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Securities
Commission

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de l'Ontario

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IN THE MATTER OF MACKENZIE FINANCIAL CORPORATION

- and -

**IN THE MATTER OF A
SETTLEMENT AGREEMENT BETWEEN STAFF
OF THE ONTARIO SECURITIES COMMISSION AND
MACKENZIE FINANCIAL CORPORATION**

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. The Ontario Securities Commission (the “**Commission**”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990 c S.5, as amended (the “**Act**”), it is in the public interest for the Commission to make certain orders in respect of Mackenzie Financial Corporation (“**Mackenzie**”).

2. Investment fund managers (“**IFMs**”) are prohibited from making a payment of money or providing a non-monetary benefit to a participating dealer or dealing representative (“**DR**”) of a participating dealer in connection with the distribution of securities, except in certain permitted circumstances under Parts 3 and 5 of National Instrument 81-105 *Mutual Fund Sales Practices* (“**NI 81-105**”). The Companion Policy to NI 81-105 states that NI 81-105 was adopted in order to discourage sales practices and compensation arrangements that could be perceived as inducing dealers and their representatives to sell mutual fund securities on the basis of incentives they

were receiving rather than on the basis of what was suitable for and in the best interests of their clients. The purpose of NI 81-105 is to provide a minimum standard of conduct to ensure that investor interests remain uppermost in the actions of mutual fund industry participants when they are distributing mutual fund securities and that conflicts of interest arising from sales practices and compensation arrangements are minimized.

3. Mackenzie is registered with the Commission as, among other things, an IFM. Mackenzie's investment fund products ("**Mackenzie Products**") are distributed to investors by DRs registered with participating dealers, both third party and affiliated dealers.

4. As summarized below, between May 2014 and December 2017, Mackenzie failed to comply with NI 81-105 and failed to meet the minimum standards of conduct expected of industry participants in relation to certain sales practices. In addition, 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 NI 81-105 and did not maintain adequate books, records and other documents to demonstrate Mackenzie's compliance with NI 81-105.

5. In particular, Mackenzie permitted excessive spending on DRs for promotional activities. For example in each of 2016 and 2017, Mackenzie's management approved of a one-day golf and reception event held at a golf club in the Eastern Townships of Quebec, at a cost to Mackenzie of \$1,149 per DR for 28 DRs in 2016 and 46 DRs in 2017.

6. These golf events occurred after April 2014, when staff of the Compliance and Registrant Regulation Branch ("**CRR**") of the Commission communicated their view to Mackenzie that a

golf event held by Mackenzie in Bermuda at a cost of \$565 to \$730 per DR per day seemed excessive.

7. Mackenzie also permitted the provision of items bearing a Mackenzie logo (“**Logoed Items**”) and/or items with no Mackenzie logo (“**Non-Logoed Items**”) (collectively “**Items**”) to DRs that were not of minimal value (and were therefore excessive) and/or were extensive, frequent and/or were not promotional in nature including by:

- (a) putting sales compliance guidelines in place that permitted annual spending of more than \$1,250 on a DR on Items and that permitted the provision of single Items to DRs at a cost of up to \$250;
- (b) approving Items included in Mackenzie’s promotional store (“**Promo Store**”) that were distributed to DRs including a Nespresso espresso machine (\$278) and a Sony iPod docking station (\$260);
- (c) permitting gifts of tickets to various events to DRs without requiring that a Mackenzie employee attend the event including tickets to Toronto Blue Jays baseball (“**Jays**”) games (at costs of over \$300) and to concerts such as Metallica (\$346);
- (d) hosting promotional activities at which DRs received excessive gifts of clothing such as custom-fit dress shirts (\$226); and
- (e) providing Apple iPad minis (approximately \$343 each) for use at conferences to 270 DRs who attended Mackenzie conferences in 2014 and to 180 DRs who attended Mackenzie conferences in 2015 which such DRs were permitted to retain after the completion of the conferences.

8. In addition, Mackenzie’s sales compliance guidelines permitted it to make financial contributions to non-educational participating dealer events which are not a permitted spending category under NI 81-105 and from September 2015 to December 2017, Mackenzie made financial contributions to 102 such dealer events.

PART II - JOINT SETTLEMENT RECOMMENDATION

9. Staff of the Commission (“**Staff**”) agree to recommend settlement of the proceeding commenced by the Notice of Hearing dated April 4, 2018 (the “**Proceeding**”) against Mackenzie according to the terms and conditions set out in Part VI of this Settlement Agreement (the “**Settlement Agreement**”). Mackenzie agrees to the making of an order in the form attached as Schedule “A” (the “**Order**”), based on the facts set out below.

10. For the purposes of this Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Mackenzie agrees with the facts as set out in Parts III and IV and the conclusions set out in Part V of this Settlement Agreement.

