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In the Matter of the *Securities Act*,
R.S.N.S. 1989, Chapter 418, as amended (the Act)

– and –

In the Matter of the Applications for Registration of Adonis Asset Management and Adrian Saturley

**Opportunity to Be Heard by the Director**
**Under Subsection 32(3) of the Act**

**Decision:** February 14, 2022

**Director:** H. Jane Anderson, Executive Director

**Submissions:**

For Staff: Brian Murphy, Manager of Registrant Regulation

For the Applicants: Adrian Saturley and Christopher I. Robinson, Counsel for the Applicants

1. For the reasons set out below, my decision is to accept the recommendation of staff of the Nova Scotia Securities Commission (**Staff**) and refuse to grant registrations to Adonis Asset Management (**AAM**) and Adrian Saturley (**AS**) (collectively, the **Applicants**).

**Overview**

2. On September 13, 2021, Staff received applications for the registration by the Nova Scotia Securities Commission (the **Commission**) of AAM, as an adviser in the category of a portfolio manager, and for the registration of AS, as the Ultimate Designated Person (**UDP**), Chief Compliance Officer (**CCO**) and sole Advising Representative (**AR**) of AAM.

3. On October 14, 2021, Staff sent a letter to the Applicants advising that Staff recommend that the Director of Securities of the Commission (the **Director**) refuse to grant registration to the Applicants on the grounds that the Applicants are not suitable for registration and the proposed registration of AAM is objectionable. The letter also advised the Applicants of their right to request an opportunity to be heard (**OTBH**) pursuant to subsection 32(3) of the Act before I make a decision in my capacity as the Director.

4. On October 15, 2021, the Applicants requested an OTBH, which was conducted by written submissions.

5. My decision is based on consideration of the recommendation and written submissions of Brian Murphy, Manager of Registrant Regulation of the Commission, dated October 28, 2021 and December 6, 2021, and the written submissions of each of AS and Christopher I. Robinson, Counsel for the Applicants, dated November 30, 2021, and December 17, 2021, as well as my review of the documentary evidence included in the submissions made pursuant to the OTBH.

**Staff's Recommendation**

6. Staff's recommendation to refuse the Applicants' registrations (the **Recommendation**) is based on the grounds that (i) AS does not currently demonstrate the proficiency and integrity necessary to be suitable for registration as a UDP, CCO and AR of a one-person portfolio manager, and (ii) because AS is not suitable for registration as the UDP and CCO of AAM, the registration of AAM is therefore objectionable.

7. Staff cited numerous compliance deficiencies by AS related to his previous experience as the CCO and an AR of High Tide Wealth Management Inc. (**HTWM**), formerly Turnpointe Wealth Management Inc., as the basis for the Recommendation.

8. HTWM was registered in the category of a portfolio manager with the Commission from September 9, 2009, to January 22, 2021, when it surrendered its registration. It was a family run firm, of which AS's father was the UDP and an AR. AS was an AR of HTWM from February, 2015, until January 22, 2021, as well as the CCO from February 2015, until a medical leave on January 16, 2020. The date that AS's medical leave from the CCO position ceased is the subject of debate between Staff and the Applicants. This issue is addressed below.

9. HTWM was the subject of a compliance examination by Staff that commenced in January 2020 and concluded with a report dated July 24, 2020 (the **Examination Report**) which was attached as Appendix B to the Recommendation.

10. The Examination Report was submitted as evidence to support the Recommendation. Staff identified 23 deficiencies in the Examination Report, 20 of which were noted as significant and several of which, Staff submit, were the responsibility of AS who was the CCO of HTWM and an AR.

11. Staff also submit that AS has not identified in the applications any subsequent events (such as additional training, experience or education) that would establish that AS has now acquired the requisite training and experience to ensure that AAM will operate as a fully compliant, one-person portfolio manager.

**Registration and the Law**

12. The primary purpose of the Act (as set out in Section 1A of the Act) is to protect investors from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets.

13. One of the main mechanisms for achieving this purpose is the registration requirement set out in Section 31 of the Act and the related registration rules and conduct requirements contained in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

14. The registration function of the Commission plays a gatekeeper role to the investing public by ensuring that applicants for registration meet the requirements of Nova Scotia securities laws.

