin account inherently carries more risk than a cash account and thus an investor using such an account must be fully informed of the mechanics and risks involved.

- [44] The Hearing Panel has no information as to the terms of the agreements between HTW and NBIN, and between NBIN and HTW’s clients as they relate to margin accounts. The IPS document that HTW prepared for clients contained the single line “Your portfolio will be managed in a separate margin account at [NBIN].” The Hearing Panel does not know what information HTW clients received from NBIN about their margin accounts. But in any event the responsibility to ensure that clients understood the risks inherent with options and margin accounts – and that they had the risk tolerance and financial capacity to bear those risks – was HTW’s. It was HTW’s – and its CCO’s – responsibility to ensure that clients were fully aware of the risks of the securities in their account and the implications of a margin account should losses beyond the cash “hedging” buffer be incurred.
- [45] The Compliance Report cited as a significant deficiency that HTW had no policies, guidance or restriction on the use of risky investment strategies. Apart from some language drawn from HTW’s KYC, IPS and Discretionary Management Agreement documents, no evidence was provided to the Hearing Panel as to HTW’s policies and procedures for discussing margin account and option risk and analyzing the implications of that risk in the context of suitability and the totality of the information in the KYC forms.
- [46] Mr. Saturley referred to a number of client KYC and IPS documents tendered as exhibits as evidence of HTW’s approach to option/margin risk. The language in those documents did not highlight the specific risk attached to options and margin accounts. There is no evidence that separate risk disclosure documents were provided to clients. In addition to the above-referenced statement regarding the requirement for a margin account with NBIN, the only other disclosure specifically relevant to risk was the following IPS disclosure:

6.0 Risk Tolerance

Risks are associated with all types of investments. Volatility of market returns due to market price fluctuations, the loss of purchasing power due to inflation, interest rate risk and credit quality risk are just some of the risks associated with investing. Generally there is a tradeoff between risk and return - - the greater the risk associated with the investment, the greater the potential long-term return.

- [47] The only reference to options in the IPS occurred in the Asset Allocation section of the ISP, which simply stated:

“We will also use equity options and leveraged exchange traded funds (ETF) if they are suitable for your account.

Judicious use of options and leveraged ETFs is deemed appropriate to achieve the target rate of return.”

[48] Although he did not refer to it in his testimony, the exhibits tendered by the Applicants included a version of the Discretionary Management Agreement from 2018. Option investing was discussed in Section 7 of that document as follows:

TWM (Turnpointe Wealth Management, predecessor name to HTW) uses the following equity option strategies for low to high risk investors to generate cash flow:

1. Covered writing is a conservative strategy suitable for most investors;
2. Buying calls and puts are suitable for average risk and above investors;
3. Uncovered options are suitable for investors who want higher rates of return and have a willingness to take risk and the ability to financially tolerate increased volatility. The percentage use of uncovered options in accounts ranges from a recommended maximum of 8% or less for overall low risk investors and over 25% for overall high risk investors.

[49] The only language relevant to margin accounts in the Discretionary Management Agreement was the following:

We use a variety of short option strategies that require clients to have margin accounts. Depending on the options strategies employed and the accounts dollar size, TWM recommends maintaining cash balances to meet margin and option contract obligations. The use of margin in your account is monitored and assessed for suitability prior to adding any securities to your account. Margin is monitored every trading day to ensure adequate margin surpluses are maintained.

[50] In his OTBH submissions to the Director, Mr. Saturley cited his involvement in the preparation and use of a Risk and Disclosure Document for Futures and Options as evidence of his experience and competency. This document was not provided to the Hearing Panel. However, this document was created at Staff’s request after the market events of March 2020. During his testimony Mr. Saturley seemed oblivious to a central point of the Compliance Report – that this kind of risk disclosure and communication should have formed part of the compliance, KYC and suitability process long before March 2020.