PART III - AGREED FACTS

A. Mackenzie

11. Since February 17, 2012, Mackenzie has been registered with the Commission as an 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.

B. The Legislative Framework

12. Subsection 2.1(1) of 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.
- 13. 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**”).
- 14. 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.
- 15. 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.
- 16. Section 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.
- 17. 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.

C. Background

1. *The CRR Review of the Bermuda Event*

18. During the period March to May 2014, CRR staff engaged in discussions with Mackenzie regarding a three-day golf event held in Bermuda in 2013 (the “**Bermuda Event**”). During the course of these discussions, CRR staff raised a number of issues with Mackenzie in relation to this event, including advising Mackenzie in April 2014 of CRR staff’s view that the cost of \$565 to \$730 per DR per day for the event seemed excessive. On this issue, Mackenzie advises that at the time, it focussed on whether it should continue to hold these types of promotional activities outside of the continental US and Canada.

19. In May 2014, Mackenzie advised CRR staff of a number of measures it was taking to rectify the issues raised by CRR staff and to prevent any future re-occurrences. These measures included:

- (a) enhancing Mackenzie’s sales practice compliance program including the implementation of Salesforce (a customer relationship management software program);
- (b) training on the enhanced program;
- (c) posting of refreshed training materials on Mackenzie’s intranet including a document entitled “Sales Practice Rules – April 2014” (the “**April 2014 Training Materials**”) (a copy of which were provided to CRR staff at that time);
- (d) a review of Mackenzie’s internal controls related to its sales practices;
- (e) enhancing Mackenzie’s testing program; and
- (f) enhancing Mackenzie’s guidelines for costs of specific promotional items and activities in order to ensure that Mackenzie’s costs related to sales practices were reasonable.

2. *Mackenzie's Sales Compliance Guidelines*

20. In December 2014, Mackenzie adopted sales compliance guidelines (the “**Sales Compliance Guidelines**”) which included:

- (a) an annual spending limit on Non-Logoed Items and activities of \$1,800 per year (“**\$1,800 Annual Spending Limit**”) (which was a change to the prior limit of \$1,500 per year);
- (b) a maximum of \$250 for a single or multiple Non-Logoed Item(s) (which amount had to be included in the \$1,800 Annual Spending Limit);
- (c) outside of the \$1,800 limit referred to in (a) above, DRs could also receive Logoed Items under \$50 (for which there was no frequency limit) and a maximum of four Logoed Items of \$50 and greater;¹
- (d) an annual frequency limit of no more than four promotional activities at a cost of more than \$100 per event per DR;
- (e) in relation to (d) above, a spending limit of \$500 per DR for a single event (“**Large Activity Limit**”); and
- (f) specific food and beverage spending limits per DR, including a \$200 dinner limit.

21. As set out in greater detail below, after May 2014, Mackenzie provided excessive non-monetary benefits to DRs in breach of NI 81-105 and, in some cases, in breach of its Sales Compliance Guidelines.

D. **Excessive Spending on One-Time Events**

1. *Approved Excessive Spending on One-Time Events*

22. The Sales Compliance Guidelines permitted spending on DRs in excess of the limits referred to in paragraph 20 above, if pre-approval was obtained from management. For example, the \$500 spending limit for a single event could be exceeded with the pre-approval of the Sales

¹ An upper limit of \$250 for Logoed Items was added to the Sales Compliance Guidelines in May 2015.

Team Regional Vice President (for events up to \$1,000) or the approval of the Head of Retail Sales (for events over \$1,000).

23. During the period April 2016 to June 2017, Mackenzie management approved the following excessive golf events:

Event	Date	No. of DRs	Cost Per DR
Golf and dinner at a golf club in Washington D.C.	April 2016	4	\$940
Golf and dinner at a golf club in Washington D.C.	May 2016	2	\$839
Golf and reception at a golf club in the Eastern Townships of Quebec	September 2016	28	\$1,149
Golf and reception at a golf club in the Eastern Townships of Quebec	June 2017	46	\$1,149

24. In addition, in May 2016, management approved excessive promotional activity spending on Toronto Raptors basketball (“**Raptors**”) play-off games which resulted in 12 DRs receiving a benefit of over \$800 each and eight DRs receiving a benefit of over \$660 each.

2. Non-Approved Excessive Spending on One-Time Events

25. There were other instances in 2015 and 2016 when Mackenzie staff engaged in excessive spending on one-time events on DRs (including, on the DR and the DR’s guests) without the pre-approval of management and in excess of the \$500 Large Activity Limit.