15. Pursuant to subsection 32(1) of the Act, registration shall be granted unless an applicant is not suitable for registration or the registration is objectionable.

> **Grant of registration**
> 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.
>
> (2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trade in certain securities or derivatives or a certain class of securities or derivatives.
>
> (3) The Director shall not refuse to grant, re-instate or amend a registration, or impose terms and conditions on a registration, without giving the applicant an opportunity to be heard.

16. While there is a statutory presumption in favor of an applicant, as stated by the Commission in *Re. Turnpointe Wealth Management Inc. and Fredrick Saturley*, NSSC August 19, 2010, at paragraph 21, there is no “right” to registration:

> 21….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 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."

17. In light of the presumption of suitability for registration, there must be evidence that demonstrates that an applicant is not suitable for registration or that the registration is objectionable.

18. As implied by the presumption in favor of an applicant, the onus is on staff of the securities regulator to demonstrate that an applicant is not suitable for registration or that a proposed registration is objectionable.

19. Moreover, as stated by the B.C. Court of Appeal in *Stenner v. British Columbia (Securities Commission),* 1996 CarswellBC 2032*,* "*securities commissions have recognized 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 as the basis of any refusal to register*" [paragraph 17].

20. Suitability for registration is not defined in the Act or in NI 31-103. However, the Act does contain guiding principles. In particular, Staff must be guided by the primary purpose of the Act to protect investors and, in doing so, the Commission and its Staff "shall have regard to factors as may be viewed by the Commission as appropriate in the circumstances, including any principles enunciated in the regulations". [section 1A of the Act].

21. The categories of registration and related requirements for the registration of individuals and firms are set out in NI 31-103.

22. In addition to specifying certain pre-requisite courses, training and experience for individuals seeking registration in Part 3, *Division 2,* of NI 31-103, subsection 3.4(1) of NI 31-103 establishes that initial and ongoing proficiency requirements for individuals include education, training and experience that a reasonable person would consider necessary to perform an activity competently, including understanding the structure, features and risks of each security the individual recommends. Subsection 3.4(2) goes on to specify that with respect to proficiency, a CCO must not perform an activity that is within their responsibility unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

23. Part 7 of NI 31-103 sets out the categories of registration for firms and subsection 7.2(2) specifically states that a company registered in the category of portfolio manager may act as an adviser in respect of any security.

24. The Companion Policy to NI 31-103 (**31-103CP**) contains the following guidance regarding suitability for registration of individuals and firms in section 1.3:

> **Fitness for registration**
> The regulator will only register an applicant if they appear to be fit for registration. Following registration, individuals and firms must maintain their fitness in order to remain registered…
> …
> **Assessing fitness for registration - firms**
> We assess whether a firm is or remains fit for registration through the information it is required to provide on registration application forms and as a registrant, and through compliance reviews. Based on this information, we consider whether the firm is able to carry out its obligations under securities legislation. For example, registered firms must be financially viable. A firm that is insolvent or has a history of bankruptcy may not be fit for registration...
>
> **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 requirements prescribed by securities legislation and demonstrate knowledge of securities legislation and the securities they recommend.
>
> Registered individuals should continually update their knowledge and training to keep pace with new securities, services and developments in the industry that are relevant to their business. See Part 3 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.
> …

25. Section 3.4 of 31-103 CP provides additional guidance regarding the proficiency principle, including that registered individuals must understand the structure, features and risks of each security they recommend to a client (referred to as know-your-product or **KYP**). It also states that the CCOs must have a good understanding of the regulatory requirements applicable to the firm and individuals acting on its behalf. CCOs must also have the knowledge and ability to design and implement an effective compliance system.

26. With respect to firms, the guidance in Section 3.4 of 31-103 CP states that the responsibility of registered firms to oversee the compliance of registered individuals

acting on their behalf extends to ensuring they are proficient at all times. A registered firm must not permit an individual they sponsor to perform an activity if the proficiency requirements are not met.

