

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)	
)	
NEW HARBOR FINANCIAL GROUP,)	
LLC,)	Docket No. E-2022-0031
)	
RESPONDENT.)	
)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and New Harbor Financial Group, LLC (“New Harbor” or “Respondent”) with respect to the above-captioned investigation by the Enforcement Section of the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (the “Enforcement Section”) into whether New Harbor engaged in acts or practices that violated the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A (the “Act”), and the regulations promulgated thereunder at 950 Code Mass. Regs. 10.01-14.413 (the “Regulations”).

On October 5, 2022, Respondent submitted an Offer of Settlement (the “Offer”) to the Division. Respondent admits the facts set forth in Sections III through VI below, neither admits nor denies the violations of law set forth in Section VII below, and consents to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the above-captioned investigation with prejudice.

II. JURISDICTION

1. The Division has jurisdiction over matters relating to securities pursuant to the Act, codified at Chapter 110A of the Massachusetts General Laws.
2. The Offer was made and this Order is entered in accordance with the Act and with Section 10.10 of the Regulations.
3. The acts and practices that were the subject of the Enforcement Section's above-captioned investigation occurred in Massachusetts within the meaning of Section 414 of the Act.

III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the acts and practices described herein occurred during the period of August 1, 2016, to July 31, 2018 (the "Relevant Time Period").

IV. RESPONDENT

5. New Harbor Financial Group, LLC ("New Harbor") is a Massachusetts limited liability company organized on January 1, 2005. It has a principal place of business currently located at 146 Main Street, Worcester, Massachusetts, and formerly, during the Relevant Time Period, at 54 Main Street, Leominster, Massachusetts 01453. It has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 155528. It has been registered with the Securities and Exchange Commission (the "SEC") as an investment adviser (an "IA") since December 21, 2010 and notice filed in Massachusetts as a federal covered adviser since January 3, 2011.

V. RELATED PERSONS

6. Michael Robert Preston (“Preston”) is an individual resident of Massachusetts and one of two managing members of New Harbor. He has a FINRA CRD number of 4050238. He has been registered in Massachusetts as an investment adviser representative (an “IAR”) of New Harbor since January 6, 2011.

7. John Christopher Llodra (“Llodra”) is an individual resident of Massachusetts and one of two managing members of New Harbor. He has a FINRA CRD number of 4675045. He has been registered in Massachusetts as an IAR of New Harbor since January 6, 2011.

8. William Raymond Cole (“Cole”) is an individual with a last known address in Massachusetts. He has a FINRA CRD number of 714542. He was registered in Massachusetts as an IAR of New Harbor from January 10, 2011 to January 17, 2020.

VI. STATEMENT OF FACTS

A. History of New Harbor

9. Preston, Llodra, and Cole first met while working as financial advisers for UBS Financial Services, Inc. (“UBS”).

10. In December 2004, Preston filed a Certificate of Organization with the Massachusetts Corporations Division in order to establish New Harbor.

11. Following the creation of New Harbor, Preston, Llodra, and Cole resigned from UBS.

12. In January 2005, because New Harbor itself was not then registered as an IA, Preston, Llodra, and Cole registered in Massachusetts as broker-dealer agents of Commonwealth Equity Services (“CES”).

13. In January 2005, Llodra and Cole both also registered in Massachusetts as IARs of CES.
14. In January 2005, Preston, Llodra, and Cole began offering investment advisory services through CES but under New Harbor's name.
15. Although New Harbor was a distinct business entity, it could only offer investment advisory services through CES, and Preston, Llodra, and Cole were subject to CES's policies, procedures, and management.
16. Between December 2010 and January 2011, Preston gained independence for New Harbor by registering it as an IA with the SEC and notice filing it with a variety of states across the country, including Massachusetts.
17. On December 31, 2010, Preston, Llodra, and Cole terminated all of their respective registrations with CES.
18. In January 2011, Preston, Llodra, and Cole registered in Massachusetts as IARs of New Harbor.
19. In December 2011, New Harbor submitted a Certificate of Amendment to the Massachusetts Corporations Division to add Llodra as a co-manager.
20. As the two sole co-managers and direct owners of New Harbor, Preston and Llodra share responsibilities and profits equally.
21. As the two sole co-managers of New Harbor, Preston and Llodra are ultimately responsible for supervising all firm activities.
22. Cole worked as an IAR of New Harbor, under the supervision of Preston and Llodra, until his retirement from the industry in January 2020. No individuals at New Harbor other than Preston and Llodra were responsible for supervising Cole.

