

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) THURSDAY, THE 25TH DAY
JUSTICE AKBARALI) OF JANUARY, 2024

BETWEEN:

STEPHEN POZGAJ

Plaintiff

- and -

MACKENZIE FINANCIAL CORPORATION
and MACKENZIE FINANCIAL CAPITAL CORPORATION

Defendants



Proceeding under the *Class Proceedings Act, 1992*

ORDER
(CERTIFICATION, NOTICE AND OPT-OUT)

THIS MOTION, by the Plaintiff for an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6 ("**CPA**") and approving the certification notice, the notice plan, setting the opt-out process and deadline, and appointing RicePoint Administration Inc. ("**RicePoint**") as notice and opt-out administrator was heard this day in writing;

ON READING the materials filed by the Plaintiff;

AND ON BEING ADVISED that the Defendants do not oppose this Order and that RicePoint consents to being appointed as notice and opt-out administrator;

1. **THIS COURT ORDERS** that for the purposes of this order, except to the extent that they are modified in this order, the definitions set out in the proposed Second Fresh as Amended

January 26, 2024

Statement of Claim (“**Claim**”), attached hereto as **Schedule “A”**, apply to and are incorporated into this order.

2. **THIS COURT ORDERS** that the within action is certified as a class proceeding pursuant to the *CPA* as against the Defendants, subject to the provisions of this order.

3. **THIS COURT ORDERS** that the Class is defined as, collectively:

(i) All persons, wherever they may reside or be domiciled, who held or hold units of a Mackenzie Trust Mutual Fund through a Discount Broker, except for the Excluded Persons*, from December 6, 2003 to the date of this Order; and

(ii) All persons, wherever they may reside or be domiciled, who held or hold shares of a Mackenzie Corporate Class Mutual Fund through a Discount Broker, except for the Excluded Persons*, from December 6, 2003 to the date of this Order.

* Excluded Persons means MFC and MFCC; the parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of MFC or MFCC at any time on or after December 6, 2003; the past and present members of the independent review committee of each Mackenzie Mutual Fund; the past and present members of a board of any Mackenzie Mutual Fund; and the past governors of any Mackenzie Mutual Fund.

4. **THIS COURT ORDERS** that the following issues are certified as common issues for the Class and shall be determined in accordance with the stay order dated August 1, 2023 made in *Ciardullo v. 1832 Asset Management L.P. et al.*, Court File No. CV-22-00684723-00CP:

Breach of Fiduciary Duty

- (a) Did MFC, as the trustee of the Mackenzie Trust Mutual Funds, owe a fiduciary duty? If so, to whom was the duty owed?
- (b) Did MFC, as the manager of the Mackenzie Mutual Funds, owe a fiduciary duty? If so, to whom was the duty owed?
- (c) If the answer to the first question in (a) and/or (b) is yes, did MFC breach its fiduciary duty? If so, when and how?

Breach of Trust

- (d) Did MFC, as the trustee of the Mackenzie Trust Mutual Funds, breach the Trust Instruments? If so, when and how?

Breach of Contract

- (e) Did MFC, as the manager of the Mackenzie Mutual Funds, breach the Management Agreements? If so, when and how?

Section 23.1 of the Trustee Act

- (f) Should the payment of the Unearned Management Fees by MFC be disallowed as an expense pursuant to section 23.1 of the *Trustee Act*?

Prospectus Misrepresentation

- (g) Did the Fund Facts Documents, and the Simplified Prospectuses which incorporate the Fund Facts Documents, contain a misrepresentation within the meaning of the *OSA* (and, as applicable, the Other Canadian Securities Legislation)?
- (h) If the answer to (g) is yes, are the Defendants, or either of them, liable to the Class Members pursuant to section 130 of the *OSA* (and, as applicable, the Other Canadian Securities Legislation)?

Oppression

- (i) Did any act or omission of the Defendants effect a result, or were the business or affairs of the Defendants carried on or conducted in a manner, that was oppressive or unfairly prejudicial to or that unfairly disregarded the interests of the Shareholder Class Members, within the meaning of section 248 of the *OBCA*?

Remedies

- (j) If breach of trust is established in the answers to common issue (d), are the Defendants, or either of them, liable to account to the Class Members?
- (k) If the Defendants are found liable on any claims asserted by the Class Members, as set out in (a) to (j) above, what remedies, including damages and/or equitable remedies, are the Class Members entitled to receive?
- (l) How should recoveries under each type of remedy be measured?
- (m) Can the amount of any monetary relief be determined on an aggregate basis? If so, what is the amount and what is the appropriate method or procedure for distributing that amount to the Class Members?

