IN THE MATTER OF THE SECURITIES ACT,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED

- AND -

IN THE MATTER OF
TURNPOINTE WEALTH MANAGEMENT INC.
AND FREDRICK SATURLEY

DECISION

OVERVIEW

1. The Appellants, TurnPointe Wealth Management Inc. and Fredrick Saturley, (collectively the "Appellants" or individually "Saturley") have been refused registration as a portfolio manager pursuant to the provisions of the Securities Act, R.S.N.S. 1989, Chapter 418, as amended (the Act). The appeal of this decision is pursuant to Section 6 of the Act and takes the form of hearing and review of the decision of the Director of Securities.

STATUTORY OVERVIEW

2. The Appellants' application for registration to the Nova Scotia Securities Commission (the Commission) was considered by the Commission's staff, and was then referred to its Director with a recommendation by staff that the registration of the Appellants not be granted. The burden to be considered in such an application is set forth in Section 32(1) of the Act:

> "32(1) Unless it appears to the Director that the applicant is not suitable for registration or re-instatement of registration or that the proposed

> registration, re-instatement of registration or amendment to registration is objectionable, the Director shall grant registration, re-instatement of registration or amendment to registration to an applicant."

3. It is our opinion that there is a presumption of the suitability of an applicant and in the absence of evidence to the contrary or if the proposed registration is not otherwise objectionable a license may be granted.

4. At the hearing of an application for registration, an applicant must follow the requirements of the Act, as well as the requirements of National Instrument 31-103 Registration Requirements and Exemptions (NI 31-103) approved by the Minister of Finance of Nova Scotia and adopted by the Commission as Rule 31-103. This instrument has the force of law in Nova Scotia. Accompanying NI 31-103 is a statement of policy (CP 31-103) which may be referred to in the interpretation of the rule.

5. The Appellant's application is for registration as a "portfolio manager" which classification falls within Section 2(1)(a) of the Act's definition of "adviser":

Section 2 (1) (a) states as follows:

> "adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities;"

6. This hearing and review of this matter is a hearing *de novo.* Such a procedure has been considered by various securities boards in Canada and in particular in Re. Triax Growth Fund Inc., a decision of the Ontario Securities Commission (OSC);

> "A. Hearing *de Novo*

> [24] The Applicants have sought a hearing and review of the Director's decision pursuant to section 8 of the Act. Section 8 provides that the Commission may "confirm the decision under review or make such other decision as the Commission considered proper." The review of the Director's decision involves a hearing *de novo*. Hence, the Applicants do not have the onus of establishing that the Director made an error in her decision.
>
> [25] Further, it is important to note that, when conducting a review of the Director's decision pursuant to section 8 of the Act we are not bound in any way by the Director's determination. Accordingly, we are required to decide the substantive question without considering technical questions such as what, if any, deference should be given to the decision of the Director."

7. We agree with the OSC conclusions, and consider the application of the Appellants *de novo,* and we accord no deference to the Director's decision.

APPLICATION BACKGROUND

8. Saturley's previous relationship of employment with CIBC World Markets Inc. (CIBC) was terminated on December 3, 2008, and, as required, CIBC filed a Uniform Termination Notice (UTN) with the Commission. CIBC's notice to the Commission gave the reasons for the termination as unauthorized discretionary trading. Its letter of dismissal to Saturley dated December 3, 2008, referred to certain reasons "previously discussed".

9. CIBC also gave notice of the dismissal to Investment Industry Regulatory Organization of Canada (IIROC) and an investigation ensued. We will address below the circumstances of Saturley's dismissal by CIBC.

10. The Appellants submitted their application for registration in April, 2009. Staff of the Commission refused to process the application as IIROC was investigating allegations made by CIBC. Without ascribing reasons, we note there then ensued rather lengthy delays in the processing of the Appellants' application.

11. On September 16, 2009, Saturley's counsel learned that IIROC had finished conducting its investigation into Saturley, and that it had closed its file with no action. This information was regarded by Saturley as a dismissal of the complaints, while staff's position is that IIROC's closing of the file is not an exoneration and is only confirmation that the file has been closed by IIROC. We conclude that IIROC found no basis for further investigation and will take no action. Indeed, IIROC referred to its decision to close the file as "good news" and indicated in its letter to Saturley's counsel that it was pursuing an outstanding complaint against CIBC.