27. When assessing suitability for registration, past conduct is relevant because it assists in determining whether the Applicants are likely to meet the standards imposed by Nova Scotia securities laws in the future. As quoted by the Commission in *Re Turnpointe Wealth Management Inc.* (August 19, 2010) at para 72*:*

> 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 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 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 pages 1610 and 1611)

[emphasis added]

28. As stated in Part 3 of 31-103 CP, the regulator is required to determine an individual's fitness for registration and may exercise discretion in doing so. Of course, any discretion is subject to fulfilling the primary purpose of the Act which, as stated above, is to protect investors.

## Decision and Reasons

### A. Registration of AS

#### Proficiency

29. Does AS's education, training and experience with HTWM (his only prior experience as a CCO and AR) meet the requirements in Part 3 of NI 31-103? Does he have the education, training and experience that a reasonable person would consider necessary to competently perform the CCO, UDP and AR activities of AAM, including knowledge of Nova Scotia securities laws and understanding the structure, features and risks of each security he recommends to clients?

*Proficiency - Education*

30. With respect to the education element of proficiency, section 3.11 requires that an AR of a portfolio manager must not act as an adviser on behalf of a portfolio manager unless the individual has either (i) earned a CFA Charter and gained 12 months of relevant investment management experience in the 36-month period before applying for registration, or (ii) received the Canadian Investment Manager (**CIM**) designation and gained 48 months of relevant investment management experience, 12-months of which was gained in the 36-months prior to applying for registration.

31. AS submitted that he is a CFA Charter holder, holds the CIM designation and has worked in the financial industry for 15 years, including five years working as a CCO and AR with HTWM. The CSI Transcript submitted by AS reflects the numerous courses completed by AS between 2011 and 2019, including the CIM designation, and I am satisfied that AS meets the educational component of the proficiency requirement to be registered as an AR.

32. Pursuant to Section 3.13 of NI 31-103, a portfolio manager must not designate an individual as its CCO unless the individual has satisfied certain specific educational and experience requirements, including that the individual has passed the Canadian Securities Course Exam and either the PDO Exam or CCO Qualifying Exam, and has worked as a registered adviser for 5 years, including 36 months in the compliance capacity.

33. AS's CSI Transcript reflects that he completed the Canadian Securities Course Exam and the PDO Exam and so I am satisfied that AS meets the educational component of the proficiency requirement to be registered as a CCO.

34. There are no specific educational or experience proficiency requirements for the registration of a UDP in Part 3 of NI 31-103. However, according to section 5.1 of 31-103 CP, UDPs are subject to the general proficiency principle in section 3.4 of NI 31-103.

*Proficiency - Experience*

35. AS worked at HTWM as an AR from February 2015 until January 2021, and as the CCO from February 2015 until his medical leave on January 15, 2020. AS's work experience meets the length of experience required for the registration of an AR in section 3.11 of NI

31-103, and meets the length of experience required for the registration of a CCO in subsection 3.13(b) or (c) of NI 31-103.

36. However, Staff submit that AS's previous experience and conduct as the CCO and an AR of HTWM demonstrates that he does not have the required proficiency to be suitable for registration as a CCO, UDP or an AR of AAM. Staff cite in the Recommendation numerous compliance deficiencies that were the responsibility of AS while he was an AR and the CCO of HTWM.

37. AS submits that since his appointment as the CCO of HTWM, he gained significant experience, and during his tenure there were no compliance related issues. On this point, AS submitted handwritten notes (the **Notes**), taken by an unidentified representative of HTWM on March 13, 2020 regarding a telephone conference with Staff on some of the findings of the compliance examination commenced in January 2020, to indicate that Staff did not express any concerns regarding AS's performance as CCO, nor did Staff indicate they had concerns about HTWM's compliance regime. According to AS, the Recommendation ignores the full scope of AS's performance as CCO from 2015 to January 2020 and is based "almost entirely" on events surrounding the market volatility in March 2020 and HTWM's actions between January to March 2020 when AS was on medical leave.