Interest

- (n) Should the Defendants be ordered to pay an equitable rate of interest and/or pre-judgment and post-judgment interest pursuant to the *CJA*? If so, what is the appropriate measure or amount of such interest?

Administration and Distribution

- (o) Should the Defendants pay the costs of administering and distributing the recovery? If so, what amount should the Defendants pay?

5. **THIS COURT ORDERS** that Stephen Pozgaj is appointed as the representative plaintiff for the Class.
6. **THIS COURT ORDERS** that the relief sought by the Class is as set out in paragraph 3 of the Claim.
7. **THIS COURT ORDERS** that the nature of the claims asserted on behalf of the Class are relief arising out of or under: (i) breach of trust; (ii) breach of fiduciary duty; (iii) breach of contract; (iv) section 23.1 of the *Trustee Act*; (v) section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation); and (vi) oppression under section 248 of the *OBCA*.
8. **THIS COURT ORDERS** that the litigation plan attached hereto as **Schedule “B”** is hereby approved.
9. **THIS COURT ORDERS** that any other class proceeding in Ontario relating to the subject matter of this action is hereby stayed, except for
- (a) *Frayce et al. v BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-00638868-00CP;
- (b) *Frayce v BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-00634551-00CP; and

(c) *Ciardullo v. 1832 Asset Management L.P. et al.*, Court File No. CV-22-684723-00CP, *Ciardullo et al. v. 1832 Asset Management L.P. et al.*, Court File No. CV-22-685386-00CP, *Yeats v. 1832 Asset Management L.P.*, Court File No. CV-22-690373-00CP, *Woodard v. Canadian Imperial Bank of Commerce et al.*, Court File No. CV-22-690374-00CP, *Yeats v. BMO Investments Inc.*, Court File No. CV-22-690519-00CP, *DeJong v. RBC Global Asset Management Inc. et al.*, Court File No. CV-22-691343-00CP, *Aggarwal v. TD Asset Management Inc.*, Court File No. CV-22-691344-00CP, and *Aizic v. Natcan Trust Company et al.*, Court File No. CV-23-00697428-00CP (collectively, the “**2022 Actions**”), subject to the temporary stay orders granted by this Court on August 1, 2023 in the 2022 Actions and any further orders subsequently made in the 2022 Actions.

10. **THIS COURT ORDERS** that no other class proceeding relating to the subject matter of this action may be commenced in Ontario without leave of the Court.
11. **THIS COURT ORDERS** that RicePoint is hereby appointed as the notice and opt-out administrator and will perform the duties and responsibilities set out herein, and any other related duty or responsibility.
12. **THIS COURT ORDERS** that the long-form notice, short-form notice and internet banner, substantially in the form attached hereto as **Schedules “C”, “D” and “E”**, respectively, are hereby approved.
13. **THIS COURT ORDERS** that the notices shall be published and disseminated by RicePoint (or Siskinds LLP (“**Class Counsel**”)) with respect to paragraphs 13(b)(ii) and

(iii) below or the Defendants with respect to paragraph 13(a)(v) below) substantially in the following manner:

(a) Short-form notice:

- (i) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
- (ii) published once in the business section of *La Presse*, in French;
- (iii) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they post the notice on their electronic message/news boards;
- (iv) published as a 2-week sponsored news link on Stockhouse;
- (v) filed by the Defendants as a news release on SEDAR;

(b) Long-form notice:

- (i) disseminated as a news release in Canada across Canada NewsWire (in English and French);
- (ii) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
- (iii) provided by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the action;

(c) Internet banner:

(i) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days.

14. **THIS COURT ORDERS** that the opt-out form (“**Opt-Out Form**”), substantially in the form attached as Appendix “A” to the long-form notice, is hereby approved.

15. **THIS COURT ORDERS** that:

(a) a person may opt out of this class proceeding by sending (by mail or courier) a fully completed Opt-Out Form in accordance with the instructions set out in the long-form notice to be postmarked on or before the date that is ninety (90) days after the day on which the short-form notice is first published (“**Opt-Out Deadline**”);

(b) no person may opt out of this class proceeding after the Opt-Out Deadline; and

(c) a person who validly opts out of the class proceeding in accordance with this Order shall not be a Class Member on and after the date that such person opts out of the class proceeding.

16. **THIS COURT ORDERS** that the costs of disseminating notice and receiving Opt-Out Forms shall be paid by the Plaintiff.