12. When Saturley asked that the outstanding application be processed he was informed by staff that Mr. R. Scott Peacock (the Commission's Director of Enforcement) advised that the application should not be processed.

13. On September 28, 2009, NI 31-103 was adopted as Rule 31-103 and therefore the application as filed was no longer valid and a new application became necessary – the application now before us.

14. Saturley and his legal counsel then made (and apparently continue to make) efforts to discover the nature of the investigation under way and the substance of any unresolved complaints. All requests for this information have been denied, including an application pursuant to the Freedom of Information and Protection of Privacy Act, which application, we are informed, is still being pursued.

15. The present application was submitted on November 17, 2009. There then followed various further delays and refusals by staff to enunciate reasons for recommending that the applicants were not suitable for registration.

16. A hearing before the Director was scheduled for February 18, 2010, and three days previous to that date the reasons for the refusal were set forth in a letter dated February 15, 2010 from staff to McInnes Cooper, as follows:

> "– previous IDA discipline penalties as stated in Bulletin #3361, a copy of which is attached.
>
> – Mr. Saturley was terminated for cause from CIBC World Markets on December 3, 2008. The Notice of Termination alleges discretionary trading. This is the same action that was the subject of the above noted Bulletin #3361.
>
> – TWMI has applied for registration as a portfolio manager and as such would be permitted to act as an adviser in respect of any security. Mr. Saturley's past work experience has been mainly focused on equities and options. The proficiency requirements for a (sic) advising representative include "48 months of relevant investment management experience,". Since the portfolio manager can act in respect of any security, the relevant experience of the advising representative must directly relate to the securities that the portfolio manager is offering advice on.

It is the opinion of Staff that Mr. Saturley's work experience can not be considered sufficient for an unrestricted portfolio manager.

- The question of whether Mr. Saturley's work experience can be considered relevant, as described above, relates to the proficiency requirement to be the chief compliance officer for TWMI. It is the opinion of Staff that Mr. Saturley's work experience can not be consider relevant in the case of an unrestricted portfolio manager.

- The detailed disaster recovery plan provided on December 21, 2009 does not address the question of which registered advising representative would be providing service to the clients of TWMI in the case of Mr. Saturley becoming unable to fulfil (sic) his duties before a second qualified advising representative is hired. Since a time line for the hiring of a second advising representative was not included in the disaster recovery plan, the plan must address the current staff of TWMI.

- The December 21, 2009 outline of the compliance structure of TWMI does not address the risks and conflicts that are inherent in a one man office. A much more comprehensive supervisory and compliance structure would have to be provided."

17. On February 18, 2010, the Director conducted the scheduled hearing.

18. On April 6, 2010, the Director issued his decision, a copy of which is attached hereto. We note particularly that the Director (correctly, in our view) rejected the termination by CIBC and historic allegations of complaints as reasons for his refusal to allow the registration sought. Rather, he directed his attention negatively to the lack of relevant experience in discretionary trading ("proficiency"), lack of an appropriate disaster recovery plan and "conflicts inherent in a one man office". With respect to the latter the Director concluded that "... the standard required to be met to register a single employee

firm… is a higher standard as there are no controls over the activities of the one registrant employee".

19. The Director's decision is under appeal to this panel, but we are not restricted to its ambits. Rather, we will review all aspects of the application on a *de novo* basis. In this regard, we will also consider how NI 31-103 applies to the application.

CRITERIA FOR ELIGIBILITY

20. Neither the Act nor NI 31-103 defines suitability, but the Companion Policy, CP 31-103, sets forth the following:

> **Section 1.3**
>
> **"Assessing fitness for registration - individuals**
>
> We use three fundamental criteria to assess whether an individual is or remains fit for registration:
>
> - proficiency
> - integrity, and
> - solvency
>
> (a) Proficiency
>
> Individual applicants must meet the applicable education, training and experience prescribed by securities legislation and demonstrate knowledge of securities legislation and the products they recommend.
>
> Registered individuals should continually update their knowledge and training and keep pace with new products, services and developments in the industry that are relevant to their business. See section 3.4 of this Companion Policy for more specific guidance on proficiency.
>
> (b) Integrity

Registered individuals must conduct themselves with integrity and have an honest character. The regulator will assess the integrity of individuals through the information they are required to provide on registration application forms and as registrants, and through compliance reviews. For example, applicants are required to disclose information about conflicts of interest, such as other employment or partnerships, service as a member of a board of directors, or relationships with affiliates, and about any regulatory or legal actions against them.

