



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Mackenzie Financial Corporation (Re), 2018 ONSEC 17

Date: 2018-04-16

File No. 2018-15

**IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: April 6, 2018

Decision: April 6, 2018

Panel: Janet Leiper
William J. Furlong
Commissioner and Chair of the Panel
Commissioner

Appearances: Michelle Vaillancourt
Jamie Gibson
For Staff of the Commission

Jeff Galway
Brittany Shames
For Mackenzie Financial Corporation

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the transcript of the reasons delivered orally in the hearing, and as edited and approved by the Panel, to provide a public record.

- [1] The Panel would like to begin by thanking counsel for completing the settlement agreement and for their helpful submissions and thoroughness in dealing with the matter.
- [2] On April 4, 2018 the Ontario Securities Commission (the **Commission**) issued a Notice of Hearing to consider whether it is in the public interest for the Commission to make certain orders in respect of Mackenzie Financial Corporation (**Mackenzie**).
- [3] Mackenzie is registered with the Commission as, among other things, an Investment Fund Manager. Mackenzie's investment fund products (**Mackenzie Products**) are distributed to investors by dealing representatives registered with participating dealers, both third party and affiliated dealers.
- [4] Between May 2014 and December 2017, Mackenzie failed to comply with National Instrument 81-105 *Mutual Funds Sales Practices* and failed to meet the minimum standards of conduct expected of industry participants in relation to certain sales practices. Mackenzie did not have systems of controls and supervision over its sales practices that were sufficient to provide reasonable assurances that it was complying with its obligations under the combined operation of National Instrument 81-105 and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and did not maintain adequate books, records and other documents to demonstrate Mackenzie's compliance with National Instrument 81-105.
- [5] The parties recommend settlement of the proceeding against Mackenzie on the following terms, which were the subject of a settlement agreement and which we approve:
 - a. Mackenzie shall be reprimanded pursuant to paragraph 6 of subsection 127(1) of the Act¹;
 - b. Mackenzie shall submit to a review of its practices and procedures by an independent consultant (the **Consultant**) at Mackenzie's expense as set out in Schedule B of the settlement agreement and to the satisfaction of the Commission;
 - c. Mackenzie shall pay an administrative penalty in the amount of \$900,000 to the Commission; and

¹ *Securities Act*, RSO 1990, c S.5

- d. Mackenzie shall pay costs of the investigation by the Commission in the amount of \$150,000.
- [6] For the reasons that follow, we will approve this settlement and make the order in the terms it contemplates.
- [7] Settlement proceedings serve the public interest in resolving regulatory proceedings efficiently, thus using enforcement resources prudently. Settlements allow registrants to have an opportunity to cooperate and demonstrate a willingness to redress regulatory breaches. This contributes to investor protection and to the integrity of public markets. Having regard to the conduct, the mitigating factors and prior regulatory decisions, we have concluded that the proposed settlement is reasonable and appropriate.
- [8] In particular, Mackenzie has admitted and acknowledged the following:
- a. during the period from May 2014 to October 2017, Mackenzie provided excessive non-monetary benefits to dealing representatives which were not in compliance with section 5.6 of National Instrument 81-105 resulting in a breach of section 2.1 of National Instrument 81-105. Examples of non-monetary benefits provided to dealing representatives included:
 - (i) Golf and dinner events ranging in value from \$839 to \$1,149;
 - (ii) Tickets to professional sporting and entertainment events ranging in value from \$608 to \$981; and
 - (iii) Promotional and non-promotional Items ranging in value from \$181 to \$452.
 - b. during the period from September 2015 to December 2017, on 102 occasions Mackenzie provided non-monetary benefits to participating dealers (in the form of contributions to non-educational dealer events) which did not meet the requirements of Part 5 of National Instrument 81-105, resulting in a breach of section 2.1 of National Instrument 81-105. Examples of non-monetary benefits to participating dealers included:
 - (i) \$5,000 for room rental and lunch for 42 dealing representatives attending a dealer event in Whistler, British Columbia
 - (ii) \$10,000 for lunch, room rental and a speaker for 66 dealing representatives attending a dealer event in Grand Bend, Ontario; and
 - (iii) \$21,859 for a cocktail reception for 330 dealing representatives attending a dealer event in Montreal, Quebec.
 - c. at the six conferences Mackenzie held during the period from November 2014 to May 2015, Mackenzie did not comply with subsection 5.2(e) and section 5.6 of National Instrument 81-105 by providing excessive non-monetary benefits to dealing representatives through the gifting of iPad minis (valued at approximately \$343) and the provision of certain dinners (in one case at a cost of nearly \$500 per person), resulting in a breach of section 2.1 of National Instrument 81-105;
 - d. during the period from May 2014 to October 2017, Mackenzie failed to establish and maintain adequate systems of controls and supervision