17. **THIS COURT ORDERS** that there shall be no costs of this motion.



The Honourable Justice Akbarali

SCHEDULE "A"
PROPOSED SECOND FRESH AS AMENDED
STATEMENT OF CLAIM

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHEN POZGAJ

Plaintiff

- and -

MACKENZIE FINANCIAL CORPORATION and
MACKENZIE FINANCIAL CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in this statement of claim.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$400.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by

the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date December 6, 2018

Issued by _____
Local registrar

Address of court office 393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO: Mackenzie Financial Capital Corporation
180 Queen Street West
Toronto, ON M5V 3K1

AND TO: Mackenzie Financial Corporation
180 Queen Street West
Toronto, ON M5V 3K1

CLAIM

CURRENCY AND DEFINITIONS

1. Unless otherwise stated, all dollar amounts stated herein are in Canadian dollars.
2. In this Second Fresh as Amended Statement of Claim, in addition to the terms that are defined elsewhere herein, the following definitions apply:
 - (a) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;
 - (b) “**Class**” and “**Class Members**” means, collectively:
 - (i) all persons, wherever they may reside or be domiciled, who held or hold, at any time prior to the conclusion of the trial of the common issues in this proceeding, units of a **Mackenzie Trust Mutual Fund** through a **Discount Broker**, except for the **Excluded Persons**, from December 6, 2003 to the date of the Certification Order (the “**Unitholder Class**” and the “**Unitholder Class Members**”); and
 - (ii) all persons, wherever they may reside or be domiciled, who held or hold, at any time prior to the conclusion of the trial of the common issues in this proceeding, shares of a **Mackenzie Corporate Class Mutual Fund** through a **Discount Broker**, except for the **Excluded Persons**, from December 6, 2003 to the date of the Certification Order (the “**Shareholder Class**” and the “**Shareholder Class Members**”);
 - (c) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
 - (d) “**CSA**” means the Canadian Securities Administrators;
 - (e) “**Current Cundill DOT**” means the Master Declaration of Trust for the Mackenzie Cundill Funds as amended and restated on January 31, 2019, as amended and supplemented from time to time;
 - (f) “**Current Cundill Management Agreement**” means the Amended and Restated Master Management Agreement for the Mackenzie Cundill Funds as amended on September 29, 2014, as amended and supplemented from time to time;
 - (g) “**Current Group G DOTs**” means, collectively:
 - (i) the Amended and Restated Declaration of Trust for the Mackenzie Canadian Dividend Fund dated July 31, 1996, as amended and supplemented from time to time; and

- (ii) the Amended and Restated Declaration of Trust for the Mackenzie US All Cap Growth Fund as amended and restated on November 17, 2020, as amended and supplemented from time to time;
- (h) “**Current Group G Management Agreement**” means the Management and Investment Advisory Agreement dated January 2, 2001, as amended and supplemented from time to time;
- (i) “**Current Ivy DOT**” means the Master Declaration of Trust for the Ivy Funds as amended and restated on August 14, 2020, as amended and supplemented from time to time;
- (j) “**Current Ivy Management Agreement**” means the Amended and Restated Master Management Agreement for the Ivy Funds as amended on September 29, 2014, as amended and supplemented from time to time;
- (k) “**Current Maxxum/Sentinel DOT**” means the Master Declaration of Trust for the Mackenzie/Maxxum/Sentinel Funds as amended and restated on July 12, 2021, as amended and supplemented from time to time;
- (l) “**Current Maxxum/Sentinel Management Agreement**” means the Amended and Restated Master Management Agreement for the Mackenzie/Maxxum/Sentinel Funds as amended on January 31, 2019, as amended and supplemented from time to time;
- (m) “**Current Saxon DOT**” means the Amended and Restated Master Declaration of Trust for the Saxon Funds as amended and restated on July 12, 2021, as amended and supplemented from time to time;
- (n) “**Current Saxon Management Agreement**” means the Master Management Agreement for the Saxon Funds as amended on September 29, 2014, as amended and supplemented from time to time;
- (o) “**Current Symmetry DOT**” means the Master Declaration of Trust for the Symmetry Funds as amended and restated on January 31, 2019, as amended and supplemented from time to time;
- (p) “**Current Symmetry Management Agreement**” means the Amended and Restated Master Management Agreement for the Symmetry Funds as amended on September 29, 2014, as amended and supplemented from time to time;
- (q) “**Current Universal/Focus DOT**” means the Master Declaration of Trust for the Universal/Focus Funds as amended and restated on August 14, 2020, as amended and supplemented from time to time;
- (r) “**Current Universal/Focus Management Agreement**” means the Amended and Restated Master Management Agreement for the Universal/Focus Funds as amended on September 29, 2014, as amended and supplemented from time to time;

