

ORDER NUMBER 90

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.N.L. 1990 CHAPTER S-13, AS AMENDED
(the “*Act*”)**

AND

**RELIEF FROM THE REQUIREMENT FOR A CORPORATION OF
AN INDIVIDUAL REGISTRANT THAT IS AN AGENT OF A MUTUAL FUND DEALER
TO BE REGISTERED TO RECEIVE COMPENSATION**

**ORDER
(Sections 138.19 and 144.(1) of the *Act*)**

Definitions

1. Unless otherwise defined in this Order or the context otherwise requires, terms used that are defined in the *Act*, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* or National Instrument 14-101 *Definitions* have the same meaning in this Order.
2. “Individual Registrant” means an individual, registered under the *Act*, who acts as an agent of a mutual fund dealer that is also registered under the *Act* (a “Mutual Fund Dealer”).
3. “Unregistered Corporation” means a corporation of an Individual Registrant that is not registered under the *Act*, of which the Individual Registrant is a director, officer or shareholder.

Background

4. A commission and/or compensation payable to an individual or a corporation by a mutual fund dealer, as a result of trading in securities, is an activity that requires the recipient of the commission or compensation to be registered under the *Act*.
5. An Individual Registrant, if permitted by his or her Mutual Fund Dealer, may choose to structure his or her business in a manner that would include the payments of any commissions, compensation, remuneration, gratuity, benefit or other consideration in relation to the Individual Registrant’s trading activities on behalf of his or her Mutual Fund Dealer, (collectively, the “Compensation”) to his or her Unregistered Corporation.
6. The superintendent has determined, subject to the terms and conditions set out in this Order, that it would not be prejudicial to the public interest to exempt an Unregistered Corporation of an Individual Registrant from the registration requirements of the *Act* for the sole purpose of permitting the Unregistered Corporation to receive Compensation from the Mutual Fund Dealer the Individual Registrant is registered with.

7. The security regulatory authorities in British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island and Nova Scotia permit an individual registrant to direct their Compensation from their mutual fund dealer to an unregistered corporation.
8. Bulletin No. 20, which was issued by the superintendent in November 2012, (the "Bulletin") reiterated that the securities legislation in Newfoundland and Labrador prohibits the payment of a commission or other remuneration to an individual or company that is not registered in Newfoundland and Labrador. The matters raised in the Bulletin are hereby modified by the terms and conditions in the Order below.

Order

9. The registration requirement does not apply to an Unregistered Corporation of an Individual Registrant for the purposes of receiving the Individual Registrant's Compensation from his or her Mutual Fund Dealer, subject to the following terms and conditions:
 - (a) the Unregistered Corporation is incorporated under the laws of Canada or a province or territory of Canada and all of its directors, officers and shareholders must be individuals registered with the same mutual fund dealer, or a family member of such registered individuals. For the purposes of this paragraph, a family member includes a spouse, child, parent, grandparent, brother, sister, uncle, aunt, niece or nephew of an individual registered with that mutual fund dealer;
 - (b) the Unregistered Corporation, the Individual Registrant and the Mutual Fund Dealer must have entered into a written agreement substantially in the form attached hereto as Schedule A that contains, among other things, the following terms:
 - (i) the Individual Registrant and the Mutual Fund Dealer shall comply with all applicable securities legislation and remain liable to third parties, including clients, irrespective of whether any Compensation is paid to the Unregistered Corporation and no payment shall, in and of itself, in any way limit or affect the duties, obligations or liability of the Individual Registrant or the Mutual Fund Dealer under applicable securities legislation;
 - (ii) the Mutual Fund Dealer shall engage in appropriate supervision with respect to the conduct of the Individual Registrant and the Unregistered Corporation to ensure such compliance as referred to in (i) above; and
 - (iii) the Individual Registrant and the Unregistered Corporation shall provide the Mutual Fund Dealer, the superintendent and the staff of the superintendent with access to all books and records maintained by or on behalf of either of them for the purpose of determining compliance with applicable securities legislation;
 - (c) the Individual Registrant is prohibited from holding himself or herself out in the name of the Unregistered Corporation or a business name of the Unincorporated Corporation or any other name that is similar to the name of the Unregistered Corporation.