around its sales practices to ensure compliance with section 2.1 and Part 5 of National Instrument 81-105, in breach of section 32(2) of the Act and section 11.1 of National Instrument 31-103; and

- e. during the period from May 2014 to October 2017, Mackenzie failed to maintain books, records and other documents as were reasonably required to demonstrate its compliance with National Instrument 81-105 in breach of paragraph 3 of subsection 19(1) of the Act.

[9] We provide the foregoing detail in our reasons to provide guidance so that members of the industry might better understand the appropriate activity that is consistent with the sales practice limitations found in National Instrument 81-105.

[10] Commissioner Anisman discussed the policy behind the sales practice limitations found in National Instrument 81-105 in the recent *Sentry*² settlement hearing as follows:

Such payments and gifts may influence registered representatives to consider factors other than the best interests of their clients when recommending investments to them. National Instrument 81-105 was adopted to prohibit payments and gifts that are likely to have this effect in an attempt to ensure that registered representatives who sell mutual funds act in the best interests of their clients on the basis of the clients' investment objectives and circumstances and the merits of the investments they recommend, without being influenced by conflicting monetary or other inducements.

[11] As in *Sentry*, a second regulatory issue arose here, that being the obligation of registrants to establish appropriate policies and procedures to ensure that they comply with their regulatory obligations.³

[12] The seriousness of the conduct in this case arises from the length of time that the practices took place, the number of dealing representatives involved and the policy failings that permitted these practices. In particular, the holding of expensive golf events after Staff had advised Mackenzie of the issue, is an aggravating feature. These factors all support the significant administrative penalty being recommended.

[13] In Mackenzie's favour, there have been a number of mitigating factors in the form of ongoing substantial remediation prior to these proceedings. In 2016, Mackenzie implemented new customer relationship management software to improve its supervision and control of its sales practices. In September 2017, Mackenzie retained an independent consultant, to assess its controls. The Consultant made a number of recommendations in October 2017, which Mackenzie is now implementing.

[14] In addition, Mackenzie has cooperated with Staff in connection with their investigation of the matters referred to in the settlement agreement. Mackenzie has no disciplinary history with the Commission and further Mackenzie has advised Staff of the following:

² *Sentry(Re)*, 2017 ONSEC 7 at para 2; (2017) 40 OSCB 3435 [**Sentry**]

³ *Ibid* at para 3

- a. Mackenzie, not Mackenzie Products, paid for for the monetary and non-monetary benefits;
- b. the performance of Mackenzie Products has not been impacted by these matters;
- c. the management expense ratios of the Mackenzie Products were not affected by the monetary and non-monetary benefits that were paid to dealing representatives; and
- d. Mackenzie, not the Mackenzie Products, will pay costs, fines, and expenses related to the resolution of the matters described in the settlement agreement.

[15] The settlement agreement provides for ongoing review, testing and feedback from the Consultant to Mackenzie, and in that respect these are proactive and appropriate measures.

[16] The settlement agreement, which we have approved, includes a reprimand of Mackenzie. To the representative of Mackenzie who is here today, Mr. McInerney, this is a symbolic reprimand given that it is being issued against the company, which you may now consider hereby administered.

[17] We approve the settlement and make the order requested by the parties.

Approved by the Panel on this 16th day of April, 2018.

"Janet Leiper"

Janet Leiper

"William J. Furlong"

William J. Furlong