38. While AS's work experience meets the length requirements, his experience must be considered in the context of the guidance set out in sections 1.3 and 3.4 of 31-103 CP. More specifically, has AS demonstrated a good understanding of the securities legislation and its regulatory requirements, as well as the securities he recommended? As noted above in paragraph 27, past conduct is relevant because it assists in determining whether AS is likely to meet the standards imposed by Nova Scotia securities laws in the future.

39. The Notes are clearly a list of compliance deficiencies, including notes regarding "KYC conflicts", "some unsuitable inv[estments]", "questionable inv[estments]", and noted deficiencies in the IPS form, P&P Manual, the DMA Agreement, and Code of Ethics. While the Notes do not specifically name AS as being responsible for the listed deficiencies, many of the noted deficiencies involve HTWM's forms, documents and know your client (**KYC**) information which were prepared and relate to HTWM's activities prior to AS's medical leave.

40. Moreover, the Examination Report submitted by Staff in support of the Recommendation includes the following appendices:

    a. Appendix B2 (**Appendix B2)**, prepared by Staff following a review of pre-clearance forms, employee account statements and corresponding monthly review forms completed by AS as the CCO of HTWM from a random four-month sample (June 2018, Dec. 2018, March 2019, and October 2019), which summarizes deficiencies identified by Staff related to trades made by employees of HTWM and related parties;

    b. Appendix B3 (**Appendix B3**), a chart prepared by Staff following a review of the most recent KYC and Investment Policy Statements (**IPS**) documentation for all 141 of HTWM's clients, which summarizes the KYC information of all of HTWM's clients, the percentage of options in each client's investment account, notes of some clients' ages and if information in their IPS conflicts with the client's KYC information, and an assessment by Staff of the suitability of the investment in uncovered options based on each client's information; and

    c. Appendix B4 (**Appendix B4**), prepared following a review of four client account statements on June 30, 2019, and again on Dec 31, 2019, which shows asset allocations of above 100% on both dates and indicates a lack of rebalancing.

41. The information contained in the Examination Report's appendices clearly shows that the compliance examination and findings by Staff are not solely related to HTWM's activities after January 15, 2020, when AS's medical leave commenced. The information contained in Appendix B2 and Appendix B4 clearly relate to activities that occurred in 2018 and 2019 while AS was the CCO. The KYC and IPS documentation summarized in Appendix B3 are foundational documents that for most (if not all) of HTWM's clients would have been completed prior to AS's medical leave, and therefore within AS's responsibility. While it is possible that some of the information contained in Appendix B3 was updated or changed during AS's medical leave, it is highly unlikely that the information in Appendix B3 is attributable to changes made after January 15, 2020, by another representative of HTWM.

42. I am satisfied that the items listed in the Notes and the scope of the Examination Report relate to activities of HTWM and its representatives prior to AS's medical leave on January 15, 2020. Having determined that the scope of the Examination Report covers

activities prior to AS's medical leave, there is no need for me to address the debate of when AS's medical leave ended or address any submissions that relate to deficiencies identified by Staff as having occurred after January 15, 2020.

*Proficiency - Past Conduct of AS*

43. Does AS's past conduct demonstrate that he has the requisite experience and knowledge of Nova Scotia securities laws, including the securities he recommends, that a reasonable person would consider necessary to perform the activities of a CCO, UDP and AR competently?

44. Staff submit that several of the compliance deficiencies in the Examination Report are attributable to AS's conduct and illustrate that AS failed to comply with his regulatory obligations as an AR and the CCO of HTWM. The identified deficiencies that relate to AS's conduct and experience during the period that AS was the CCO (and AR) prior to his medical leave include:

    a. The use of uncovered put options for most of HTWM's clients without establishing related policies, guidance, restrictions or controls on the use of risky investment strategies contrary to sections 5.2 (responsibilities of the CCO) and 11.1 (compliance system) of NI 31-103, and subsection 39A(2) of the Act (requirement to deal fairly, honestly and in good faith with clients);

    b. HTWM's deficient compliance system, including deficient internal controls, policies and procedures that did not reflect the business of the firm, failure to follow the firm's written policies and procedures, lack of an KYC and suitability process, conflicts of interest and trading inadequacies contrary to sections 5.2 (responsibilities of the CCO) and 11.1 (compliance system) of NI 31-103;