- (s) “**Discount Brokers**” means entities providing “order-execution only services” as defined in Rule 3200 of the **IIROC Rules** or entities performing a function similar to “order-execution only services” prior to the introduction of that definition in Rule 3200 of the **IIROC Rules**;
- (t) “**Excluded Persons**” means **MFC** and **MFCC**; the parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of **MFC** or **MFCC** at any time on or after December 6, 2003; the past and present members of the independent review committee of each **Mackenzie Mutual Fund**; the past and present members of a board of any **Mackenzie Mutual Fund**; and the past governors of any **Mackenzie Mutual Fund**;
- (u) “**Final Corporate Class Management Agreement**” means the Amended and Restated Master Management Agreement between **MFCC** and **MFC** as amended on July 6, 2018, as amended and supplemented from time to time;
- (v) “**Form 81-101F1**” means Form 81-101F1 – *Contents of Simplified Prospectus*, as amended;
- (w) “**Form 81-101F2**” means Form 81-101F2 – *Contents of Annual Information Form*, as amended;
- (x) “**Form 81-101F3**” means Form 81-101F3 – *Contents of Fund Facts Document*, as amended;
- (y) “**Fund Facts Document**” means a fund facts document as referred to in **NI 81-101** and **Form 81-101F3**;
- (z) “**IIROC**” means the Investment Industry Regulatory Organization of Canada;
- (aa) “**IIROC Rules**” means the **IIROC Dealer Member Rules**, as amended;
- (bb) “**Mackenzie Mutual Funds**” means, collectively:
 - (i) all mutual funds (including, without limitation, all series thereof) that are, were or may be constituted as a separate class of shares of **MFCC**, including, for greater certainty, (i) those mutual funds that have been or may be terminated, (ii) those mutual funds that have been or may be merged into other mutual funds, and (iii) those mutual funds that have undergone or may undergo name changes (the “**Mackenzie Corporate Class Mutual Funds**”); and
 - (ii) all mutual fund trusts (including, without limitation, all series thereof) of which **MFC** is trustee, was trustee or may be trustee at any time prior to the conclusion of the trial of the common issues in this proceeding (but only in respect of the period during which **MFC** is trustee, was trustee or may be trustee, as applicable), including, for greater certainty, (i) those mutual

funds that have been or may be terminated, (ii) those mutual funds that have been or may be merged into other mutual funds, and (iii) those mutual funds that have undergone or may undergo name changes (the “**Mackenzie Trust Mutual Funds**”);

- (cc) “**Management Agreements**” means, collectively, all management agreements pursuant to which MFC acts, has acted or may act as manager of the **Mackenzie Mutual Funds**, including, without limitation, the **Current Maxxum/Sentinel Management Agreement**, the **Current Cundill Management Agreement**, the **Current Universal/Focus Management Agreement**, the **Current Saxon Management Agreement**, the **Current Ivy Management Agreement**, the **Current Symmetry Management Agreement**, the **Current Group G Management Agreement** and the **Final Corporate Class Management Agreement**;
- (dd) “**Manager’s Standard of Care**” has the meaning given to that term in paragraph 132 hereof;
- (ee) “**Manager’s Compliance with Law Duty**” has the meaning given to that term in paragraph 133 hereof;
- (ff) “**MFC**” means the Defendant, Mackenzie Financial Corporation;
- (gg) “**MFCC**” means the Defendant, Mackenzie Financial Capital Corporation;
- (hh) “**NI 81-101**” means National Instrument 81-101 – *Mutual Fund Prospectus Disclosure*, as amended;
- (ii) “**NI 81-107**” means National Instrument 81-107 – *Independent Review Committee for Investment Funds*, as amended;
- (jj) “**OBCA**” means the *Business Corporations Act*, RSO 1990, c B.16, as amended;
- (kk) “**OSA**” means the *Securities Act*, RSO 1990, c S.5, as amended;
- (ll) “**Other Canadian Securities Legislation**” means, collectively, the *Securities Act*, RSA 2000, c S-4; the *Securities Act*, RSBC 1996, c 418; *The Securities Act*, CCSM c S50; the *Securities Act*, SNB 2004, c S-5.5; the *Securities Act*, RSNL 1990, c S-13; the *Securities Act*, SNWT 2008, c 10; the *Securities Act*, RSNS 1989, c 418; the *Securities Act*, S Nu 2008, c 12; the *Securities Act*, RSPEI 1988, c S-3.1; the *Securities Act*, RSQ, c V-1.1; *The Securities Act, 1988*, SS 1988-89, c S-42.2; and the *Securities Act*, SY 2007, c 16, all as amended;
- (mm) “**Plaintiff**” means Stephen Pozgaj;
- (nn) “**Securities**” means units in the case of a **Mackenzie Trust Mutual Fund** and shares in the case of a **Mackenzie Corporate Class Mutual Fund**;