26. Some examples in 2015 include:

Event	No. of DRs	No. of Guests of DR	Cost per DR/guest	Total benefit to DR
Toronto Maple Leafs hockey (“ Leafs ”) game	1	1	\$403	\$806
Raptors game	1	1	\$378	\$756
Leafs game	1	1	\$365	\$730
Detroit Lions football game	16	0	\$657	\$657
Concert at Rogers Stadium	1	1	\$328	\$656

27. Some examples in 2016 include:

Event	No. of DRs	No. of Guests of DR	Cost per DR/guest	Total benefit to DR
Montreal Canadiens hockey (“ Canadiens ”) game	1	1	\$490	\$981
Canadiens game	1	1	\$416	\$833
Canadiens game	3	1	\$374	\$748
Val Saint-Côme ski resort, Quebec	1	3	\$185	\$740
Canadiens game	1	0	\$691	\$691
Raptors game	1	1	\$345	\$690
Detroit Tigers baseball game (“ Detroit Tigers ”)	2	1	\$304	\$608

28. However, not all of the spending on DRs referred to above in excess of the \$500 Large Activity Limit was treated by Mackenzie as a breach of this limit as Mackenzie did not attribute the cost of a DR’s guest to the DR in determining whether the total benefit received by the DR complied with the Large Activity Limit but allocated the cost of the DR’s guest to the DR’s \$1,800 Annual Spending Limit.

E. Excessive Spending on Single Items

1. Stocking Excessive Items in the Mackenzie Promo Store

29. Among other requirements, in order for the gift of an item to be permissible under section 5.6 of NI 81-105, the item must be of a promotional nature and of minimal value.

30. Mackenzie's April 2014 Training Materials identified acceptable promotional items as being "pens, calendars, t-shirts, hats, mugs, paperweights, golf balls." These examples duplicated the examples of reminder advertising referred to in section 7.6 of the Companion Policy to NI 81-105 as being the type of promotional items contemplated by section 5.6 of NI 81-105 and as being non-monetary benefits of a promotional nature and of minimal value.

31. However, from at least 2014 to 2017, Mackenzie maintained the Promo Store which contained a large number of Items (including Non-Logoed Items) available for distribution to DRs that were not consistently promotional in nature and were not of minimal value, including electronics, household items, watches, luggage, and sports equipment, a few examples of which are summarized below:

Promo Store Item	Cost
Apple iPad mini	\$329
Leather computer briefcase	\$303
Duffel bag	\$296
Nespresso espresso machine	\$278
Sony iPod docking station with tuner	\$260
Apple iPod touch	\$229
Bose speakers	\$210

32. From 2015 to 2017, Mackenzie provided Items to DRs that were not of minimal value. These Items were sourced both from in and outside of the Promo Store. Some examples include:

Item(s)	Cost
Golf putter	\$452
Golf shoes	\$271
Golf putter	\$266
GPS watch	\$242
Bose Soundlink speaker	\$237
Activity trackers	\$229
Bluetooth speaker	\$226
Golf bag	\$195
Sony digital camera	\$181

2. *Gift Policy Permitted Provision of Excessive Single Items in Breach of NI 81-105*

33. As discussed above, as part of the Sales Compliance Guidelines, Mackenzie permitted its staff to purchase single Items for DRs at a cost of up to \$250. This policy resulted in Mackenzie providing gifts to DRs that were not of minimal value and, in some instances, were not promotional in nature.

3. *Gifts of Clothing in Breach of NI 81-105*

34. From at least 2015 to 2017, Mackenzie provided Items of clothing (typically custom-fit dress shirts and golf shirts) that were not of minimal value and were not promotional in nature to DRs as part of promotional events.

35. The Mackenzie logos on the custom-fit dress shirts were placed on the inside of the collar, inside the label, at the bottom edge of the shirt or on the sleeve of the shirt and were not prominently displayed on the exterior of the shirts. In some cases, there was no Mackenzie logo on the clothing.

36. In 2015 and 2016, Mackenzie provided over 190 of these types of custom-fit dress shirts that were not promotional in nature.

37. These custom-fit dress shirts were also not of minimal value with the maximum cost to Mackenzie of the dress-shirts being \$226 in some limited cases. For example, in 2016, seven DRs received a custom-fit dress shirt at a cost of \$226 per shirt as part of an event involving a golf game, dinner and cocktails at a golf course in Inverness, Nova Scotia, all paid for by Mackenzie.

4. *Gifts of Tickets to Various Events in Breach of NI 81-105*

38. As part of the Sales Compliance Guidelines introduced in December 2014, Mackenzie allowed its staff to provide tickets to DRs for events without requiring Mackenzie staff to be in attendance at the event, provided that the value of the tickets was within a \$250 maximum limit for gifts. This policy resulted in Mackenzie providing gifts to DRs of a non-promotional nature that were not of minimal value.

