

Nova Scotia Securities Commission

In the Matter of  
TurnPointe Wealth Management Inc. and  
Fredrick Saturley (the “Applicants”)

Opportunity to be heard by the Director  
Under Section 32 of the  
*Securities Act*, R.S.N.S., 1989, c. 418, as amended (the “Act”)

Panel: J. William Slattery, Executive Director

Heard: February, 18, 2010

Decision: April 6, 2010

Appearances:

Brian W. Murphy, for staff of the Nova Scotia Securities Commission (“NSSC”)  
George MacDonald, QC, and Jane O’Neill for  
TurnPointe Wealth Management Inc. and Fredrick Saturley

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OVERVIEW:

1. On February 15, 2010, NSSC Capital Markets Staff (“Staff”) advised TurnPointe Wealth Management Inc. (“TWMI”) that they had recommended to the Director that the application for registration of TWMI as an advisor in the category of portfolio manager (“PM”) be refused. IF TWMI’s registration is granted, Staff’s understanding is that Mr. Saturley will be designated as the only Chief Compliance Officer, (“CCO”) Officer Advising, Director, Shareholder and Ultimate Designated Person (“UDP”) of TWMI. All of these are registerable positions. As a result, if TWMI’s registration is refused or Mr. Saturley’s application for registration is refused, then the application of the other Applicant will also be refused.
2. Pursuant to subsection 32(3) of the Act, TWMI and Mr. Saturley are entitled to the opportunity to be heard (“OTBH”) before a decision is made by the Director. TWMI and Mr. Saturley requested a verbal OTBH, which occurred February 18, 2010.
3. My decision is based on Staff’s submissions, the Applicants’ counsel’s submissions, the testimony of Mr. Saturley on behalf of TWMI, my reading of the documentary evidence referred to at the OTBH and several subsequent letters and E-mails from counsel to the Applicants and staff.

4. I have set out Staff's recommendations first, then the general requirements for registration, analyzed each of Staff's reasons for recommending refusal of TWMI's and Mr. Saturley's registration, together with the Applicants' arguments on each point and concluded with my decision and reasons regarding the registration of each of TWMI and Mr. Saturley.

#### STAFF'S RECOMMENDATION TO THE DIRECTOR

5. Staff recommended that TWMI's registration as a PM and thus Mr. Saturley's registration as CCO, Officer Advisory, Director, Shareholder and UDP be refused for five primary reasons as follows:
  - The past conduct of Mr. Saturley;
  - The lack of relevant investment management experience;
  - The lack of relevant experience related to the proficiency requirements to be the chief compliance officer;
  - The failure of the detailed disaster recovery plan to address which registered advising representative would provide service to the clients of TWMI if Mr. Saturley was unable to fulfill his duties; and
  - The failure of the compliance structure of TWMI to address the risks and conflicts that are inherent in a one man office.
6. Each of those reasons is discussed separately below. Staff submitted that the five reasons, in their totality, are sufficient for me to find TWMI's registration and Mr. Saturley's registration should be refused.

#### THE LAW

7. Section 31 of the Act generally requires that any person or company that acts as a dealer, underwriter, advisor or investment manager, be registered in the relevant category.
8. Subsection 32(1) of the Act states that, unless it appears that an applicant is not suitable for registration or that the registration is objectionable, the Director shall grant registration.
9. Subsection 32(2) of the Act states that the Director may impose terms and conditions on the registration.
10. Subsection 1A(1) sets out the purpose of the Act which is to protect investors from practices and activities that undermine investor confidence in the fairness and efficiency of the capital markets and when not inconsistent with the appropriate level of investor protection, foster the process of capital formation.

REASONS FOR STAFF RECOMMENDING REFUSAL OF TWMI'S REGISTRATION AND THAT OF MR. SATURLEY.

