



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
MOSKOWITZ CAPITAL MANAGEMENT INC.
and BRIAN MOSKOWITZ**

Lawrence Haber, Commissioner and Chair of the Panel
Cathy Singer, Commissioner
Garnet W. Fenn, Commissioner

File No. 2021-4

February 22, 2021

**ORDER
(Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5)**

WHEREAS the Ontario Securities Commission (the **Commission**) held a hearing in writing to consider the approval of a settlement agreement dated February 17, 2021 (the **Settlement Agreement**) between the respondents Moskowitz Capital Management Inc. (**MCFI**) and Brian Moskowitz (**Moskowitz**) (collectively, the **Respondents**) and Staff (**Staff**) of the Commission (**Commission**);

AND WHEREAS MCFI has given an undertaking to the Commission, in the form attached as Annex I to this Order (the **Undertaking**);

ON READING the Joint Application for a Settlement Hearing, including the Statement of Allegations dated February 17, 2021 and the Settlement Agreement, and on receiving the submissions of the representatives of each of the parties, and on considering the Undertaking;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;
2. the Respondents shall pay an administrative penalty in the amount of \$350,000, on a joint and several basis, pursuant to paragraph 9 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), which amount is designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b) of the Act; and
3. MCFI shall pay costs to the Commission in the amount of \$25,000, pursuant to section 127.1 of the Act.

"Lawrence Haber"
Lawrence Haber

"Cathy Singer"
Cathy Singer

"Garnet W. Fenn"
Garnet W. Fenn

ANNEX I

**UNDERTAKING OF
MOSKOWITZ CAPITAL MANAGEMENT INC.**

**IN THE MATTER OF
MOSKOWITZ CAPITAL MANAGEMENT INC.
and BRIAN MOSKOWITZ**

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated February 17, 2021 (the **Settlement Agreement**) between Moskowitz Capital Management Inc. (**MCMI**) and Brian Moskowitz (**Moskowitz** (collectively, the **Respondents**) and Staff (“**Staff**”) of the Ontario Securities Commission (the “**Commission**”). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. MCMI undertakes to do the following:
 - (a) conduct any trades of securities of MCM Fund II through or to a firm registered under Ontario securities law in a category that permits such trades, or by MCMI directly only if and when registered to conduct such trades;

 - (b) retain an exempt market dealer (**EMD**) to:
 - (i) conduct a review of the adequacy of the know-your-client (**KYC**) and suitability documentation obtained by MCMI with respect to its current existing investors who did not purchase securities of the MCM Funds through a registered dealer, to be completed within four months from the date of the Settlement Hearing;

 - (ii) to the extent required by the EMD after reviewing MCMI’s existing KYC and suitability information, obtain any additional KYC and suitability information as may be required by the EMD to complete its suitability assessment;

- (iii) conduct a suitability analysis in accordance with sections 13.2 and 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) for a random sample of 20 current existing investors, selected by the EMD, who did not purchase securities of the MCM Fund through a registered dealer, to be completed within four months from the date of the Settlement Hearing;
 - (iv) if five or more of the 20 investors are identified by the EMD to have made unsuitable investments in the MCM Funds pursuant to paragraph 2(b)(iii) above, conduct suitability analysis in accordance with sections 13.2 and 13.3 of NI 31-103 for all current existing investors who did not purchase securities of the MCM Fund through a registered dealer; and
 - (v) report the results of the review to MCMI and Staff.
- (c) once an EMD has been retained pursuant to paragraph 2(b) above, MCMI shall immediately provide Staff with a written authorization granting Staff free and unfettered access to communicate with the EMD with respect to this retainer; and
 - (d) redeem the preferred shares held by all investors identified by the EMD to have made an unsuitable investment in the MCM Funds pursuant to paragraph 2(b) above at the issue price of \$10 per preferred share, unless the investor(s) informs MCMI in writing that they wish to retain their investments and provided the EMD has first informed the investor in writing of the EMD's opinion that the preferred shares are not a suitable investment for them and the reasons for that opinion in accordance with subsection 13.3(2) of NI 31-103.

DATED at Toronto, Ontario this 17 day of February, 2021.

**MOSKOWITZ CAPITAL MANAGEMENT
INC.**

By: "Brian Moskowitz"

Name: Brian Moskowitz

Title: President