- (oo) “**SEDAR**” means the **CSA’s** System for Electronic Document Analysis and Retrieval;
- (pp) “**Simplified Prospectus**” means a simplified prospectus as referred to in **NI 81-101** and **Form 81-101F1**;
- (qq) “**Trust Instruments**” means, collectively, all declarations of trust or similar trust instruments that govern, have governed or may govern the **Mackenzie Trust Mutual Funds**, including, without limitation, the **Current Maxxum/Sentinel DOT**, the **Current Cundill DOT**, the **Current Universal/Focus DOT**, the **Current Saxon DOT**, the **Current Ivy DOT**, the **Current Symmetry DOT** and the **Current Group G DOTs**;
- (rr) “*Trustee Act*” means the *Trustee Act*, RSO 1990, c T.23, as amended; and
- (ss) “**Unearned Management Fees**” means, in respect of management fees that have been paid or may be paid out of the assets of the **Mackenzie Mutual Funds**, the portion of those management fees that has been paid or may be paid to **Discount Brokers** as trailing commissions, and any taxes relating to those trailing commissions.

RELIEF SOUGHT

3. The Plaintiff claims on his own behalf and on behalf of the other Class Members:

- (a) an order certifying this action as a class proceeding pursuant to the *CPA* and appointing the Plaintiff as the representative plaintiff for the Class;
- (b) a declaration that MFC committed breaches of trust and/or breached its fiduciary duties to the Plaintiff and the other Class Members by the acts and omissions pleaded herein;
- (c) a declaration that MFC is liable to the Plaintiff and the other Class Members for breach of contract;
- (d) a declaration that the Defendants made one or more misrepresentations within the meaning of the *OSA* (and, if necessary, the Other Canadian Securities Legislation), and that the Defendants are liable to the Plaintiff and the other Class Members

pursuant to section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation);

- (e) a declaration that the acts or omissions of the Defendants have effected a result, the business or affairs of the Defendants have been carried on or conducted in a manner, or the powers of the directors of the Defendants have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Plaintiff and the other Shareholder Class Members, under section 248 of the *OBCA*;
- (f) an order requiring MFC to account to the Plaintiff and the other Class Members for the Unearned Management Fees;
- (g) damages and/or equitable compensation in the sum of \$175 million (or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references) to restore the Plaintiff and the other Class Members to the position they would have been in had the Unearned Management Fees not been paid;
- (h) if necessary, an order compelling the Defendants to compensate the Plaintiff and the other Class Members in respect of the Unearned Management Fees by means of litigation trusts to be established pursuant to the *CPA*;
- (i) an order disallowing the payment of the Unearned Management Fees as expenses pursuant to section 23.1 of the *Trustee Act* (and, if necessary, the equivalent provisions of comparable Canadian legislation) and requiring MFC to repay the expenses to the Plaintiff and the other Unitholder Class Members or to the Mackenzie Trust Mutual Funds;

- (j) an interim and permanent order prohibiting the Defendants from seeking or obtaining indemnity or reimbursement from the assets of the Mackenzie Mutual Funds in respect of monetary relief paid or payable to the Plaintiff and the other Class Members in this action or their costs and expenses of this action;
- (k) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (l) an equitable rate of interest on all sums found due and owing to the Plaintiff and the other Class Members to compensate them for the diminution in the value of their Securities of the Mackenzie Mutual Funds resulting from payment of the Unearned Management Fees;
- (m) pre-judgment and post-judgment interest pursuant to the *CJA*;
- (n) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity;
- (o) pursuant to section 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (p) such further and other relief as this Honourable Court may deem just.

OVERVIEW

4. This class proceeding arises out of the payment of excessive, inflated and/or unearned management fees to MFC in respect of the Mackenzie Mutual Funds. The management fees are excessive, inflated and/or unearned because unearned trailing commissions earmarked for payment to Discount Brokers are included in, or embedded into, those management fees.