11. On September 29, 2004, the Investment Dealers Association ("IDA") accepted a settlement agreement between Mr. Saturley and staff of the IDA. In the settlement agreement Mr. Saturley admitted that between March 14, 1997 and August 20, 1997, he effected discretionary trades in client accounts without such accounts having been specifically approved and accepted in writing as discretionary accounts by a designated person of his member firm, contrary to IDA Regulation 1300.4(a) and (b).
12. On December 3, 2008, Mr. Saturley was dismissed for cause from his former employer CIBC World Markets Inc. ("CIBC") per Form 33-109F1 dated December 8, 2008. Details of the reasons for dismissal for cause were in Attachment A stating:

"As a result of 3 client complaints (...) an internal review was performed regarding the trading practices of the IA. CIBC concluded that the IA had conducted discretionary trades in respect of at least 5 client accounts without having the proper approvals and documentation in place to handle such accounts on a discretionary basis. The IA was terminated for cause on December 3<sup>rd</sup>, (...). The IA had been previously disciplined by CIBC in 2004 (...) for exercising time discretion in a client account."
13. Staff argues that the IDA discipline and the reasons for dismissal for cause from CIBC show a trend of non-compliance with the discretionary trading requirements. Mr. Saturley will be the only employee, officer advising, chief compliance officer, ultimate designated person, shareholder and director of TWMI. This raises concerns regarding compliance by TWMI and Mr. Saturley.
14. I do understand staff's concerns regarding compliance having regard to prior discipline of Mr. Saturley. I note that there is an E-mail from Doug Cope, Manager, Investigations, Investment Industry Regulatory Organization of Canada (IIROC), dated September 16, 2009, indicating the file on Mr. Saturley has been closed. I feel that the only disciplinary action to be considered at this time is the IDA matter settled September 29, 2004, resulting from action in 1997. As this non-compliance took place thirteen years ago and we have no subsequent non-compliance proven, I do not believe that this incident of non-compliance is relevant to my decision.
15. TWMI has applied for registration as a portfolio manager and if registered would be permitted to act as an advisor respecting any securities. Mr. Saturley's experience mainly focused on equities and options. Proficiency requirements for an advising representative include 48 months of relevant investment management experience per 3.11(b) of National Instrument 31-103 ("NI 31-103").
16. Staff submitted that Mr. Saturley's work experience cannot be considered sufficient for an unrestricted portfolio manager. A portfolio manager can act in respect of any security. Therefore the relevant experience of the advising representative must directly

relate to all securities that the portfolio manager is advising on and it is Staff's submission that Mr. Saturley has not obtained this broad experience.

17. Counsel for TWMI and Mr. Saturley submitted that Mr. Saturley has experience advising clients regarding a wide variety of securities and this experience is directly related to the portfolio manager role. They submitted that this role has been for longer than the required 48 months of relevant investment management experience, with 12 months of this experience coming within the last 36 months. They further submitted that Mr. Saturley obtained his Canadian Investment Management ("CIM") in 2009 and meets the proficiencies required of a portfolio manager – advisory representative under clause 3.11(b) of NI 31-103.
18. I agree that Mr. Saturley has met the CIM requirement but I have some concerns about his 48 months of relevant experience with 12 of the 48 months in the last 36 months. I note in a letter dated March 15, 2010, from counsel to Mr. Saturley that "Mr. Saturley's discretionary license was approved by CIBC Wood Gundy and was to be issued in November, 2008". It appears from this statement that Mr. Saturley was not permitted to do any discretionary trading during his period of employment with CIBC Wood Gundy. If he was to be registered as a portfolio manager – advising representative then he would likely only be doing discretionary trading and no one but Mr. Saturley would be supervising Mr. Saturley.
19. Staff submitted that Mr. Saturley's work experience is not relevant to the proficiency requirements to be chief compliance officer for TWMI for registration as an unrestricted portfolio manager.
20. Counsel for TWMI and Mr. Saturley submitted that Mr. Saturley "has passed the PDO exam and has met the requirements of section 3.11 [portfolio manager – advisory representative]" and has met the requirements of both subsections 3.13(a) and (c) of NI 31-103. Mr. Saturley has therefore met the requirements in NI 31-103 to be designated TWMI chief compliance officer.
21. I do understand staff's concerns as it appears that Mr. Saturley has no experience as a compliance officer and that he will be CCO and also UDP with no supervision to guide him in this role. I note that only one of the three means to qualify to be designated CCO in subsection 3.13 of NI 31-103 (clause (b)) specifically requires experience in a compliance capacity.
22. Staff has concerns that the disaster recovery plan does not provide for a registered advisory representative to provide service to the clients of TWMI in the case of Mr. Saturley becoming unable to fulfill his duties, before a second qualified advising representative is hired.
23. Counsel for TWMI and Mr. Saturley submitted that NI 31-103 clearly contemplates the registration of sole proprietor firms. Client assets are domiciled with and protected by TD Waterhouse ("TD") and their clients are either able to move their accounts or

continue to receive services from TD before a second qualified advising representative is hired in December 2010. Disaster recovery is mitigated by the relationship with TD and the planned hiring by TWMI in December 2010.