(c) Solvency

The regulator will assess the overall financial condition of an individual applicant or registrant. An individual that is insolvent or has a history of bankruptcy may not be fit for registration. Depending on the circumstances, the regulator may consider the individual's contingent liabilities. The regulator may take into account an individual's bankruptcy or insolvency when assessing their continuing fitness for registration."

21. We will examine each of these criteria, and in doing so we are mindful that registration is a privilege and not a right. In this regard, we refer to Re. Trend Capital Service Inc. (1992), 15 OSCB 1711:

> "The regime of securities regulation established by the Act and the Regulations, and discussed in decision 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."

22. Section 3.4 of NI 31-103 states the following:

> **"3.4 Proficiency - initial and ongoing**
>
> (1) An individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.
>
> (2) A chief compliance officer must not perform an activity set out in section 5.2 [*responsibilities of the*

chief compliance officer] unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently."

a) Proficiency

(I) Formal Education/Training

23. Saturley is well educated. He obtained an MBA from the University of Calgary in 1982, became a Certified General Accountant in 1997 and a Canadian Investment Manager in 2009. He testified that he completed courses in the following:

a. Canadian Securities Course
b. Canadian Options Course
c. Partners, Directors and Senior Officers Course
d. Branch Manager Course
e. Conduct and Practices Handbook Course
f. Canadian Insurance Course
g. Corporate Governance
h. CE Compliance Course
i. Portfolio Management Techniques
j. Investment Management Techniques
k. CE Ethics course, retail version

24. In addition, Saturley said that he taught courses in accounting, financing and organizational behavior at the University of Calgary and obtained professional development credits relevant to the investment business.

(ii) Experience

25. Saturley has been directly involved in securities as an Investment Adviser since 1992 and specialized in options trading for which he was licensed since 1993.

26. Saturley testified about his employment history since 1992. It is unnecessary to detail that history, except to say that based on his testimony, he was apparently successful both personally and professionally. His most recent employment was with CIBC World Markets Inc., and he testified that he had over 200 clients with assets in excess of $130,000,000; he was in the top 35 of 1300 investment advisers of that company and was ranked number 1 in the Halifax office. At the time of his dismissal by CIBC Mr. Saturley said that his employer was ready to recommend him for registration as a portfolio manager with discretionary trading authority.

27. In his testimony given on June 16, 2010, at page 108 of the transcript prepared by Verbatim Inc. (the Transcript), Saturley discussed the allegation by the Director that as his past work experience mainly focused on equities and options he thus had insufficient experience to be licensed as a portfolio manager. He stated:

> "...I ran a diversified investment practice. Not only did I have experience in equities and options, which is probably the most important area to have the experience and knowledge, but I also had experience in fixed income, dealing with bonds, preferred shares, and associated types of securities, along with extensive exposure to mutual funds and limited partnerships, flow-through shares, and short term equivalent type investments, like treasury bills. So I do not understand how they could have even come to that conclusion that I only focused on equities and options. It makes no sense to me."

28. Saturley testified in some detail concerning his use of a "strangle

strategy" for his clients. That strategy is, in effect, a hedge strategy, making use of options. We neither approve nor reject the use of this investment strategy.

Functions - Requirements and Responsibilities

29. The application in question is an application for a single person proprietorship. Such an arrangement is clearly contemplated by NI 31-103. The single person must perform several functions, including those of "advising representative", "chief compliance officer" and "ultimate designated person", and each position has its own requirement as follows:

> **"3.11 Portfolio manager – advising representative**
>
> An advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless any of the following apply:
>
> (a) The representative has earned a CFA Charter and has 23 months of relevant investment management experience in the 36-month period before applying for registration;
>
> (b) The representative has received the Canadian Investment Manager designation and has 48 months of relevant investment management experience, 12 months of which was in the 36-month period before applying for registration."