23. New Harbor’s investment advisory services have always consisted primarily of discretionary management of brokerage and securities-based retirement accounts.

24. New Harbor has always required every new client to open a brokerage or individual retirement account (an “IRA”) with TD Ameritrade, Inc. (“TD”) in order to house the assets for which New Harbor will be providing advisory services.

25. As of March 16, 2022, New Harbor had \$334,621,350 in discretionary assets under management across 1,449 client accounts.

B. New Harbor Failed to Reasonably Supervise Cole’s Management of Investments in an Exchange Traded Fund in Discretionary Client Accounts.

26. New Harbor has developed a strategic investment model that it describes as only being suitable for clients seeking preservation of capital and/or modest growth.

27. It would be extremely unusual for a potential client to approach New Harbor looking for a high-risk, speculative investment strategy. In fact, New Harbor most likely would not accept that type of investor as a client.

28. New Harbor adopted an investment strategy during the Relevant Time Period that involved purchasing and holding inverse exchange traded funds (an “ETF”)¹ in client accounts intended as hedges against certain equity positions, for the purpose of a partial offset of the risk of large equity market declines.

¹ An ETF is a professionally managed, pooled investment fund that holds multiple underlying assets and that trades on an exchange like regular stock. An ETF will often build a portfolio that tracks the returns of a specific stock index, such that if the prices of the stocks comprising that index increase, the price of the ETF increases. In contrast, an inverse ETF will utilize derivatives, such as futures, to build a portfolio that tracks the returns of a specific stock index in the opposite direction, such that if the prices of the stocks comprising that index increase, the price of the ETF decreases. The purpose of an inverse ETF is to be an asset that actually appreciates during a market downturn.

29. New Harbor's investment strategy resulted in New Harbor purchasing and holding inverse leveraged ETFs for at least 45 client accounts for periods of several weeks to several months. New Harbor ultimately exchanged these inverse leveraged ETFs for inverse ETFs whose stated objective was to track the same market index as the inverse leveraged ETFs.

i. Client 1

30. "Client 1" is an individual who resided in Massachusetts during the Relevant Time Period.

a. History with New Harbor

31. On July 18, 2016, Client 1 signed a discretionary investment management agreement with New Harbor.

32. On July 18, 2016, Client 1 submitted a new IRA application to TD with New Harbor listed as the account adviser.

33. Along with the new IRA application, Client 1 submitted an options trading application to TD that included suitability information.

34. On the suitability portion of the options trading application, Client 1 reported having "limited" investment knowledge.

35. On the suitability portion of the options trading application, Client 1 reported having the options investment objectives of "conservation of capital" and "growth."

36. New Harbor understood that conservation of capital and growth were also Client 1's objectives for the overall allocation of securities within the IRA.

37. Cole initially served as Client 1's point of contact at New Harbor and placed many trades for Client 1's IRA consistent with New Harbor's hedged investment philosophy, devised by its co-managers Preston and Llodra.

b. ProShares UltraShort Russell2000 ("TWM")

38. On August 2, 2016, Cole purchased 470 shares of the ProShares UltraShort Russell2000 ETF ("TWM") in Client 1's IRA for the total price of \$14,953.05.

39. TWM is a twice leveraged inverse (-2x) ETF² that tracks the Russell 2000 Index.

40. On December 27, 2016, on behalf of Client 1, New Harbor sold the 470 shares of TWM in Client 1's IRA, for the total price of \$10,845.06, and used the proceeds, in addition to uninvested cash in the account, to purchase 385 shares of an unleveraged inverse ETF for the total price of \$18,582.02 to conform this hedging position to the unleveraged inverse ETF holding New Harbor used in the majority of its client accounts at the time.

41. Client 1 suffered \$4,107.99 in realized losses on TWM.

ii. **Other TWM Clients**

42. During the Relevant Time Period, Cole purchased and held shares of TWM in at least forty-five (45) other discretionary client accounts primarily managed by Cole (the "Other TWM Clients").