    c. AS's overall lack of understanding of his regulatory responsibilities and fiduciary duty required for portfolio manager registration contrary to section 5.2 of NI 31-103 (responsibilities of the CCO);

    d. KYC and suitability deficiencies in 129 of a total of 141 HTWM client relationships, including AS's clients as an AR, contrary to sections 5.2 (responsibilities of the CCO), 11.1 (compliance system), 11.5 (general requirements for records), 13.2 (KYC), and 13.3 (suitability) of NI 31-103; and

e. Non-compliance with proper procedures related to trades in personal accounts of HTWM employees contrary to sections 5.2 (responsibilities of the CCO), 11.5 (general requirements for records), and 13.4 (identifying and responding to conflicts of interest) of NI 31-103.

45. As the CCO of HTWM, AS was subject to the following responsibilities of a CCO:

> **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.

[emphasis added]

46. According to section 5.2 of 31-103CP, a CCO is responsible for the monitoring and oversight of a firm's compliance system, including establishing and updating policies and procedures for the firm's compliance system and managing the firm's monitoring and reporting. Pursuant to section 11.1 of 31-103CP, everyone in a registered firm should understand the standards of conduct for their role, and anyone who supervises registered individuals has the responsibility on behalf of the firm to take all reasonable measures to, among other things, ensure that each individual deals fairly, honestly and in good faith with their clients, complies with securities legislation and complies with the firm's policies and procedures.

47. Pursuant to his responsibilities as the CCO, AS was responsible for the foundation of HTWM's compliance system to ensure that policies and procedures establishing a system of controls and supervision were implemented pursuant to section 11.1 of NI 31-103, and to ensure that HTWM's representatives complied with all securities law requirements in accordance with section 5.2 of NI 31-103, including reviewing all trades for suitability. The maintenance of an effective compliance system would be expected to continue even during AS's medical leave.

48. As an AR of HTWM, AS was required to comply with subsection 39A(2) of the Act, to deal fairly, honestly and in good faith with his clients, as well as the conduct requirements set out in Part 13 of NI 31-103 that registered individuals and firms must comply with, including KYC and suitability obligations in Sections 13.2 and 13.3 which are among the most fundamental obligations owed by registrants to their clients:

> **13.2 Know your client**
> …
> **(2)** A registrant must take reasonable steps to
> (a) establish the identity of a client and, if the registrant has cause for concern, make reasonable inquiries as 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.
>
> **13.3 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.
> **…**

[emphasis added]

49. The guidance in section 13.2 of 31-103 CP states that the regulators consider KYC information to be current if it is sufficiently up-to-date to support a suitability determination, and specifically states that a portfolio manager with discretionary trading authority should update its clients' KYC frequently.

50. Additionally, section 13.3 of 31-103 CP explains that where a registrant is a portfolio manager with discretionary trading authority, the registrant will need extensive KYC information in order to obtain a comprehensive understanding of the client's (i) investment needs and objectives, including the client's time horizon for their investments, (ii) their overall financial circumstances, including net worth, income, current investment holdings and employment status, and (iii) their risk tolerance for various types of securities and investment portfolios, taking into account the client's investment knowledge.

51. Staff submit that they reviewed the most recent KYC and IPS documentation for all 141 HTWM clients and found suitability deficiencies in 129 client relationships.

52. AS submits that until January 15, 2020, all client KYC's, IPS, risk tolerances and account positions were reviewed by AS and were in full compliance with the firm's policies and procedures. AS submits that Staff who prepared Appendix B3 took leaps of logic in their analysis and therefore the resulting report is valueless as a gauge to suitability for HTWM's clients.

53. Appendix B3 contains a summary of the KYC information and notes any conflicts in that information with the information in clients' IPS. From my review of the KYC information, there are many clients whose risk threshold, time horizon, investment knowledge and investment objectives in the KYC information conflict with each other and/or conflict with information in their corresponding IPS. In addition, there are long time horizons for investments for several clients who are seniors which suggests that the KYC information was not updated when it should have been, contrary to the requirements in subsection 13.2(4) of NI 31-103 to keep KYC information current.