30. The portfolio manager must also act as his/her own chief compliance officer who is answerable to the ultimate designated person. These positions are addressed in NI 31-103 as follows:

> **"3.13 Portfolio manager – chief compliance officer**
>
> A portfolio manager must not designate an individual as its chief compliance officer under subsection 11.3 (1) [*designating a chief compliance officer*] unless any of the following apply:
>
> (a) the individual has
>
> (i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,
>
> (ii) passed the Canadian Securities Course Exam and PDO Exam, and
>
> (iii) either
>
> A) gained 36 months of relevant securities experience while working at an investment dealer, a registered adviser or an investment fund managers, or
>
> B) provided professional services in the securities industry for 36 months and worked at a registered dealer, a registered adviser or an investment fund manager for 12 months;
>
> (b) the individual has passed the Canadian Securities Course Exam and the PDO Exam and any of the following apply:
>
> (i) the individual has worked at an investment dealer or a registered adviser for 5 years, including for 36 months in a compliance capacity;
>
> (ii) the individual has worked for 5 years at a Canadian financial institution in a compliance capacity relating to portfolio

management and worked at a registered dealer or a registered adviser for 12 months;

(c) The individual has passed the PDO Exam and has met the requirements of section 3.11 [*portfolio manager – advising representative*]."

31. Part 5 deals with the " ultimate designated person" and "chief compliance officer" as follows:

"5.1 Responsibilities of the ultimate designated person

The ultimate designated person of a registered firm must do all of the following:

(a) supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf;

(b) promote compliance by the firm, and individuals acting on its behalf, with securities legislation.

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;

(d) Submit an annual report to the firm's board of directors, or individuals acting in a similar capacity for the firm, for the purpose of assessing compliance by the firm, and individuals acting on its behalf, with securities legislation."

32. Pursuant to sections 7.2(1) and 7.2 (2) of NI 31-103 a portfolio manager may act as an adviser in respect to any security.

33. Sections 11.1 to 11.3 of NI 31-103 make clear that sole proprietorships are contemplated and permissible. CP 31-103 states that it is preferable to separate the functions of CCO and UDP, but recognizes that is not practical in some firms. Part 5 of CP 31-103, in addressing this subject reads as follows:

> "The UDP and the CCO can be the same person if they meet the requirements for both registration categories. We prefer firms to separate these functions, but we recognize that it might not be practical for some registered firms."

Findings - Proficiency

34. The Director, in his Decision, stated that Mr. Saturley does not have sufficient experience as required in subsection 3.11 of NI 31-103 as he has no ... "current experience in doing discretionary work for his clients". ... " As an advisor with a portfolio manager, Mr. Saturley would be doing discretionary trades for all of his clients with no one to supervise him in developing relevant experience in completing discretionary trades".

35. In his post-hearing submissions, Counsel for Mr. Saturley stated that ... " 'Relevant investment management experience' does not require that an applicant have working

experience with discretionary accounts. This is evident from the Companion Policy with [sic] provides ...examples of "relevant investment management experience" for the purposes of ss. 3.11 and 3.12 of NI 31-103" ..

36. Mr. Saturley's Counsel stated that ... "The Companion Policy is meant to be an interpretative aid to NI 31-103. It is clear from these provisions that experience with discretionary portfolio management is not a required element of "relevant investment management experience". The proficiency required relates to the ability to properly manage portfolios which is demonstrated by experience and ability in analyzing, researching and selecting securities or in discretionary portfolio management".

37. We are satisfied that Saturley has the formal requirements for proficiency for the positions of adviser, CCO and UDP as set forth in NI 31-103, both academically and professionally. We further believe, based on the evidence adduced before us, that a reasonable person would conclude that Saturley meets the test of having the necessary education, training and experience to perform competently the activities for which he has applied for registration.