39. Since at least 2014, Mackenzie has been gifting ticket(s) to events to DRs that were neither of minimal value nor promotional in nature and, in some cases, after December 2014, breached Mackenzie's own \$250 limit. Examples include gifts of ticket(s) to the following events:

Year	Event Ticket(s)	No. of Guests of DR	Cost per DR/Guest	Total Benefit to DR
2014	Imagine Dragons concert	0	\$300	\$300
2014	Jays game	3	\$60	\$240
2014	Rod Stewart concert	1	\$89.50	\$179
2015	Madonna concert	1	\$196	\$392
2015	Jays game	3	\$80.25	\$321
2015	Vancouver Open	1	\$152	\$304
2015	The Weeknd concert	1	\$144	\$288
2015	Jays game	1	\$137.50	\$275
2016	Jays game	5	\$135.83	\$815
2016	Jays game	1	\$134.50	\$269
2017	Canadian Open tickets	1	\$122	\$244
2017	Detroit Tigers game	3	\$50.25	\$201

5. *Excessive Gifting with the Approval of Management*

40. Since at least 2014, Mackenzie has gifted Items to DRs above \$250 with the approval of management. The Sales Compliance Guidelines introduced in December 2014 specifically

permitted the gifting of Items above \$250 with the pre-approval of the Sales Team's Regional Vice-President, including gifts of tickets to events.

41. In 2014, Mackenzie provided gifts to DRs including Sony iPod Docking Stations (\$260) to at least 5 DRs and a Nespresso Espresso Machine (\$278) to at least one DR with the approval of management.

42. From 2015 to 2017, Mackenzie provided gifts of ticket(s) to DRs to the following events with the approval of management:

Event Ticket(s)	No. of Guests of Dr	Cost per DR/Guest	Total Benefit to DR
Jays game	3	\$68.75	\$275
Canadiens game	1	\$143.50	\$287
Jays playoff game	0	\$310	\$310
Charitable dinner event	0	\$287	\$287
Metallica concert	1	\$173	\$346

43. As a result of the above, from 2014 to 2017, Mackenzie provided Items to DRs that were not promotional in nature nor of minimal value with the approval of management.

F. Excessive Spending on Combined Items

44. In order for gifts of items of a promotional nature and of minimal value to be permissible under section 5.6 of NI 81-105, the provision of these items must be neither so extensive nor so frequent as to cause a reasonable person to question whether the provision of these benefits improperly influences the investment advice given by the DR to his or her clients.

45. As set out below, from December 2014 to November 2017, Mackenzie adopted policies that permitted Mackenzie to provide extensive Items on a frequent basis to DRs in breach of section 5.6 of NI 81-105.

46. In particular, the Sales Compliance Guidelines introduced in December 2014 permitted spending on:

- (a) an unlimited number of Logoed Items under \$50; and
- (b) four Logoed Items per calendar year with a value of \$50 or greater,

both of which categories were excluded from the \$1,800 Annual Spending Limit.

47. These Logoed Items could be provided in addition to Non-Logoed items of a single or aggregate value of \$250 (which gifts were required to be included in the \$1,800 Annual Spending Limit).

48. By May 22, 2015, Mackenzie amended its Sales Compliance Guidelines to place a \$250 limit on the four logoed Items per calendar year above \$50. However, it continued to allow its staff to provide an unlimited number of Logoed Items under \$50 to DRs. The \$250 Non-Logoed Items limit remained the same.

49. The result was that from May 2015 to March 2017, Mackenzie could spend up to \$1,250 per year on Logoed and Non-Logoed Items on a DR, only \$250 of which was to be included in the \$1,800 Annual Spending Limit, and Mackenzie could also provide an unlimited amount of Logoed Items under \$50 to a DR.

50. Although Mackenzie amended its Sales Compliance Guidelines in March 2017 to reduce the total allowable spending on promotional Items, Mackenzie still permitted its staff to provide

total Items (including Logoed and Non-Logoed Items) of up to \$750 per DR per year. In November 2017, Mackenzie announced to its staff that effective January 1, 2018, the total annual Item limit was reduced to \$250.

51. Mackenzie's policies on Items contained in its Sales Compliance Guidelines from December 2014 to October 2017 permitted and resulted in extensive and frequent annual spending on Items for DRs contrary to section 5.6 of NI 81-105. This non-compliant spending included more than 80 instances in 2015 and more than 100 instances in each of 2016 and 2017 respectively.

G. Mackenzie Conferences

1. Excessive Gifts of iPad Minis

52. Mackenzie hosted six mutual fund sponsored conferences in 2014 and 2015 pursuant to section 5.2 of NI 81-105. Mackenzie provided an Apple iPad mini (with a value of approximately \$343) to the 270 DRs who attended its conferences in 2014 and the 180 DRs who attended its conferences in 2015.

53. The provision of the Apple iPad minis to DRs did not comply with section 5.6 of NI 81-105 as they were not of minimal value.

54. While Mackenzie intended for conference attendees to use the iPad minis to access its website and the conference materials during the conference, this goal should have been pursued in a manner that did not result in DRs receiving items that were not of minimal value.