54. I am satisfied that the conflicting KYC information demonstrates that AS, in his capacity as the CCO of HTWM, failed to monitor and assess compliance with the KYC requirements by HTWM and its representatives, and failed to report the non-compliance to the UDP contrary to section 5.2 of NI 31-103. AS also failed to comply with section 11.5 of NI 31-103 to ensure that accurate records of HTWM were maintained to demonstrate compliance with applicable securities laws, including the KYC and suitability requirements.

55. As an AR, AS was required to ensure that the KYC information for his clients was complete, accurate and up-to-date as required by section 13.2 of NI 31-103 so he could assess the suitability of the investments for his clients. Since the chart in Appendix B3 does not identify which accounts were clients of AS, I am unable to determine if AS complied with the KYC requirements in section 13.2 for his clients. However, given the breadth of the conflicting KYC information in Appendix B3, a reasonable person could assume that some of the conflicting KYC information in Appendix B3 relates to AS's clients.

56. While suitability is a distinct obligation, it is closely intertwined with the KYC obligation because the KYC information provides the basis for a suitability assessment.

57. The guidance in section 13.3 of 31-103CP states that to meet the suitability obligation, registrants are subject to a KYP obligation whereby they should know each security well enough to understand and explain to their clients the security's risks, key features, and initial and ongoing costs and fees. Individual registrants must still determine the suitability of each transaction for every client. It goes on to specify that "*In all cases, we expect registrants to be able to demonstrate a process for making suitability determinations that are appropriate in the circumstances.*"

58. Staff submit that many of AS's clients (in his capacity as AR) held unsuitable uncovered put options without having the necessary level of risk tolerance or investment knowledge. Staff also submit that AS, in his capacity as the CCO, was responsible for ensuring the appropriate suitability assessments were made prior to trade execution and were properly documented. Staff observed in the Examination Report that HTWM did not document (either in the trade logs or separately) how, prior to trade execution, investments were reviewed for suitability within client accounts and in accordance with the client's IPS.

59. Appendix B3 shows that (i) only 7 of HTWM's 141 clients did not hold any options, (ii) the majority of clients held between 10-20% of uncovered put options in their account, and (iii) one client's account (whose KYC investment knowledge was stated to be "limited") consisted of 75% of uncovered put options.

60. AS submits that Staff incorrectly focused on the use of options by HTWM as always being high-risk investments, and that options have near-infinite uses and combinations to both raise and lower exposure to expected risk. AS also stated that HTWM "used uncovered options as a major part of its investment strategy from the beginning of its operations in 2010", and that Staff knew of this. AS cited a quote by the Commission in *Re. Turnpointe Wealth Management Inc.* (supra), a proceeding in 2010 involving AS's father, Fredrick Saturley, which acknowledged (without approving or rejecting) the use by Fredrick Saturley of a "strangle strategy" using options.

61. Unlike trading in equity and debt securities, which covers a low- to high-risk spectrum, trading in uncovered options is considered high-risk in the investment industry because of the margin requirement and because movements in market prices and volatility may result in margin calls and substantial losses if the market moves against a client. A strangle strategy, which employs corresponding put and call options to lower risk, is different from a strategy using uncovered put options which are not backed by another

position to hedge the risk, and where potential losses can be significant. Moreover, there were no submissions from AS that the options in HTWM's client accounts noted in Appendix B3 were anything other than uncovered put options.

62. In any event, the issue is not about HTWM using uncovered put options as an investment strategy for some of its sophisticated clients, but rather whether uncovered put options were suitable investments for 134 (out of a total of 141) of HTWM's clients that invested in them based on their KYC information. Investing in uncovered put options may have been suitable for clients who had an appetite for risk, the ability to understand the risks and the capacity to withstand additional financial outlays and losses. However, uncovered put options may not be suitable investments for clients that had a lower appetite for risk, less investment sophistication or less capacity to withstand the potential losses from this type of investment.