Know Your Client, Know Your Product and Suitability

[51] Mr. Saturley’s view that option and margin risks incurred by HTW clients were appropriately managed by HTW (through its “hedging” strategy) coloured his view of the KYC, KYP and suitability process. He believed HTW had a robust KYC, KYP and risk tolerance process (an important component of assessing the suitability of a security or investment strategy for a particular client). It appears, however, that the primary focus of that process was simply to titrate risk tolerance against desired investment return.

- [52] Mr. Saturley referred to a document submitted by the Applicants as part of the OTBH which referenced his “mandate of requiring clients who had sufficient target rates of return (>15%) to either lower their target return or recognize that they are categorized as high risk”. This opened a frank discussion about options and risk and what represented the client objectives and risk tolerance best.” However the risk the clients were assuming did not flow just from the fact that they wanted higher returns, but that they were investing through a managed margin account and purchasing high-risk securities such as options. There was little evidence presented to Staff during their compliance examination or to the Hearing Panel as to what HTW’s processes were for addressing these issues on an individual client basis based on the particular circumstances of their KYC information. The disclosure in the IPS was minimal at best. The Risk and Disclosure Document for Futures and Options referred to above was only created in March 2020 after Staff required it. The obligation to have clearly articulated policies and a communication plan in place to address these issues and ensure firm-wide compliance with them prior to March 2020 was Mr. Saturley’s in his position as CCO.
- [53] The Hearing Panel is not in a position to assess the circumstances of each HTW client and determine whether uncovered options and associated margin accounts were suitable for each client. Nor is this the appropriate forum for such an assessment. But the Hearing Panel can assess whether Mr. Saturley appropriately understood his responsibilities as CCO in terms of conducting an adequate KYC, KYP and suitability process, creating documentation supporting that process and ensuring HTW followed that process. On the evidence before the Hearing Panel, we agree with conclusions in the Compliance Report that he did not.
- [54] Suitability is a cornerstone of NI 31-103. Not only must the securities purchased for a managed account be suitable for the client but, as set out in CP 31-103 Section 13.3, registrants must “ensure the type of account recommended, the dealer or adviser compensation options and the nature of the service offered to the client, *including the use of investment strategies such as leveraging*, are both suitable for the client and put the client’s interest first” (emphasis added). Likewise, Section 13.2 in CP 31-103 points out that “Where, after discussion, it is determined that the client does not have the capacity or tolerance to sustain the potential losses and volatility associated with a higher risk portfolio, the registrant should explain to the client that their need or expectation for a higher return cannot realistically be met, and as a result the higher risk portfolio is unsuitable. The interaction with the client and end results should be properly documented.”
- [55] The foregoing indicates an important part of the risk analysis process – the client’s ability to endure potential financial loss, which CP 31-101 defines as “risk capacity”. The evidence shows that HTW’s KYC and suitability process emphasized risk tolerance (the client’s ability to accept risk) over risk capacity.
- [56] The Applicants included in their exhibits a document setting out HTW’s action plan when NBIN began making margin calls. The document lists the actions numerous clients were undertaking to meet those margin calls and references drastic – and

costly – actions such as deregistering TFSAs, RSPs and RRIFs, obtaining new lines of credit and mortgaging homes. These are not the actions of clients prepared to respond to margin calls and able to sustain the losses to which they were exposed.

[57] Appendix B to the Compliance Report provides a summary of 128 client accounts, all of which included options as part of the investment strategy, and Staff’s conclusions as to the unsuitability of uncovered options for many of the clients listed in that summary. While the detail behind the summary was not available to the Hearing Panel, what is apparent is a general lack of individualization in determining whether options, which included uncovered puts and which in any event required the opening of a margin account, were suitable investments. Based on the summary, it appears that if a client wanted an above average investment return their risk tolerance was also required to be above average, which at HTW meant that investment strategies that utilized options and margin were deemed suitable regardless of other KYC factors such as age, life circumstances and investment objectives. The evidence in Appendix B leads us to conclude that the conflict between a desire for lower risk tolerance and higher rate of return was not adequately addressed with HTW’s clients.

