



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION**

**STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 127.1 of the Securities Act, RSO 1990, c S.5)**

A. ORDER SOUGHT:

Staff of the Enforcement Branch (“**Enforcement Staff**”) of the Ontario Securities Commission (the “**Commission**”) requests that the Commission make an order pursuant to subsections 127(1) and (2) and section 127.1 of the *Securities Act*, RSO 1990, c S.5 (the “**Act**”) to approve the settlement agreement dated April 4, 2018 between Enforcement Staff and Mackenzie Financial Corporation (“**Mackenzie**”).

B. FACTS:

Enforcement Staff makes the following allegations of fact:

1. The Respondent

1. Since February 17, 2012, Mackenzie has been registered with the Commission as an investment fund manager (“**IFM**”). Mackenzie has been registered as an exempt market dealer, a portfolio manager and a commodity trading manager since September 28, 2009, and was previously registered in a number of historical registration categories.

2. Mackenzie's investment fund products are distributed to investors by dealing representatives ("DRs") registered with participating dealers, both third party and affiliated dealers.

2. Legislative Framework

3. Subsection 2.1(1) of National Instrument 81-105 *Mutual Fund Sales Practices* ("NI 81-105") states, among other things, that no member of the organization of a mutual fund shall, in connection with the distribution of securities of the mutual fund:

- (a) make a payment of money to a participating dealer or a DR;
- (b) provide a non-monetary benefit to a participating dealer or a DR; or
- (c) pay for or make reimbursement of a cost or expense incurred or to be incurred by a participating dealer or a DR.

4. Pursuant to section 1.1 of NI 81-105, a "member of the organization" referred to in subsection 2.1(1) includes the manager of the mutual fund or an IFM (the "**Fund Manager**").

5. Subsection 2.1(2) of NI 81-105 provides the following exceptions to subsection 2.1(1) and allows a Fund Manager to:

- (a) make a payment of money or provide a non-monetary benefit to a participating dealer, or pay for or make reimbursement of a cost or expense incurred or to be incurred by a participating dealer or its DRs, if permitted by Part 3 or 5 of NI 81-105; and

(b) provide a non-monetary benefit to a DR, if permitted by Part 5 of NI 81-105.

6. Parts 3 and 5 of NI 81-105 set out certain limited circumstances in which Fund Managers are permitted to provide monetary and non-monetary benefits to DRs and participating dealers.

7. Subsection 5.2(e) of NI 81-105 allows a Fund Manager to provide DRs with a non-monetary benefit through attendance at a conference organized by the Fund Manager if, among other things, the costs of the conference are reasonable having regard to the purpose of the conference.

8. Section 5.6 of NI 81-105 allows a Fund Manager to provide DRs with non-monetary benefits of a promotional nature and of minimal value, and to engage in business promotion activities that result in a DR receiving a non-monetary benefit if, among other things, the provision of the benefits and activities is neither so extensive nor so frequent as to cause a reasonable person to question whether the provision of the benefits or activities improperly influence the investment advice given by the DR to his or her clients.

3. Mackenzie's Conduct

(a) Excessive Spending on Business Promotional Activities and Promotional Items

9. Between May 2014 and October 2017, Mackenzie permitted excessive spending on DRs for promotional activities, contrary to section 5.6 of NI 81-105.

10. During the same period, Mackenzie permitted the provision of items to DRs that were not of minimal value and/or were extensive, frequent and/or were not promotional in nature, contrary to section 5.6 of NI 81-105.

(b) Mackenzie Conferences

11. During the period November 2014 to May 2015, Mackenzie hosted six mutual fund sponsored conferences pursuant to section 5.2 of NI 81-105 and provided non-monetary benefits to DRs at the conferences that did not comply with subsection 5.2(e) and section 5.6 of NI 81-105.

(c) Spending Category Not Permitted Under NI 81-105

12. Mackenzie's sales compliance guidelines introduced in December 2014 permitted it to make financial contributions to non-educational participating dealer events which were not permitted under NI 81-105 and from September 2015 to December 2017, Mackenzie made financial contributions to such dealer events.

(d) Controls, Supervision and Books and Records Relating to Sales Practices

13. During the period May 2014 to October 2017, Mackenzie failed to establish and maintain systems of controls and supervision around its sales practices sufficient to provide reasonable assurances that it was complying with its obligations under section 2.1 and Part 5 of NI 81-105.

14. During the period May 2014 to October 2017, Mackenzie failed to maintain adequate books, records and other documents in relation to its sales practices as was reasonably required to demonstrate its compliance with Part 5 of NI 81-105.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST:

Enforcement Staff alleges the following breaches of Ontario securities law and/or conduct contrary to the public interest:

1. Mackenzie did not comply with section 5.6 of NI 81-105 by providing excessive non-monetary benefits to DRs through business promotional activities and through the provision of items resulting in a breach by Mackenzie of section 2.1 of NI 81-105, during the period May 2014 to October 2017;
2. 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 NI 81-105 resulting in a breach by Mackenzie of section 2.1 of NI 81-105, during the period September 2015 to December 2017;
3. Mackenzie did not comply with subsection 5.2(e) and section 5.6 of NI 81-105 by providing excessive non-monetary benefits to DRs at the six conferences it held during the period November 2014 to May 2015, resulting in a breach by Mackenzie of section 2.1 of NI 81-105;
4. Mackenzie failed to establish and maintain adequate systems of controls and supervision around its sales practices during the period May 2014 to October 2017 to ensure compliance with section 2.1 and Part 5 of NI 81-105, in breach of subsection 32(2) of the Act and section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

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

6. the conduct referred to above is also contrary to the public interest.

DATED this 4th day of April, 2018.

Ontario Securities Commission

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