2. Excessive Dinner Costs

55. Section 5.2 of NI 81-105 allows a Fund Manager to provide a non-monetary benefit to a DR by allowing the DR to attend a conference organized and presented by the Fund Manager provided that, among other requirements, the costs relating to the organization and presentation of the conference are reasonable having regard to the purpose of the conference (subsection 5.2(e) of NI 81-105).

56. In some cases, the dinner costs at the Mackenzie conferences in 2014 and 2015 significantly exceeded Mackenzie's \$200 dinner limit and were unreasonable, including a May 2015 conference dinner that had a budgeted and actual cost per person of almost \$500.

57. Mackenzie also failed to include all ancillary costs (such as event planning, facility and related staff costs) associated with evening activities at the conferences when determining the reasonableness of the conference costs under section 5.2(e) of NI 81-105.

H. Spending Category Not Permitted Under NI 81-105

58. As part of the Sales Compliance Guidelines introduced in December 2014, Mackenzie included a category of spending on DRs entitled "non-educational dealer events". This category permitted Mackenzie to support a request from a participating dealer to pay a portion of the participating dealer's costs to host a non-educational event for DRs. The Sales Compliance Guidelines provided that any payment made by Mackenzie had to be made directly to the vendor (e.g. caterer or venue) and that the total amount paid by Mackenzie for the non-educational dealer event was to be equally allocated to the DRs attending the event towards the \$1,800 Annual Spending Limit pertaining to those DRs. However, this latter requirement was not

consistently followed. In any event, solicitations for a contribution to a participating dealer event and payments by an IFM towards a participating dealer event may only be made if the participating dealer is holding an educational event pursuant to section 5.5 of NI 81-105.

59. From September 2015 to December 2017, Mackenzie made financial contributions to 102 non-educational dealer events that did not meet the requirements of section 5.5 of NI 81-105, including contributions of:

- (a) \$10,000 for a lunch, room rental and speaker for 66 DRs attending a dealer event at a hotel in Grand Bend, Ontario in 2015;
- (b) \$21,859 for a cocktail reception for 330 DRs attending a dealer event at a hotel in Montreal, Quebec in 2016; and
- (c) \$5,000 for the room rental and lunch for 42 DRs attending a dealer event at a hotel in Whistler, British Columbia in 2017.

I. Lack of Controls over Mackenzie's Sales Practices

60. Pursuant to section 32(2) of the Act and section 11.1 of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"), Mackenzie was required to maintain a system of controls and supervision around its sales practices sufficient to provide reasonable assurances that it was complying with its obligations under NI 81-105.

61. In May 2014, Mackenzie undertook to review and enhance its controls and testing in relation to its sales practices and, thereafter, did implement changes to its systems and controls. Despite these changes, from May 2014 to October 2017, Mackenzie failed to impose systems of control and supervision sufficient to provide reasonable assurances that it was complying with its obligations under NI 81-105.

1. Failure to Record all Costs Associated with the Same Event

62. In particular, Mackenzie failed to consistently ensure that all costs associated with the same event were attributed to a DR for the purpose of Mackenzie's system for tracking benefits provided to DRs (the "**DR Spending Records System**"). On a number of occasions, Mackenzie did not ensure that the cost of tickets used by a DR as part of a promotional event or as a gift was properly allocated to that DR. For example, in 2017, Mackenzie identified a total of \$33,000 in tickets (relating to the period 2015 to 2017) that were given but not allocated to specific DRs on Mackenzie's DR Spending Records System.

2. Failure to Combine all Costs Related to the Same Event

63. Mackenzie failed to consistently ensure that all costs associated with the same event were properly combined in determining whether the spending limit of \$500 per DR for a single event had been breached. For example, in February 2015, a Bryan Adams concert with a cost of \$560 was not identified as a breach of this spending limit because the catering costs were paid several months before the ticket costs associated with this event were incurred.

3. Undetected Excessive Spending from the Failure to Include the Costs of a DR's Guest(s)

64. In addition, as noted above, Mackenzie failed to attribute the cost of a DR's guest to the DR in determining whether the total benefit received by the DR from an event complied with its \$500 Large Activity Limit. For example, where the cost of an event exceeded \$500 but half of that cost was to pay for the DR's guest, Mackenzie did not consider the event to be in breach of its \$500 Large Activity Limit. However, for such events, the DR received a non-monetary benefit from the attendance of their guest which should have been counted towards the \$500

Activity Limit. Mackenzie did allocate the cost of the DR's guest to the DR's \$1,800 Annual Spending Limit.

4. *Failure to Identify Breaches of Mackenzie's Sales Compliance Guidelines Through Mackenzie's Internal Controls and Testing*

65. In February 2017, Mackenzie reported to Staff that it had identified 31 breaches of Mackenzie's internal sales practice limits during the period 2015 to 2016. However, during the course of Staff's investigation in 2017, Mackenzie discovered an additional 42 breaches of these limits for the same period which were not detected through Mackenzie's regular internal testing procedures.