[58] A substantial majority of the clients listed in Appendix B had “above average” or “high” risk tolerances and were seeking returns of 10% or higher. That may not necessarily be a concern in itself – Mr. Saturley acknowledged that HTW was known for using options and thus the firm may have attracted a particular clientele. However, what is apparent in Appendix B is that no matter the investment objectives of clients – high growth, capital appreciation, diversification, protect capital, supplement income, provide for retirement, provide for surviving spouse, leave inheritance – HTW considered options, and the associated margin accounts, to be suitable. This was true for clients in their eighties and for clients significantly younger. Some of these investment objectives are diametrically opposed to others. It is difficult to conceive how the same strategy can be appropriate in all cases. The Applicants provided no evidence of undertaking individual analysis of the critical factors required to be considered in the KYC process and whether options – and the heightened investment risks, including due to the requirement for a margin account – were appropriate given the individual circumstances of each client. HTW’s KYC process appeared to have a bias towards risk and options.

[59] The issue is highlighted by a comparison of the KYC information for just a few client accounts, as summarized in Appendix B:

	Client 12	Client 57	Client 71	Client 32
Risk Tolerance	Low	Average	Above Average	High
Time Horizon	Less than 5 years	5 – 10 years	10+ years	10+ years

Investment Knowledge	Limited	Average	Average	Limited
Investment Objective	Target return 8%, cash flow generation, modest growth, above average growth, high growth, provide income (regularly), supplement income as needed (variable)	Target return 10%, capital appreciation and cash flow generation, provide supplement for pensions, provide income (regularly), provide for spouse upon death, provide care for sick/disable dependents, leave inheritance	Target return 12%, capital appreciation and cash flow generation, above average growth, diversify investment assets, provide for retirement, provide income (regularly), leave inheritance	Target return 15%, capital appreciation and cash flow generation, high growth, provide for retirement,
Option % (of total portfolio)	10%	10%	15%	15%

- [60] As Staff noted in the Compliance Report, some of the above information is self-contradictory and may be out of date (which is itself a compliance failure). But as the example above indicates, there seems to have been no differentiation between clients when it came to assessing the suitability of opening a margin account and investing in options as an investment strategy. Regardless of the time horizon, investment knowledge, risk tolerance or investment objective – high growth, moderate growth, capital appreciation, retirement income, provide for health care needs – the HTW KYC process resulted in options and the related margin accounts being utilized as a purportedly suitable strategy.
- [61] It is not clear which of the clients listed in Appendix B were Mr. Saturley’s clients. But, in any event, it was his responsibility as CCO to ensure appropriate KYC and suitability assessments were completed for all clients and investment strategies and trades were made in accordance with those assessments. Based on the evidence presented, we find that this did not occur.

- [62] Mr. Saturley disagreed with many of Staff's conclusions in Appendix B. For example, he disagreed that options are inappropriate for "senior" clients or for clients who have only limited or average investment knowledge. We agree that it is important not to make blanket statements about what classes of investments are suitable for a client based on broad demographic criteria, without taking into account the totality of the client's individual circumstances. Similarly, we agree there may be some circumstances where a client with average investment knowledge may nevertheless appropriately invest in "riskier" securities when provided with adequate information as to the nature and risks of the investment and demonstrates full understanding of that information.
- [63] The critical point, however, is that an adequate compliance process will ensure that this occurs based on the entirety of the KYC and suitability process and with adequate discussion and risk disclosure to clients. Mr. Saturley's disagreement with Staff's conclusions does not negate the fact that the HTW KYC process was outcome determined. Despite a wide variety of client demographics, financial situations, risk tolerances, investment knowledge and investment objectives, options and margin accounts were considered suitable for most clients.
- [64] Mr. Saturley noted that Staff's concerns regarding the unsuitability of options were not raised in the 2015 compliance review of HTW even though options were used to an even greater extent at that time than during his tenure as CCO. However, whatever the circumstances of that audit (i) it is not relevant to an assessment of Mr. Saturley's practices as CCO during the period of this audit; (ii) clearly the events of March 2022 gave rise to a higher level of scrutiny in this audit; and (iii) whether or not a compliance audit raises a concern, it remains the CCO's responsibility to comply with securities laws, including NI 31-103. Failure of Staff to note non-compliance does not release a registrant from their obligations.
- [65] In his testimony, Mr. Saturley reviewed the various changes to the KYC and KYP processes and firm policies and procedures that had been implemented during his tenure. It is clear that substantial changes were made to the compliance documentation and policies in place prior to the 2014 audit. However, the evidence does not establish that the documentary changes implemented by Mr. Saturley resulted in the actual implementation of a substantive KYC and suitability process consistent with Mr. Saturley's responsibilities as a CCO pursuant to the Act and to NI 31-103.
- [66] Despite the concerns raised in the Compliance Report and the Director's Decision, Mr. Saturley believes HTW's KYC and KYP processes were fully compliant with Nova Scotia securities laws. Mr. Saturley was asked on cross-examination whether he had reassessed his business plan or strategy for AAM, particularly his decision not to have a different person perform the CCO functions for the new business for the first few years, in light of the concerns set out in the Compliance Report and the Director's Decision. Mr. Saturley's response reflects his complete rejection of those concerns:

Mr. Saturley: “I don’t believe that the concerns raised by the director are really going to affect my decision. What she made her decisions on in my opinion is a faulty report that was designed to be or in a rush job designed to try and figure out what happened when a market crash affects a number of clients with margin accounts. I don’t believe that the accusations of my lack of suitability, I don’t believe in the lack of documentation, so all of the criticisms levied I can refute. So I will not change my opinion of my business model based on findings that I believe are inaccurate.”

- [67] Mr. Saturley later indicated that he would not use the same investment strategy as HTW in his new business, was not necessarily tied to using options and could go back and look at things that were confusing to clients. But he re-iterated that “the issues identified were not significant enough to really stand out in my mind of I will be doing things much different”.

March 2020 Market Decline

- [68] Mr. Saturley blames the over \$80 million in losses that HTW clients sustained on the market declines of March 2020 and NBIN’s actions in response to those declines. He referred to NBIN’s “insane” decision to liquidate positions in accounts that were out of margin without providing clients with sufficient time to deposit cash to cover the margin call, notwithstanding that many clients had the funds available to do so. He pointed out, in hindsight, that had NBIN not flattened portfolios to cover margin calls the losses would have been avoidable, as the markets recovered relatively quickly following their initial decline.
- [69] Mr. Saturley stated that the March 2020 market decline was unprecedented and implied that it was not something that could have been anticipated or factored into a risk assessment.
- [70] But markets are inherently volatile, particularly during unstable global events of any nature. Market “crashes” have occurred numerous times over the past several decades. While the Covid-19 pandemic was unprecedented, volatile markets, significant market declines and margin calls are not. The Hearing Panel was not provided with information as to the magnitude or velocity of the March 2020 market decline compared to similar events in the past. But even if that decline was greater than any previous, the Applicants acknowledged that the markets recovered at least some of their value relatively quickly. HTW’s clients lost money during this market decline – and, in many cases were required to fund additional margin advances to NBIN – because their HTW investment strategy included risky investments such as uncovered put options that created losses in their margin accounts. During this period, margin calls were made by NBIN, positions were liquidated and losses were crystallized. In March 2020 a global pandemic was unprecedented and perhaps unanticipated; a margin call during a declining market was not, and it should have been anticipated and planned for by HTW & Mr. Saturley.
- [71] Mr. Saturley acknowledged this dynamic in his testimony:

Q. And similarly had they been standard equities or basic stocks there wouldn't have been a loss and there wouldn't have been margin calls involved, is that fair?

A. That's not true. You can buy stock on margin.

Q Okay. But the nature of the use of margins is what caused the loss of eighty to ninety million for High Tide Wealth's clients.