DATED at St. John's, Newfoundland and Labrador this 23rd day of October, 2015.



John O'Brien, FCPA, FCA, CISA
Superintendent of Securities

Schedule A

COMPENSATION PAYMENT AGREEMENT

THIS COMPENSATION PAYMENT AGREEMENT is made the <@> day of <@> <@> by and between:

[ENTER NAME OF DEALING REPRESENTATIVE], an individual resident
in [Enter name of city and province]
(the "Representative")

- and -

[ENTER NAME OF UNREGISTERED CORPORATION], a company
established under the laws of [Enter name of applicable jurisdiction]
(the "Corporation")

- and -

[ENTER NAME OF MUTUAL FUND DEALER], a company established
under the laws of [Enter name of applicable jurisdiction]
(the "Mutual Fund Dealer")

WHEREAS the Superintendent of Securities of Newfoundland and Labrador (the "Superintendent") issued an exemption order dated <@>, 2015 (the "Exemption Order") which allows the Mutual Fund Dealer to pay any commissions, compensation, remuneration, gratuity, benefit or other consideration in relation to the Representative's trading activities on behalf of the Mutual Fund Dealer, (collectively, the "Compensation") to the Corporation, provided the parties hereto enter into this compensation payment agreement (the "Agreement");

AND WHEREAS the parties hereto wish to enter into this Agreement pursuant to the terms and conditions set out below in order to be able to rely on the Exemption Order.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows in accordance with the terms of the Exemption Order that:

1. Each party hereto shall comply with all applicable securities legislation and remain liable to third parties, including clients, irrespective of whether any Compensation is paid to the Corporation and no such payment shall, in and of itself, in any way limit or affect the duties, obligations or liability of the Mutual Fund Dealer or the Dealing Representative under applicable securities legislation;
2. The Mutual Fund Dealer shall engage in appropriate supervision with respect to the conduct of the Dealing Representative and the Corporation to ensure such compliance as referred to in paragraph 1;

3. The Dealing Representative and the Corporation shall make available during normal business hours to the Superintendent and the staff of the Superintendent, free access to, and copies thereof, of all books of account, bank accounts, correspondence and records of every description of, or maintained by or on behalf of, either of them;
4. A request made in accordance with paragraph 3 shall be for the purpose of determining compliance by the Mutual Fund Dealer and/or each of the undersigned and its respective shareholders, directors, officers, employees and affiliates with applicable securities legislation, and each of the undersigned shall, and shall cause such shareholders, directors, officers and affiliates to, fully co-operate with any of the persons entitled to access to the records and other information referred to in paragraph 3 for such purpose. In addition, any such person so entitled to access to such records and information is authorized to provide or disclose the same to any securities commission or similar regulatory authority, self-regulatory organization or law enforcement agency, subject to any applicable law restricting such disclosure;
5. The Mutual Fund Dealer is receiving this Agreement by each of the undersigned for itself and for the benefit of the Superintendent, and the Superintendent shall be able to rely on this Agreement and enforce its terms without any duty or obligation to any other person, including the parties hereto; and
6. The undersigned Dealing Representative shall take such steps and execute such documents including acting and voting as a director, officer, shareholder or employee of the Corporation as may be necessary to cause the Corporation to comply with this Agreement.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the date first written above.

Signature of Witness

Signature of Dealing Representative

Print Name of Witness

[ENTER NAME OF UNREGISTERED CORPORATION]

By: _____
Name:
Title:

[ENTER NAME OF MUTUAL FUND DEALER]

By: _____
Name:
Title:

Address where records maintained:

Telephone: _____

Fax: _____

E-mail: _____