5. MFC is the trustee and manager of the Mackenzie Trust Mutual Funds, which are Mackenzie Mutual Funds with a trust structure. MFC is also the manager of the Mackenzie Corporate Class Mutual Funds, which are Mackenzie Mutual Funds with a corporate structure.
6. The Class Members are persons who held or hold Securities of a Mackenzie Mutual Fund through a Discount Broker, as distinct from other distribution channels through which Mackenzie Mutual Funds are sold to investors. Discount Brokers are also commonly referred to as “order-execution only”, “DIY” and “online” brokers. Under the IIROC Rules, Discount Brokers are prohibited from providing investment advice to investors.
7. The Mackenzie Trust Mutual Funds are trusts governed by the Trust Instruments. The assets of the Mackenzie Trust Mutual Funds are trust property that MFC, as trustee and a fiduciary, has undertaken to hold for the exclusive benefit of the beneficiaries, being the Unitholder Class Members and the other unitholders of the Mackenzie Trust Mutual Funds. MFC has a duty to preserve the trust property and maximize the value of units of the Mackenzie Trust Mutual Funds.
8. The Mackenzie Corporate Class Mutual Funds are constituted as separate classes of shares of MFCC. MFC, as a fiduciary, has a duty to act in the best interests of the Shareholder Class Members.
9. MFC receives management fees out of the assets of the Mackenzie Mutual Funds. The management fees are excessive, inflated and/or unearned because a portion — described herein as the Unearned Management Fees — is collected by MFC for the purpose of paying trailing commissions to Discount Brokers. MFC has paid, and continues to pay, trailing

commissions to Discount Brokers through which the Class Members held or hold the Mackenzie Mutual Funds.

10. The purpose of a trailing commission on a mutual fund is to compensate the dealer (through whom the mutual fund is sold) for providing their client with ongoing investment advice about the client's investment in the mutual fund in respect of which the trailing commission is paid. As the Defendants state in a publication entitled *All in the Details — Mutual Fund Investing: Facts About Cost*: “Why are trailers paid? The trailing commission compensates your advisor for providing you with ongoing advice about the mutual fund investment.” As Discount Brokers do not and cannot provide investment advice to investors, the payment of trailing commissions to Discount Brokers in respect of the Mackenzie Mutual Funds is improper, unreasonable and unjustified. Consequently, the payment by MFC (in respect of the Mackenzie Trust Mutual Funds) and MFCC (in respect of the Mackenzie Corporate Class Mutual Funds) of the Unearned Management Fees on account of those trailing commissions, and their receipt by MFC (in respect of all Mackenzie Mutual Funds), is improper, unreasonable and unjustified.
11. Since 2011, the Fund Facts Documents that the Defendants have prepared and filed with securities regulators to permit the sale of Securities of the Mackenzie Mutual Funds (other than Fund Facts Documents for Series D Securities of the Mackenzie Mutual Funds for a period of time) have acknowledged the purpose of trailing commissions as compensation for advice. Those Fund Facts Documents stated that trailing commissions are paid to dealers for the “services and advice” provided by those dealers to their clients. Until sometime in 2019, the Fund Facts Documents for Series D Securities of the Mackenzie Mutual Funds referred to “services” rather than “services and advice”. During that period,

the Defendants continued to represent that trailing commissions were paid for “services and advice” in Fund Facts Documents for other series of the Mackenzie Mutual Funds that were held through Discount Brokers. The language of the Fund Facts Documents for Series D Securities of the Mackenzie Mutual Funds was then changed to “services and advice” sometime in 2019. By making the earlier amendment to the Fund Facts Documents for Series D Securities of the Mackenzie Mutual Funds to refer to “services” rather than “services and advice”, the Defendants have acknowledged that the reference to “services and advice” in the Fund Facts Documents is and was false, misleading and/or inaccurate in respect of Mackenzie Mutual Funds held through Discount Brokers.

12. The term “services and advice” refers to a dealer providing ongoing advice to a client with respect to the client’s investment in the Mackenzie Mutual Fund in respect of which the trailing commission is paid, and services that are specifically connected with that advice, namely determining the suitability for the client of the investment in that Mackenzie Mutual Fund in light of the personal circumstances of the client (including the client’s other holdings). However, Discount Brokers do not and cannot provide investment advice to clients and they do not provide suitability determinations for their clients. Accordingly, the payment of trailing commissions to Discount Brokers in respect of the Mackenzie Mutual Funds is improper, unreasonable and unjustified. Consequently, the payment by MFC (in respect of the Mackenzie Trust Mutual Funds) and MFCC (in respect of the Mackenzie Corporate Class Mutual Funds) of the Unearned Management Fees on account of those trailing commissions, and their receipt by MFC (in respect of all Mackenzie Mutual Funds), is improper, unreasonable and unjustified.