A. The detraction of eighty million or – yeah, exactly. It was the loss and subsequent – options are priced with a multitude of factors, one of them being volatility that you can't quantify unless you have the actual option and work out backwards what the volatility premium is. So that is the volatility index or VIX. When that goes to eighty like it did on March 16th, that explosion of validity makes the options inherently worth more purely because of the volatility. So it was market factors on that day that literally wouldn't have been a factor any other day.

Q. So it was an unfortunate timing more than anything else.

A. Driven by National Bank's, you know, desire to wrap things up and protect themselves.

Q. Okay. And the fact that clients held options rather than alternate forms of security.

A. They had cash. That's incorrect.

Q. Okay.

A. They had cash, they had securities, they had bonds, ETFs, preferred shares. National Bank didn't care about any of it. They liquidated it all.

Q. But they liquidated based on the options.

A. They liquidated based on the margin requirements.

Q. Right.

A. Be it options or shares.

[72] The Hearing Panel did not have any information before it as to whether NBIN's actions were within the terms of its contractual arrangements with HTW and its clients or not. Notwithstanding that he was CCO and an AR, Mr. Saturley did not seem aware of those terms. In his testimony, he could not say whether NBIN was acting in accordance with the terms of the margin agreements with HTW's clients.

[73] It is not up to the Hearing Panel to determine the cause of HTW's clients' losses in March 2020 or whether HTW or NBIN are at all culpable in that regard. But Mr.

Saturley's focus on the "unprecedented" market decline and NBIN's actions ignores the substance of the compliance concern that is relevant to an assessment of his suitability for registration. The mechanics of the margin arrangements and the extent to which an investment in options may enhance the risk associated with margin arrangements are fundamental elements to be considered in assessing a client's risk tolerance, determining suitability and ensuring the client's IPS reflects the totality of the KYC information. An adequate compliance program will have policies, procedures and documentation that reflects this. The Compliance Report concluded that that HTW did not have this. Notwithstanding Mr. Saturley's evidence, we have reached the same conclusion.

- [74] Mr. Saturley argued that the margin and account losses sustained in March 2020 occurred during his medical leave, when he had no participation in client account management, and that most of the trades liquidated by NBIN originated in accounts in which the liquidated positions were established during that medical leave. Whether or not Mr. Saturley was responsible for those trades, he was responsible for maintaining and monitoring the compliance documentation, including KYC and suitability processes, and ensuring HTW personnel complied with those policies and procedures. Mr. Saturley's suitability as a registrant is not in question simply because HTW clients incurred losses. It is because the compliance program at HTW, for which Mr. Saturley was responsible, was deficient.

CONCLUSION

- [75] It was clear throughout Mr. Saturley's testimony that he believes he is being used as a scapegoat by Staff in the Compliance Report to account for the significant losses suffered by HTW clients during the market events of March 2020. He referred in his testimony to numerous examples of deficiencies in the Compliance Report that either misunderstood the reality of the situation or erroneously characterized minor deficiencies as significant. He noted that HTW had used uncovered put options as an investment strategy since before he took over the CCO role, and the issue of the unsuitability of options as an investment for HTW clients had never previously been raised. He was concerned with the vastly different tone he experienced from Staff during his early March 2020 conference call – which he characterized as fairly friendly – compared to the tone of the Compliance Report once delivered. He stated he had no indication from his previous meeting and call with Staff that the Compliance Report would be recommending his suspension.
- [76] There is no doubt that the Compliance Report was written with the benefit of hindsight and the tone of the report is very far from "fairly friendly". Staff did not testify at the Hearing, and so the Hearing Panel cannot determine the extent to which Staff re-examined or modified their conclusions after the market events of March 2020. It may well be that some of the issues raised by Staff should have been raised earlier and it may also be true that some of the issues raised would not have been raised had the market events of March 2020 not occurred. The Hearing Panel can appreciate Mr. Saturley's frustration in this regard. However, as indicated earlier the failure of Staff to raise non-compliance does not absolve a registrant of responsibility.