5. *Conclusions regarding Controls and Supervision*

66. As a result of the above, during the period May 2014 to October 2017, Mackenzie failed to adequately:

- (a) train its employees who provided non-monetary benefits to DRs on the requirements of NI 81-105 and on the DR Spending Records System;
- (b) supervise the employees who provided non-monetary benefits to DRs and the employees entering information into the DR Spending Records System;
- (c) consistently record all of the costs associated with the same event into its DR Spending Records System; and
- (d) test its DR Spending Records System and internal controls, which resulted in excessive spending on DRs that continued during the period May 2014 to October 2017.

67. As a result, 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 and was therefore in breach of section 32(2) of the Act and section 11.1 of NI 31-103.

J. Failure to Maintain Adequate Books and Records in Relation to Mackenzie's Sales Practices

68. Mackenzie was required to maintain such books, records and other documents as was reasonably required to demonstrate its compliance with Part 5 of NI 81-105.

69. The Sales Compliance Guidelines defined the value of a gift to be the amount paid by Mackenzie for the item. However, Mackenzie management allowed an exception to this policy with regard to the recording of the iPad minis provided to DRs attending the 2014 and 2015 conferences and allowed deductions for Mackenzie's savings on photocopying and other costs when recording the value of the iPad mini gifts on the DR Spending Records System. Mackenzie attributed a reduced gift amount of \$132 in 2014 and \$121 in 2015 for the iPad minis rather than the actual purchase price of approximately \$343 for these items.

70. During the period May 2014 to October 2017, Mackenzie also:

- (a) failed to enter all expenditures on DRs into the DR Spending Records System;
- (b) did not consistently track the names of DRs who received tickets to events; and
- (c) did not consistently track the names of its employees who attended an event with a DR in order to determine whether the event was a promotional activity or a gift to the DR.

71. In addition, during this period, Mackenzie discovered that incorrect information had been entered into the DR Spending Records System by:

- (a) on one occasion, attributing a promotional activity to the wrong DR, which had the effect of avoiding the applicable frequency limit on promotional activities over \$100 in relation to the DR who received the benefit; and
- (b) on another occasion, reporting that two Mackenzie staff members and their guests had attended an event, when they had not, which had the effect of reducing the per-person cost of the event so as to be within the Large Activity Limit.

72. As a result of all of the above, during the period May 2014 to October 2017, Mackenzie failed to maintain adequate books, records and other documents as was reasonably required to demonstrate its compliance with Part 5 of NI 81-105 and was therefore in breach of paragraph 3 of subsection 19(1) of the Act.

PART IV - MITIGATING FACTORS

A. Systems Enhancements and Revisions to the Sales Compliance Guidelines

73. Mackenzie advises that it has dedicated significant financial and human resources to enhance its systems of controls and supervision for sales practices including the implementation of Salesforce (as noted above, a customer relationship management software program) for use in expense management and the implementation of Concur for use in uploading and managing receipts. The implementation of Salesforce and Concur has occurred in phases with the software having to be configured and customized for Mackenzie's purposes. This process was substantially completed by mid-2016.

74. In September 2017, while Staff's investigation into the matters in issue was ongoing, Mackenzie retained an independent consultant (the "**Consultant**") to assess the quality of Mackenzie's controls around its sales practices in light of the requirements of NI 81-105. The Consultant noted that overall Mackenzie has demonstrated a continuously improving compliance culture and since 2014 has seen increased investment in resources, both people and systems, focused on sales practices compliance.

75. In respect of Mackenzie's systems and record keeping for sales practices, the Consultant found that the Salesforce/Concur implementation has greatly increased transparency for both the sales teams and compliance.

76. In a report dated October 31, 2017, the Consultant made a series of recommendations for enhancing Mackenzie's sales practices compliance program which Mackenzie is in the process of implementing.

77. As part of this Settlement Agreement, the Consultant will conduct a review of Mackenzie's sales practices and continue its review of Mackenzie's internal controls and make recommendations to Mackenzie to ensure that Mackenzie's sales practices and internal controls comply with the requirements of NI 81-105, section 32(2) of the Act and section 11.1 of NI 31-103. Thereafter, the Consultant will conduct testing to ensure that its recommendations have been fully implemented. The Consultant has been approved by a Deputy Director of the CRR branch of the Commission.

B. Promo Store and iPad Minis

78. Most of the Items in the Promo Store were not excessive Items.

79. With respect to the Apple iPad minis provided to DRs who attended six mutual fund sponsored conferences between 2014 and 2015, Mackenzie advises that these were provided to DRs for two reasons, namely to eliminate the printing and shipping costs for the conference materials and to enable DRs to explore the re-designed Mackenzie website. Upon being advised in February 2016 of CRR staff's view that the provision of iPad minis to DRs did not comply with section 5.6 of NI 81-105, Mackenzie immediately stopped this practice.