43. Cole last purchased shares of TWM for an account not belonging to a member of his family on October 25, 2016. Nearly all purchases of TWM for accounts managed by Cole were made on or about July 16, 2016 or September 13, 2016.

² A leveraged ETF builds a portfolio that attempts to produce a return multiple times greater than the returns of the stock index that its portfolio tracks. A leveraged inverse ETF functions the same way, but in the opposite direction of the returns of the stock index that its portfolio tracks.

44. New Harbor began selling shares of TWM held in client accounts as early as August 2016, with the majority of the sales occurring between December 14 and December 27, 2016.

45. New Harbor used the proceeds of the sales of TWM to purchase shares of an unleveraged inverse ETF also tracking the Russell 2000 Index.

iii. New Harbor Failed to Reasonably Supervise Cole’s management of investments in TWM for Client 1 and for the Other TWM Clients.

46. TWM poses a higher risk than a comparable unleveraged inverse ETF due to the potential for magnified tracking error over longer term holding periods as well as due to increased volatility resulting from TWM’s stated objective of amplifying price movements in the underlying index.

47. The October 1, 2015 Summary Prospectus for TWM that ProShares Trust filed with the SEC (the “TWM Summary Prospectus”) provided the following warnings to potential investors:

[TWM] is different from most [ETFs] in that it seeks inverse leveraged returns relative to the [Russell 2000] Index and only on a daily basis. [TWM] also is *riskier* than similarly benchmarked [ETFs] that do not use leverage. Accordingly, [TWM] may not be suitable for all investors and should be used only by knowledgeable investors who understand the potential consequences of seeking daily inverse leveraged investment results.

. . . .

. . . [TWM] obtains investment exposure through derivatives. Investing in derivatives may be considered *aggressive* and may expose [TWM] to *greater risks* than investing directly in the reference asset(s) underlying those derivatives. . . . Because derivatives often require only a limited initial investment, the use of derivatives also may expose [TWM] to *losses in excess of those amounts initially invested*.

(boldface in original) (italics added).

48. The TWM Summary Prospectus stated that the ETF does not “seek to achieve its stated investment objectives over a period of time greater than a single day.”

49. Additionally, the TWM Summary Prospectus advised shareholders to “actively manage and monitor their investments, as frequently as daily.”

50. The fact that TWM is twice leveraged means that investors face two-times the amount of potential daily losses on a percentage basis as compared to a comparable unleveraged ETF.

51. Contrary to the guidance from the TWM Summary Prospectus, there are no records documenting that Cole monitored the performance of Client 1’s account as frequently as daily during the Relevant Time Period.

52. There are also no records documenting that Cole monitored the performance of the Other TWM Clients’ respective accounts as frequently as daily during the periods when those accounts held shares of TWM.

53. The decision by Cole to purchase and hold TWM in discretionary client accounts, in most cases, from several weeks to several months, without records documenting his monitoring as frequently as daily prevents New Harbor from establishing Cole’s use was consistent with the TWM Summary Prospectus’s explanation of the intended use for that securities product.

54. The Division alleges the inherent risks of TWM were magnified by Cole’s failure to document that he monitored the accounts of Client 1 and Other TWM Clients as frequently as daily.

55. New Harbor likewise failed to reasonably supervise Cole's management and documentation of the frequency of monitoring of the investments in TWM for the accounts of Client 1 and Other TWM Clients.

56. In particular, New Harbor failed to maintain written supervisory procedures to enforce a supervisory system reasonably designed to document the frequency of monitoring investments in TWM by its investment adviser representatives.

57. As with Client 1, New Harbor, on behalf of Other TWM Clients, conformed the accounts of the Other TWM Clients to its core hedged model investment strategy by replacing TWM with an unleveraged inverse ETF tracking the same underlying market index, in most cases on or before December 27, 2016.

VII. VIOLATIONS OF LAW

Count I - Mass. Gen. Laws c. 110A, § 204(a)(2)(J)

58. Section 204 of the Act provides:

The [S]ecretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the . . . registrant . . . :—

. . . .

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter

Mass. Gen. Laws c. 110A, § 204(a)(2)(J).