13. The reality is that trailing commissions function as sales commissions paid on an ongoing basis by MFC to Discount Brokers in consideration for services provided by the Discount Brokers to MFC, not services provided by the Discount Brokers to the Class Members. The trailing commissions incentivize the Discount Brokers to offer for sale, or provide “shelf space” for, Mackenzie Mutual Funds on their trading platforms. This is to the detriment of the Class Members (who suffer reduced investment returns), while accruing to the benefit of MFC (which receives increased management fees as the assets of the Mackenzie Mutual Funds grow through new investment capital). MFC misused property belonging to the Class Members for the purpose of benefiting itself.
14. Further or in the alternative, the payment of trailing commissions to Discount Brokers cannot be justified on the basis of purported “services” because, among other things:
 - (a) MFC does not impose an obligation on Discount Brokers to provide particular services to Class Members in respect of the Mackenzie Mutual Funds in consideration for the trailing commissions;
 - (b) MFC does not conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers are providing particular services to Class Members in respect of the Mackenzie Mutual Funds; and
 - (c) MFC does not conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers use or apply the trailing commissions for the purpose of providing particular services to Class Members in respect of the Mackenzie Mutual Funds.

15. In fact, Discount Brokers do not provide Class Members with any services that are specific to the Mackenzie Mutual Funds in respect of which the trailing commissions are paid and that are provided on an ongoing basis. The services provided by Discount Brokers to their clients (such as research and educational tools) are provided regardless of whether the clients hold Mackenzie Mutual Funds. Those general services available to all Discount Broker clients do not justify the payment of trailing commissions to Discount Brokers in respect of the Mackenzie Mutual Funds. Accordingly, the payment of trailing commissions to Discount Brokers on account of “services” is improper, unreasonable and unjustified. Consequently, the payment by MFC (in respect of the Mackenzie Trust Mutual Funds) and MFCC (in respect of the Mackenzie Corporate Class Mutual Funds) of the Unearned Management Fees on account of those trailing commissions, and their receipt by MFC (in respect of all Mackenzie Mutual Funds), is improper, unreasonable and unjustified.
16. The Unearned Management Fees represent significant sums of money and are paid on a continuous basis. The wasting of the assets of the Mackenzie Mutual Funds by the payment of the Unearned Management Fees has unjustly enriched MFC and decreased the value of the Securities of the Mackenzie Mutual Funds held by the Class Members. The Class Members have suffered, and continue to suffer, significant loss and damage as a result of the Defendants’ acts and omissions pleaded herein.

THE PARTIES

The Plaintiff

17. The Plaintiff is an individual residing in Mississauga, Ontario.

18. The Plaintiff held Securities of the Mackenzie Canadian Resource Fund – Series A (MFC653), a Mackenzie Trust Mutual Fund, in an account with TD Direct Investing (or TD Waterhouse Discount Brokerage or such other discount brokerage business operated, directly or indirectly, by The Toronto-Dominion Bank from time to time), a Discount Broker, from around March 2001 until on or around October 18, 2018, at which time the Securities were switched into Securities of the Mackenzie Canadian Resource Fund – Series D (MFC4620). On or around August 16, 2019, the Mackenzie Canadian Resource Fund was renamed the Mackenzie Global Resource Fund. The Plaintiff continues to hold Securities of the Mackenzie Global Resource Fund – Series D (MFC4620).
19. The Plaintiff held Securities of the Mackenzie Ivy European Class – Series A (MFC1565), a Mackenzie Corporate Class Mutual Fund, in an account with TD Direct Investing (or TD Waterhouse Discount Brokerage or such other discount brokerage business operated, directly or indirectly, by The Toronto-Dominion Bank from time to time), a Discount Broker, from around March 2001 until on or around October 18, 2018, at which time the Securities were switched into Securities of the Mackenzie Ivy European Class – Series D (MFC4646). On or around July 30, 2021, the Mackenzie Ivy European Class merged into the Mackenzie Ivy European Fund. The Plaintiff continues to hold Securities of the Mackenzie Ivy European Fund – Series D (MFC8454).