63. Based on AS's submissions noted above, and the lack of risk disclosure documentation regarding the use of uncovered put options by HTWM, I query whether AS understood the real risks of uncovered put options, and whether the potential risks of additional outlays and significant loss was explained to all of the 134 HTWM clients that held them.

64. With respect to the suitability requirements in section 13.3 of NI 31-103, AS submits that one must complete a total analysis of the client's ability (their financial and physical realities) and willingness (their personal experience, education and feelings towards investing) to get a picture of their risk tolerance and only then can suitability be assessed. AS also submitted his own "KYC and Suitability Assessment" document (the **Assessment**). According to AS, the Assessment shows HTWM's clients' risk tolerances in 2015 compared to 2020. AS asserts that every client in 2015 utilized the same uncovered options and either had the same risk tolerance or higher back in 2015. AS stated that it was his mandate as CCO to require clients who had significant target rates of return of greater than 15% to either lower their target return or recognize that they are categorized as high risk. He also submitted that he signed off on all trades as the CCO prior to his medical leave

*65.* I did not find the Assessment (prepared for the purpose of the OTBH and after-the-fact) and AS's explanation helpful in explaining the suitability of the investments in uncovered put options by the majority of HTWM's clients. Rather, it raises concerns about AS's understanding of the suitability assessment. AS's submission appears to be focused on risk tolerance which he's tied to a targeted rate of return, rather than a holistic

assessment of many factors, including each client's age, time horizon, current financial situation, capacity to withstand loss, education and investment knowledge, investment goals and objectives, risk tolerance, the risks of the investment product, the composition of the client's portfolio, and the current market conditions; all of which will have changed since 2015 and would impact whether or not the use of uncovered put options was a suitable investment in 2020. A client's desired rate of return forms part of the entire suitability assessment and should not dictate the client's risk tolerance. Moreover, a client's risk tolerance is based on factors personal to them and should not be determined by being categorized based on blanket thresholds that are applied generally, such as reclassifying all clients who previously had "above average" risk tolerance to having a "high risk" tolerance if they are looking for a rate of return greater than 15%.

*66.* The Notes state that there was conflicting information regarding the use of options in the P&P Manual and the DMA Agreement, as well as no mention of the use of options in the IPS. Further, in the submissions of AS, a Risk and Disclosure Document for Futures and Options was not prepared by AS until after the market volatility in March 2020 at the insistence of Staff.

*67.* Based on the KYC information in Appendix B3, the lack of risk disclosure regarding the use of uncovered put options prior to March 2020, and AS's submissions regarding suitability assessments, AS has not demonstrated that he understands the risks of using uncovered put options, that HTWM's clients (including his own) knew of and really understood those risks, and that suitability assessments were appropriately conducted to ensure that the investments in uncovered put options by HTWM's clients (including his own) were suitable for each client that held them (as required by sections 3.4 and 13.3 of NI 31-103).

*68.* In addition, as the CCO of HTWM, AS failed to ensure that HTWM's documents contained appropriate disclosure about the risks of the uncovered put options it traded, by not keeping records that demonstrate compliance with KYC and suitability requirements, by failing to ensure the accurate recording of HTWM's business activities and client transactions to demonstrate compliance with the suitability requirements, and by not having a system of controls in place to identify non-compliance at an early stage (as required by sections 11.1 and 11.5 of NI 31-103). Having signed off on all trades prior to his medical leave (including trades of unsuitable uncovered put options), AS also failed to assess the compliance of the securities law requirements by HTWM and its

representatives, and report the non-compliance to the UDP (as required by section 5.2 of NI 31-103).

69. Based on my determinations of the above-noted contraventions of Nova Scotia securities laws by AS when he was the CCO and an AR of HTWM, and his lack of understanding of the securities law requirements (including KYP and suitability), I find there is clear and convincing proof that AS does not meet the general proficiency requirement in subsection 3.4(1) of NI 31-103 required for registration as an AR and a UDP. For the same reasons, I also find there is clear and convincing proof that AS does not meet the proficiency requirement in subsection 3.4(2) of NI 31-103 for registration of a CCO. AS lacks the experience element of proficiency that a reasonable person would consider necessary to competently perform the activities of an AR, CCO and UDP of AAM.