59. Respondent's acts and practices, as described above, constitute violations of Section 204(a)(2)(J) of the Act.

VIII. ORDER

IT IS HEREBY ORDERED:

- A. New Harbor shall permanently cease and desist from violations of the Act and the Regulations.
- B. Respondent is censured by the Division.
- C. Within thirty (30) days of the entry of this Order, Respondent shall provide the Division with a verified accounting of, and disgorge, all management fees paid to New Harbor attributable to TWM holdings in client accounts. For the purposes of this paragraph, management fees paid to New Harbor attributable to TWM holdings in client accounts shall mean, for each date on which management fees were calculated where TWM was held in the client's account, the value of TWM holdings in the client's account on the management fee calculation date(s) divided by the total value of the client's account on the same date(s), multiplied by the management fee(s) charged.
- D. Within thirty (30) days of the entry of this Order, Respondent shall pay restitution to Client 1 to cover Client 1's total realized losses attributable to the twice leveraged aspect of TWM during the Relevant Time Period, subject to the following terms:
 - i. Respondent shall be liable for the restitution owed to Client 1.
 - ii. Within fifteen (15) days of the entry of this Order, Respondent shall provide a verified accounting of Client 1's total realized losses attributable to the twice leveraged aspect of TWM during the Relevant Time Period.
 - iii. Respondent shall within the thirty (30) day deadline provide to the Enforcement Section proof of payment to Client 1.

E. Within sixty (60) days of the entry of this Order, Respondent shall pay restitution to the Other TWM Clients to cover realized losses attributable to the twice leveraged aspect of TWM, subject to the following terms:

- i. Respondent shall be liable for the restitution owed to each of the clients.
- ii. Within thirty (30) days of the entry of this Order, Respondent shall provide a verified accounting of each of the Other TWM Clients' total realized losses attributable to the twice leveraged aspect of TWM during the Relevant Time Period.
- iii. Respondent shall within the sixty (60) day deadline provide to the Enforcement Section proof of payment to each of the clients.

F. Within five (5) days of the entry of this Order, Respondent shall pay an administrative fine in the amount of \$100,000 (USD). Payment shall be:

- i. Made by United States Postal Service postal money order, certified check, bank cashier's check, bank money order, or wire transfer;
- ii. Made payable to the Commonwealth of Massachusetts;
- iii. Mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per the Division's instructions; and
- iv. Submitted under cover letter or other documentation that identifies the payor and that bears the docket number of this matter (Docket No. E-2022-0031).

Additionally, Respondent shall provide the Enforcement Section with notice twenty-four (24) hours prior to making payment.

G. Respondent shall not claim, assert, or apply for a tax deduction or tax credit with regard to any local, state, or federal tax for any amount that it shall pay in accordance with an Order entered by the Division pursuant to this Offer.

H. Respondent shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that it shall pay in accordance with an Order entered by the Division pursuant to this Offer.

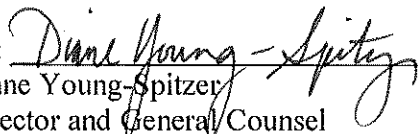
I. If Respondent is the subject of a voluntary or involuntary bankruptcy petition under Title 11 of the United States Code within three hundred sixty-five (365) days of the entry of an Order by the Division pursuant to this Offer, Respondent shall provide written notice to the Enforcement Section within five (5) days of the date of the petition.

J. Any fine, penalty, and/or money that Respondent shall pay in accordance with this Order is intended by Respondent and the Enforcement Section to be a contemporaneous exchange for new value given to Respondent pursuant to 11 U.S.C. § 547(c)(1)(A) and is, in fact, a substantially contemporaneous exchange pursuant to 11 U.S.C. § 547(c)(1)(B).

K. Upon the issuance of this Order, if Respondent fails to comply with any of said terms, the Enforcement Section may institute an action to have the settlement agreement and Order declared null and void. Additionally, after a full and fair hearing and the issuance of an order finding that Respondent has not complied with this Order, the Division may move to have this Order declared null and void, in whole or in part, and re-institute the associated investigation that had been brought against Respondent; and

L. For good cause shown, the Enforcement Section may extend any of the procedural deadlines set forth above.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 
Diane Young-Spitzer
Director and General Counsel
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Dated: October 11, 2022