C. Mackenzie Paid for the Benefits at Issue

80. Mackenzie advises Staff of the following:
- (a) Mackenzie, not the Mackenzie Products, paid for the monetary and non-monetary benefits at issue;
 - (b) the performance of the Mackenzie Products has not been impacted by these matters. The management expense ratios of the Mackenzie Products were not affected by the monetary and non-monetary benefits that were paid to DRs; and
 - (c) Mackenzie, not the Mackenzie Products, will pay all costs, fines and expenses relating to the resolution of the matters described in this Settlement Agreement, including the administrative fine, costs of the Commission's investigation and the fees charged by the Consultant in relation to the matters described in Schedule "B" to this Settlement Agreement.

D. Cooperation with Staff's Investigation

81. Mackenzie has cooperated with Staff in connection with Staff's investigation of the matters referred to in this Settlement Agreement.
82. Mackenzie has no disciplinary history with the Commission.

PART V - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

83. By engaging in the conduct described above, Mackenzie admits and acknowledges that it has breached Ontario securities law, and that it has acted contrary to the public interest. In particular:
- (a) Mackenzie did not comply with section 5.6 of NI 81-105 by providing excessive non-monetary benefits to DRs through business promotion activities and through the provisions of Items resulting in a breach by Mackenzie of section 2.1 of NI 81-105, during the period May 2014 to October 2017;
 - (b) 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;

- (c) 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 through the gifting of iPad minis and the provision of certain dinners 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;
- (d) 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 section 32(2) of the Act and section 11.1 of NI 31-103;
- (e) 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 from May 2014 to October 2017; and
- (f) the conduct referred to above is also contrary to the public interest.

PART VI - TERMS OF SETTLEMENT

84. Mackenzie agrees to the terms of settlement listed below and consents to the Order in substantially the form attached hereto as Schedule “A”, which provides that:

- (a) the Settlement Agreement is approved;
- (b) Mackenzie is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- (c) Mackenzie shall:
 - (i) submit to a review of its practices and procedures carried out by the Consultant, at Mackenzie’s expense as set out in Schedule “B” to the Settlement Agreement, until a Deputy Director or a Manager in the Compliance and Registrant Regulation Branch of the Commission is satisfied that the conclusions expressed in the Attestation Letter by the Consultant described in Schedule “B” are valid, pursuant to paragraph 4 of subsection 127(1) of the Act;
 - (ii) pay an administrative penalty in the amount of \$900,000 by wire transfer to the Commission before the commencement of the Settlement Hearing, which amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act; and

- (iii) pay costs of the Commission's investigation in the amount of \$150,000, by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act.

85. Mackenzie consents to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the terms and conditions as may be imposed pursuant to the preceding sub-paragraph (c)(i). These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

86. Mackenzie agrees to attend in person at the hearing before the Commission to consider the proposed settlement.

PART VII - FURTHER PROCEEDINGS

87. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against Mackenzie in relation to the facts set out in Part III of this Settlement Agreement, subject to paragraph 88 below.

88. If the Commission approves this Settlement Agreement and Mackenzie fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Mackenzie. These proceedings may be based on, but need not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

89. The parties will seek approval of this Settlement Agreement at a public hearing (the "**Settlement Hearing**") before the Commission scheduled for April 6, 2018 or on another date

agreed to by Staff and Mackenzie, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

90. Staff and Mackenzie agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the Settlement Hearing on Mackenzie's conduct, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

91. If the Commission approves this Settlement Agreement:

- (a) Mackenzie irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

92. Whether or not the Commission approves this Settlement Agreement, Mackenzie will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX - DISCLOSURE OF SETTLEMENT AGREEMENT

93. If the Commission does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and Mackenzie before the Settlement Hearing takes place will be without prejudice to Staff and Mackenzie; and
- (b) Staff and Mackenzie will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations. Any such proceedings, remedies and

challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

94. The parties will keep the terms of this Settlement Agreement confidential until the Commission approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Commission does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless Staff and Mackenzie otherwise agree in writing or if required by law.

PART X - EXECUTION OF SETTLEMENT AGREEMENT

95. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

96. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated at Toronto this 4th day of April, 2018.