38. We have concerns arising from the obvious conflicts in a single person proprietorship, and we will discuss this below.

b) Integrity

39. As required, Saturley disclosed in his application certain negative aspects of his record. He was disciplined in 2007 for certain trades made in 2004. He explained to us the circumstances surrounding the complaints. However, even without that explanation we are satisfied that these disciplinary actions ought not now be considered. We refer to Trafalgar Associates Ltd. (Re) (2010), 32 OSCB 1197, a decision of the Compliance Manager of OSC in which she said:

> "17 In my view, absent any information or evidence to the contrary in the seven year period since the date of the settlement agreement, Mr. Furtak should not continue to be penalized for conduct which occurred approximately seven years ago and for which he was sanctioned by the Commission. The panel itself in the settlement hearing was troubled by the terms of the settlement agreement. In my view, staff cannot now use this settlement agreement as evidence that TAL is not currently suitable for registration. If the past conduct of Mr. Furtak was more egregious or if there was any evidence presented by staff that Mr. Furtak or TAL hadn't "learned their lesson" in the approximately seven years since the settlement agreement was entered into, I would have come to a different conclusion."

40. The question to be addressed is (assuming the historic complaints were valid), has Saturley "learned his lesson"? No evidence has come before us which would suggest that since the alleged questionable trades in 2004 Saturley has not conducted himself in anything but in a professional manner.

41. This question, however, raises the subject of the CIBC dismissal of Mr. Saturley.

42. Saturley testified concerning his dismissal, which according to his evidence and certain documentary evidence before us allegedly arose from errors by CIBC in its treatment of

certain splits of securities held by Saturley's clients, and which allegedly negatively affected those clients in a significant manner.

Findings - Integrity

43. We are conscious of a civil action taken by Saturley for wrongful dismissal and a class action taken by Saturley's clients against CIBC. We do not wish to make findings of fact or credibility which may influence the course of those actions, especially as the evidence before us has not been tested by cross-examination or possibly by contrary evidence. In the absence of any contrary evidence we have accepted the evidence of Mr. Saturley concerning his dismissal and concerning the errors allegedly committed by CIBC .

44. As mentioned above, we accept that IIROC investigated complaints against Saturley and closed its file. We infer that IIROC was satisfied that discipline procedures should not proceed. However, the Enforcement Division of this Commission held certain files "open" and refused to disclose the subject matters of the complaints or the identity of the complainants. We express concern about that position held by Enforcement, which might have the effect of depriving an applicant for registration and the right to work in his/her chosen profession. An unresolved and unidentified complaint against an applicant cannot be regarded as a trump card to be played at will, and it is extremely unfair to an applicant.

45. Such a complaint cannot be considered "clear and convincing proof of unsuitability" as

contemplated by Re Somback and Saskatchewan Securities Commission et al (1994) 4 CCLS 102, as referred to in Gordon Stenna, Docket CA018128, a decision of the Court of Appeal of British Columbia as follows:

> "[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 of any refusal to register: see Re Sombach and Saskatchewan Securities Commission et al. (1994) 4 C.C.L.S. 102 (Sask. Sec. Comm.)."

46. Accordingly, we have disregarded the open files currently being held by the Enforcement Division of this Commission. We note that the Director also disregarded these files in forming his decision.

47. Certain of Saturley's clients gave evidence, both orally and by affidavit concerning Saturley's integrity. With respect to the affidavit evidence, it was not tested by cross-examination and is therefore of limited value. As well, although we were impressed by the obvious sincerity of the witnesses who testified, that evidence is also of limited value as those witnesses would not have been able to address the intricacies of the overall suitability of Saturley. We nonetheless found the evidence helpful.

48. We are satisfied that, in the absence of contrary evidence, Saturley has the required integrity.

c) Solvency

49. The Director is not concerned with Saturley's solvency; nor are we.

DISASTER RECOVERY PLAN

50. One of the reasons advanced by the Director for his refusal of the application by Saturley was his dissatisfaction with the Disaster Recovery Plan put forth by Saturley. In his Decision, the Director stated that at paragraph 33:

> "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 adviser on their own."

51. Saturley testified on June 16, 2010, at page 110 of the Transcript, that one of the reasons he established a relationship with TD Institutional Services was to provide better protection to his clients:

> ".... all of the clients' assets are domiciled with TD, which provides them with all the insurance coverage, as any other investment firm provides across Canada. So from a disaster point of view, it wouldn't matter whether the records at TurnPointe Wealth Management were destroyed because it would have no impact on the assets protection that a client would have because all the assets are domiciled with TD Bank. But, in addition to that, TD has advisors and also an advisory service that could easily take over the advising responsibilities for my clients, whether on a permanent or part-time basis."