**Integrity**

70. The next issue is whether AS has the requisite integrity to act as the UDP, CCO and an AR of AAM.

71. Staff submit that AS's lack of understanding regarding his fiduciary duty to his clients, combined with a culture of non-compliance at HTWM while AS was the CCO, demonstrates that AS lacked the requisite integrity to be a suitable UDP, CCO and AR of AAM.

72. The guidance on the integrity element of suitability for registration in section 1.3 of 31-103 CP states that registered individuals must conduct themselves with integrity and have an honest character. Moreover, 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.

73. Although AS's experience with HTWM demonstrates a lack of knowledge of Nova Scotia securities laws and his regulatory obligations, I have not seen any evidence that AS acted dishonestly, either in his conduct prior to his medical leave from HTWM or related to the applications. I therefore disagree with Staff that AS lacks the integrity element of suitability for registration.

74. However, I do find AS's submissions in which he denies all responsibility for all of the deficiencies in the Recommendation, even those that relate to the period when he was the CCO of HTWM prior to his medical leave, to be further evidence of his lack of understanding of the regulatory requirements of the positions of CCO and AR.

75. As stated by the Commission in *Re. Turnpointe* (supra) at para 69,

> 69. …The Policy, and its Companion Policy, set out 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 with adequate protection.

[emphasis added]

76. Having found that AS lacks the proficiency to competently perform the activities of an AR, UDP, and CCO, I find there is clear and convincing proof that AS is not suitable for registration as the CCO, UDP or AR of AAM. In light of my findings of AS's previous non-compliance with fundamental securities law requirements and that AS's application relates to a one-person portfolio manager, there are no terms and conditions that could be applied in connection with AS's application that would provide an appropriate level of investor protection. Accordingly, I therefore accept the Recommendation and refuse to grant registration to AS as a UDP, CCO and AR of AAM.

## B. Registration of AAM

77. Pursuant to section 7.2 of NI 31-103, a portfolio manager is a category of registration for firms that will be engaging in the business of advising others as to the investing in or the buying and selling of all types of securities.

78. Sections 11.2 and 11.3 of NI 31-103 require registered firms to designate an individual who is registered under securities legislation in each of the categories of UDP and CCO, respectively. As stated in section 3.4 of 31-103 CP, a firm must not permit an individual they sponsor to perform an activity if the proficiency requirements are not met.

79. The guidance contained in section 1.3 of 31-103 CP states that in assessing the fitness for registration of firms, the regulators consider the information that is required to be provided on the application forms in order to determine whether the firm is able to carry out its obligations under securities legislation.

80. The application for the registration of AAM as a portfolio manager sets out that AS will be the UDP, CCO and an AR of AAM. Although the Applicants' intentions of retaining another person to be the CCO in future, as stated in their submissions and set out in the business plan, are duly noted, the application for AAM's registration is for AS to be the sole person responsible for all levels of compliance, supervision, advising, and trade executions of AAM. I can only base my decision on the information in the applications. Having determined that AS is not suitable for registration as a CCO or a UDP, AAM will therefore not be able to designate AS as its UDP and CCO. Without having a UDP or a CCO, or an AR, AAM's registration is objectionable. Accordingly, I accept the Recommendation and refuse to grant the registration of AAM as an adviser in the category of a portfolio manager on the basis that AAM's registration is objectionable.

81. This decision does not foreclose AS from pursuing a career in the securities industry. Staff stated in the Recommendation that they are willing to consider an application by AS for registration as an AR if he is sponsored by a firm with a strong compliance system and is properly supervised. Contrary to the Applicants' counsel's arguments, the willingness to consider an alternate registration is not an indication that AS currently has the proficiency to be an AR. Rather, it is recognition that AS has studied and trained to work in the securities industry, and he may be able to gain the requisite experience to become proficient if he is subject to terms and conditions, such as strict supervision by a firm that has demonstrated consistent compliance with Nova Scotia securities laws.

(signed) *"H. Jane Anderson"*
H. Jane Anderson,
Executive Director
Nova Scotia Securities Commission