24. I do understand staff's concerns as it appears that if Mr. Saturley is unable to perform his duties as a registrant that TD will continue with asset custody and provide trading services, but will not be providing advisory services. TWMI plans to hire another advisory representative by December 2010 but until this person is hired clients will be forced to find a new advisor.
25. Staff submitted that the compliance structure of TWMI does not address the risks and conflicts inherent in a one man office.
26. Counsel for TWMI and Mr. Saturley submitted Mr. Saturley has contacted and received advice from another firm operating under the TD umbrella in Quebec under the same structure as TWMI's proposed structure. TWMI's structure is modeled on this company which conducts a one person operation. This firm is registered under the same registration category in Quebec as applied for by TWMI.
27. I do not believe that registration of a one person firm should be refused for the sole reason that it is a one person firm. I also do not find that the compliance structure in itself is flawed but I do understand Staff's submission that in a one person operation the person must have all the experience necessary to be eligible to be registered in all the positions required to be filled in a firm. In the situation of a one person firm a higher standard must be met due to a lack of oversight of the one person firm's employee.

## DECISION AND REASONS

28. After having heard the submissions of Staff and TWMI and Mr. Saturley's counsel and the evidence of the witnesses, it is my decision that the registration of TWMI and Mr. Saturley should be refused. It is my view that Staff's submissions at the OTBH and as summarized in this decision as they relate to TWMI and Mr. Saturley provide a sufficient and reasonable basis to deny the registration of TWMI and Mr. Saturley.
29. I note that the Ontario Securities Commission in *Re Trend Capital Services Inc. (1992) 15 OSCB 1711* made it clear that registration is a privilege and not a right.

The Commission noted:

“The regime of securities regulation established by the Act and the Regulations, and discussed in decisions of the Commission and the Courts makes it clear that obtaining registration entitling persons to deal with the public is a privilege and not a right and that this must constantly be borne in mind.”

30. I will now detail the reasons for my decision to deny registration to TWMI and Mr. Saturley.
31. In regard to the relevant experience requirement in subsection 3.11 of NI 31-103 to be registered as an advisor, I noted earlier that I had concerns that Mr. Saturley seems to have no current experience in doing discretionary trading for his clients. It appears that his former employer did not permit him to do discretionary trading for his clients. As an advisor with a PM, Mr. Saturley would be doing discretionary trading for all of his clients with no one to supervise him in developing relevant experience in completing discretionary trades.
32. To be registered as the CCO of TWMI, Mr. Saturley must meet the requirement in 3.13 (a), (b) or (c) of NI 31-103. I am of the opinion he does not comply fully with any of these clauses having regard to the oversight concerns inherent in registering a one person firm. Mr. Saturley has no prior relevant experience in performing the functions of a CCO or even as a compliance officer therefore he does not meet the requirements in 3.13(b). Mr. Saturley also does not meet the requirements of section 3.13(c) as explained in paragraph 30 above, as he does not meet the relevant investment management experience requirement of subsection 3.11 of NI 31-103. I also believe that Mr. Saturley does not qualify under clause 3.13(a) as he has neither the relevant securities experience, lacking both discretionary trading and compliance officer experience and for the same reason has not provided relevant professional services in the securities industry to operate a one man firm. I believe the standard required to be met to register a single employee firm, in which one registrant will fill all positions, including the registerable positions of PM, Advising representative, CCO and UDP is a higher standard as there are no controls over the activity of the one registrant employee. He has not met this required higher level.
33. I am also not satisfied that the disaster recovery plan satisfactorily deals with what will happen to clients if Mr. Saturley is unable to fulfill his duties to his clients, if and until a second advising representative is in place. Under the current disaster recovery plan, the clients would have to find a new advisor on their own.
34. Accordingly I find the Applicants, TWMI and Fredrick Saturley are not suitable for registration.

DATED at Halifax, Nova Scotia this 6<sup>th</sup> day of April, 2010.

“J. William Slattery”  
J. William Slattery, CA  
Executive Director