52. Further at page 115 of the Transcript, Mr. Saturley stated that TD looks

> "... after all of the margin calculations. They look after all of the cash flow, the cheque handling, the set up of the accounts in terms of whether it is a margin account, or RIFF account of RSP account..."

He indicated that as the administration of the accounts would be handled by TD, he would have no ability to access the funds and the investments in the accounts, other than the buying and selling of the investments, which would all have to be in accordance with the "Know Your Client" form, and the "Investment Policy Statement".

53. Saturley also testified at page 111 of the Transcript that once he obtains a license, he will as soon as possible after obtaining his license hire an assistant or a second advisor representative

> "....so that in the event that I'm not able to operate, that someone would be available to provide continuity of service, in addition to the services that are provided by TD Institutional Services, which is the same arrangement that takes place across all other advisors who deal with TD across Canada."

Findings - Disaster Recovery Plan

55. After considering this matter, we are not persuaded that the proposed arrangement by Saturley will operate to the detriment of his clients, in the case of his incapacity to look after his clients, any more than would be the case of a lawyer, an insurance agent, or another investment advisor, who are no longer able to look after their clients, for one reason or another. There are times when a client no longer wishes to be served by a particular firm, or by a new contact person in an existing firm. In times like this, the client may simply choose to move to another firm or another individual. Thus, we do not believe that the proposed arrangement is a reason to deny the registration for which Mr. Saturley is applying.

SINGLE EMPLOYEE FIRM

56. The Director stated the following concerning Mr. Saturley in paragraph 12 of his decision:

> ... " has no prior relevant experience in performing the functions of a CCO or even as a compliance officer therefor 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."

57. It is worth mentioning here, that although the Director speaks of a higher standard being required of a single employee firm, he does not indicate what that higher standard should be.

58. What the Director appears to be concerned with in the case of a single person firm, is that the same person, (Mr. Saturley) in this case, performs the responsibilities of chief compliance officer, ultimate designated person, and advising representative. Further, in the case of Turnpointe, the Director is of the view that this same person has insufficient experience. This latter point has been discussed above.

59. The single person firm in the investment business has additional factors to be considered. NI 31-103 sets out the educational, experience requirements and the responsibilities of the advising representative, the chief compliance officer, and the ultimate designated person. Further, it sets out the various reporting protocols which are required.

60. However, as set forth above, CP 31-103 recognizes that the same person may be the chief compliance person and the ultimate designated person.

61. This situation is no different than the case of a single person firm, which has its accounts audited by a firm of external auditors. The auditors are faced with the difficult task of providing an audit report of a company which, because of its relatively small size may not have a sufficient number of employees to provide an effective system of internal controls. In such a case, the auditors will utilize other procedures in order to determine if the financial statements fairly present the year end financial picture. For example, the auditors may place a greater emphasis on the year end balances, such as accounts receivable, inventories, and how such balances compare with other years. Year end confirmation requests are frequently employed. Further, neither NI 31-103 nor the Companion Policy, speak of a higher standard being required in the case of a single person firm. That is not to say, of course, that a higher standard would not be desirable, but in the eyes of the NI-31-103, it is not a requirement, as long as the underlying requirements relating to the reporting standards are met.

62. With respect to the matter of internal controls, NI-31-103 states in Section 11.1 that:

> "A registered firm must establish, maintain, and apply policies and procedures that establish a system of controls and supervision sufficient to
>
> (a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and
>
> (b) manage the risks associated with its business in accordance with prudent business practices."

63. What is left unspoken here is that the smaller the firm, and the fewer number of employees, the more difficult it is to implement an effective system of internal controls.

64. In addition to the section on internal controls, NI 31-103 sets out the requirements for records, and retention of records in Section 11.5 and 11.6.

65. The Companion Policy CP-31-103 says a great deal more about internal controls and systems in Part 11. It sets out the elements of an effective Compliance system, and states that ... "internal controls are an important part of a firm's compliance system."