- [77] In any event, the purpose of the Hearing is to assess the suitability of the Applicants for registration and determine whether the evidence in the Record and that adduced at the Hearing is sufficient to overcome the statutory presumption in favour of registration. In the Hearing Panel's view, whether or not the market events of March 2020 occurred, whether or not HTW clients suffered losses and whether or not certain compliance issues were raised by Staff in preliminary discussions with HTW, the issues raised in the Compliance Report, particularly as they relate to a CCO's responsibility for KYC, KYP, suitability and risk disclosure processes within a firm, remain valid. Mr. Saturley questions whether these issues would have been raised if HTW clients had not suffered losses, but that question is moot. The Hearing Panel's obligation is to make its decision based on the evidence before it.
- [78] The Hearing Panel has reviewed the Record and the exhibits produced by Mr. Saturley and considered his testimony in both direct and cross examination. In many cases we did not find Mr. Saturley's testimony persuasive. He has continued to characterize the Compliance Report as wrong, inaccurate, full of "wild assumptions" and prepared by people who did not understand the capital markets or the investing process. While there may have been some minor errors in the Compliance Report, and hindsight was clearly brought to bear by Staff after the events of March 2020, Mr. Saturley completely discounted the idea that there could be any merit in Staff's conclusions as to the substantial compliance deficiencies at HTW. He believes that his opinions on KYC, suitability assessments, risk tolerance analysis and the risks of option investing are correct and Staff's opinions on these matters are wrong, notwithstanding that many of Staff's "opinions" are reflected in Nova Scotia securities laws, including NI 31-103, and in CP 31-103. His refusal to consider that there could be any deficiencies in HTW's processes and his deflection of any criticism of the firm's compliance processes is concerning and goes directly to an assessment of his proficiency in the role of CCO, AR and UDP and his suitability for registration. Added to this concern is his stated intention to operate his new business in substantially the same manner as HTW, with no material changes to the policies and procedures that were the subject of the Compliance Report and the Director's Decision.
- [79] Based on Mr. Saturley's failure to comply with Nova Scotia securities laws when he was the CCO and an AR of HTW and his lack of understanding of securities law requirements, particularly as they related to KYC, KYP and suitability, we find there is clear and convincing proof that Mr. Saturley does not meet the general proficiency requirement in subsection 3.4(1) of NI 31-103 for registration as an AR and a UDP. We also find there is clear and convincing proof that Mr. Saturley does not meet the proficiency requirement in subsection 3.4(2) of NI 31-103 for registration as a CCO. Accordingly, we refuse to grant the registration of Mr. Saturley as CCO, UDP and AR.
- [80] Our decision is based on the totality of the evidence, including (i) the deficiencies noted in the Compliance Report related to (a) the use of risky investments; (b) the failure to implement and maintain an appropriate compliance system; (c) a demonstrated lack of proficiency in performing the CCO functions; and (d) a failure to meet the regulatory requirements to comply with KYC, KYP and suitability obligations, most of which involved compliance related matters for which Mr. Saturley was

responsible; and (ii) Mr. Saturley’s testimony and exhibits, which did not alter our view that the material conclusions in the Compliance Report are borne out by the evidence and demonstrate his unsuitability for registration, and which in many cases served to highlight Mr. Saturley’s lack of awareness of his responsibilities as CCO and AR.

- [81] We agree with and adopt paragraphs 77 through 80 of the Director’s Decision with respect to the registration of AAM as an advisor in the category of a portfolio manager. For the reasons set forth in the Director’s Decision, we refuse to grant this registration.
- [82] We considered whether it would be appropriate to approve the Application with conditions that could address the concerns underlying our decision. We determined that, given our conclusions above, it would not be appropriate to do so in this case.

DATED at Halifax, Nova Scotia, this 16th day of February, 2023.

NOVA SCOTIA SECURITIES COMMISSION

(signed) “Valerie Seager”
Valerie Seager
Commissioner

(signed) “Anne Day”
Anne Day
Commissioner

(signed) “Michael Deturbide”
Michael Deturbide
Commissioner