**MACKENZIE FINANCIAL
CORPORATION**

By: "Donald J. MacDonald"

Name: Donald J. MacDonald
Senior Vice President.
General Counsel & Secretary

COMMISSION STAFF

By:

"Jeff Kehoe"
Jeff Kehoe
Director, Enforcement Branch

SCHEDULE “A” – DRAFT ORDER



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

FILE NO.: ●

IN THE MATTER OF MACKENZIE FINANCIAL CORPORATION

**ORDER
(Subsections 127(1) and 127.1)**

WHEREAS on April 6, 2018 the Ontario Securities Commission (the “**Commission**”) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario to consider the Application made jointly by Mackenzie Financial Corporation (“**Mackenzie**”) and Staff of the Commission for approval of a settlement agreement dated April 4, 2018 (the “**Settlement Agreement**”);

ON READING the Joint Application Record for a Settlement Hearing, including the Statement of Allegations dated April 4, 2018 the Settlement Agreement and the Consent of the parties to an Order in substantially this form, and on hearing the submissions of counsel for both parties;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved pursuant to subsection 127(1) of the Securities Act, RSO 1990 c S.5, as amended (the “**Act**”).
2. Mackenzie is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
3. Mackenzie shall:
 - (i) 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” to the Settlement Agreement until a Deputy Director or a Manager in the Compliance and Registrant Regulation Branch of the Commission is satisfied that the conclusions expressed in the Attestation Letter by the Consultant described in Schedule “B” are valid, pursuant to paragraph 4 of subsection 127(1) of the Act;
 - (ii) pay an administrative penalty in the amount of \$900,000 to the Commission, which amount shall be designated for allocation or for use

by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act; and

- (iii) pay costs of the Commission's investigation in the amount of \$150,000, to the Commission, pursuant to section 127.1 of the Act.

SCHEDULE “B” – REVIEW OF PRACTICES AND PROCEDURES

1. Mackenzie Financial Corporation ("**Mackenzie**") shall continue to retain the independent consultant (the "**Consultant**"), it first retained in September 2017, to review Mackenzie’s sales practices and the controls around Mackenzie’s sales practices which includes a review of Mackenzie's operations, internal controls, practices, policies and procedures relating to sales practices (the "**Sales Practice System**") to ensure that:
 - a. the Sales Practice System fully complies with applicable law, including National Instrument 81-105 - *Mutual Fund Sales Practices* ("**NI 81-105**"), section 32(2) of the *Securities Act*, RSO 1990 c S.5, as amended, and section 11.1 of National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
 - b. the Sales Practice System is tailored to the specific manner of business conducted by Mackenzie and is consistent with prudent business practices and best industry standards;
 - c. the Sales Practice System is designed to prevent and identify any non-compliance at an early stage, to allow for correction of the conduct in a timely manner, and to escalate breaches for appropriate disciplinary action; and
 - d. all applicable Mackenzie staff are trained on business promotion matters to ensure compliance with applicable laws related to the Sales Practice System, including NI 81-105;

2. Mackenzie shall require the Consultant to deliver to a Deputy Director or Manager in the Compliance and Registrant Regulation Branch of the Commission (the "**OSC Manager**") a written report describing the Consultant's recommendations, in addition to the recommendations already made in the Consultant’s report dated October 31, 2017, to ensure that Mackenzie's Sales Practice System conforms with the obligations set out in paragraph 1 above (the "**Report**"), within 90 days of the Order approving the Settlement Agreement between Staff of the Commission ("**Staff**") and Mackenzie dated April 4, 2018;

3. Within 12 months of the delivery of the Report to the OSC Manager, Mackenzie shall have fully implemented the recommendations of the Consultant described in the Report, and the Ultimate Designated Person and the Chief Compliance Officer of Mackenzie shall provide written confirmation to the OSC Manager that there has been full implementation of the Consultant's recommendations in the Report (the "**Confirmation Letter**");

4. Commencing 6 months after the delivery of the Confirmation Letter to the OSC Manager, Mackenzie shall cause the Consultant to conduct testing to determine whether the recommendations in the Report have been fully implemented, and whether any changes

resulting from those recommendations are being appropriately followed, administered and enforced by Mackenzie ("**Final Testing**");

5. Within 12 months of the provision of the Confirmation Letter to the OSC Manager, the Consultant shall provide a letter (the "**Attestation Letter**") to the OSC Manager, expressing his or her conclusions with respect to the Final Testing and:
 - a. include a report with the Attestation Letter which provides a description of the testing performed to support the conclusions contained in the Attestation Letter; and
 - b. submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the conclusions expressed in the Attestation Letter described above are valid;
6. Mackenzie shall provide the Consultant with reasonable access to all of Mackenzie's books and records necessary to complete the Consultant's mandate and will allow the Consultant to meet privately with Mackenzie's officers, directors and employees. Mackenzie shall require its officers, directors and employees to cooperate fully with the Consultant with respect to the Consultant's work and with respect to the implementation of the recommendations in the Report;
7. Mackenzie shall not terminate the Consultant's retainer without prior written approval by the OSC Manager; and
8. Mackenzie shall immediately submit to Staff a direction giving consent for unrestricted access and permission for Staff and the Consultant to communicate with one another regarding the Consultant's work and Mackenzie's progress with respect to the implementation of the recommendations in the Report and/or any other matter relevant to this review.