66. The last element to review in this matter, is the role of the external auditor. Section 12.8 of NI 31-103 states that ...

> "A registered firm must direct its auditor in writing to conduct any audit or review required by the regulator during its registration and must submit a copy of the direction to the regulator
> (a) with its application for registration, and
> (b) no later than the 7th day after the registered firm changes its auditor."

67. Section 12.10 of NI 31-103 sets out the requirements for the annual financial statements, and without discussing these in detail, we point out section 12.10 (2), which states that... "The annual financial statements delivered to the Regulator under this Division must be audited."

Findings - Single Employee Firm

68. While we understand the concerns of the Director with respect to a Single Employee Firm, we are not prepared to refuse the application for registration due to the Applicant being a Single Employee Firm. Single Employee Firm is contemplated under NI 31-103 and its Companion Policy. However, that is not to say that we do not share some of the same concerns of the Director. The reality is that if the experience requirements are met, and we believe they are, as discussed elsewhere in this decision, then it would be unfair and unjust to deny the registration solely because it is a single employee firm.

69. It is clear to us that the way to deal with this issue lies with NI-31-103 itself. The Policy, and its Companion Policy, set out the responsibilities of the key persons in the firm, even if there is only one person in the firm. The responsibilities are clear and the designated person must perform those responsibilities to the best of his or her ability. The designated person, or persons, must recognize that he or she carries a heavy responsibility in order to ensure that the clients are provided adequate protection.

70. In our view, there are three entities which must play a key role in the effective administration of a single person firm: the owner of the firm, the Regulator and the

External Auditors. The owner must carry out those responsibilities set out in NI 31-103; the Regulator has to set out the requirements which it wishes to have performed by the Owner and the Auditors in order that it can be satisfied that the firm is providing adequate protection to its clients. In short, the Regulator has the supervisory and compliance powers to conduct surprise audits, and to request, via the regulated firm, that the External Auditors perform certain specific procedures beyond those normally employed by the External Auditors, and that the External Auditors report their findings to the Regulator.

71. We are concerned about the length of time this application has been outstanding. We believe that the Applicants have now met the criteria for registration. Accordingly, we direct that the Commission issue the necessary registrations to the Applicants as soon as possible, and that this not be held up pending the regulator's determination of any specific additional requirements it may require. These can be determined on go forward basis in conjunction with the Applicants and the External Auditors, as required.

MANDATE

72. Our mandate was aptly expressed by the OSC in Istanbul (Re) (2008), 31 OSCB 3798 as follows:

> "58 As part of the Commission's public interest mandate, it is the role of the Commission:

> to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to the past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. (*Re Mithras Management Ltd., (1990), 13 O.S.C.B. 1600 at 1610 and 1611*)"

73. We are satisfied that we comply with this mandate. We are satisfied that the disaster plan as set forth by Saturley is satisfactory as it depends largely on his relationship with Toronto Dominion. As set forth above, the latter will provide the "backroom support" necessary for proper administration and custody of investments and we are also persuaded that in the event of a disaster that support will effectively protect the clients.

74. Finally, we again express concern about the compliance supervision of a sole proprietorship. Such a concern may be addressed by the Commission by stringent exercise of its supervisory and compliance powers. The Director referred in his decision to "oversight concerns inherent in registering a one person firm". We share this concern generally, but we conclude that such a concern is not addressed in the mandated registration requirements. There is no "higher standard" prescribed for a sole proprietorship. It is our conclusion that the obvious concerns should be met by careful enforcement. We also remark that the problems inherent in single person professional firms are not unique to the investment industry. Those same problems are found in other

self-governing professions, such as accounting and legal, and are addressed by careful auditing and inspections. The protection of the public is provided by careful administration as well as the registration processes of the professional organizations.

75. We accordingly order that Saturley be granted the license sought, to be exercised by him through his corporation, TurnPointe.

Dated at Halifax, Nova Scotia this 19th day of August, 2010.

Honorourable David W. Gruchy, Q.C.
Commission Member

John A. Morash, C.A.
Commission Member

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

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 3rd, (....). 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 me 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 6th day of April, 2010.

"J. William Slattery"
J. William Slattery, CA
Executive Director