The Class

20. The proposed Class on whose behalf this proceeding is brought is comprised of all persons, wherever they may reside or be domiciled, who hold or held Securities of a Mackenzie Mutual Fund through a Discount Broker, except for the Excluded Persons, from December 6, 2003 to the date of the Certification Order.

MFC

21. MFC is a corporation incorporated under the *OBCA*.
22. MFC's registered offices and headquarters are located in Toronto, Ontario.
23. MFC is and was at all material times the manager of the Mackenzie Mutual Funds and the trustee of the Mackenzie Trust Mutual Funds.
24. MFC is and was at all material times an "investment fund manager" as defined in the *OSA*. As an investment fund manager, MFC is and was at all material times subject to the duty under section 116 of the *OSA* and/or section 2.1 of NI 81-107 to (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Mackenzie Mutual Funds, and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

MFCC

25. MFCC is a corporation incorporated under the *OBCA*.
26. MFCC's registered offices and headquarters are located in Toronto, Ontario.
27. MFCC was at all material times the issuer of the Mackenzie Corporate Class Mutual Funds.
28. On or around July 30, 2021, each Mackenzie Corporate Class Mutual Fund was terminated and merged into a Mackenzie Trust Mutual Fund.

THE MACKENZIE MUTUAL FUNDS

Mackenzie Trust Mutual Funds

29. Each of the Mackenzie Trust Mutual Funds is or was a trust governed by the terms of one of the Trust Instruments.

30. Each of the Mackenzie Trust Mutual Funds is or was an “investment fund” and a “mutual fund” as those terms are defined in the *OSA*.
31. Each of the Mackenzie Trust Mutual Funds is or was a reporting issuer in Ontario and in all other provinces of Canada.
32. To the best of the Plaintiff’s knowledge, the Mackenzie Trust Mutual Funds as of December 6, 2018 are listed in **Schedule “A”** hereto.

Mackenzie Corporate Class Mutual Funds

33. Each of the Mackenzie Corporate Class Mutual Funds was a class of shares of MFCC.
34. Each of the Mackenzie Corporate Class Mutual Funds was an “investment fund” and a “mutual fund” as those terms are defined in the *OSA*.
35. Each of the Mackenzie Corporate Class Mutual Funds was a reporting issuer in Ontario and in all other provinces of Canada.
36. To the best of the Plaintiff’s knowledge, the Mackenzie Corporate Class Mutual Funds as of December 6, 2018 are listed in **Schedule “B”** hereto.

TRUST INSTRUMENTS AND MANAGEMENT AGREEMENTS FOR THE MACKENZIE TRUST MUTUAL FUNDS

37. The Mackenzie Trust Mutual Funds are currently governed by the Current Maxxum/Sentinel DOT, the Current Cundill DOT, the Current Universal/Focus DOT, the Current Saxon DOT, the Current Ivy DOT, the Current Symmetry DOT and the Current Group G DOTs.
38. Under each of the Trust Instruments, MFC holds in trust all property of the Mackenzie Trust Mutual Funds for the benefit of the unitholders of the Mackenzie Trust Mutual Funds.

39. The Unitholder Class Members are or were unitholders of the Mackenzie Trust Mutual Funds.

Maxxum/Sentinel Funds

40. The Current Maxxum/Sentinel DOT is the Trust Instrument that currently governs the Mackenzie Trust Mutual Funds described by MFC as the “Mackenzie/Maxxum/Sentinel Funds” or the “Group A Trust Funds”.
41. Pursuant to section 9.08(b) of the Current Maxxum/Sentinel DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC, as trustee, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
42. Pursuant to section 9.02 of the Current Maxxum/Sentinel DOT (and the equivalent provisions of other Trust Instruments applicable at material times), and sections 2, 3 and 4 of the Current Maxxum/Sentinel Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as trustee, has delegated to MFC, as manager, authority and responsibility for providing managerial, supervisory, administrative and investment advisory services to the applicable Mackenzie Trust Mutual Funds.
43. Pursuant to section 2 of the Current Maxxum/Sentinel Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to exercise its powers and

discharge its duties as manager honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Section 2 of the Current Maxxum/Sentinel Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) makes MFC, as manager, responsible for any loss arising out of MFC's failure to adhere to the standard of conduct set out in section 2.

44. Pursuant to section 19(b) of the Current Maxxum/Sentinel Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to comply with the *OSA*, the rules and regulations thereunder, with equivalent legislation of all other provinces and territories where the securities are registered or qualified for sale and with the requirements of the *CSA*, which includes the obligations under section 116 of the *OSA* and/or section 2.1 of NI 81-107.
45. Pursuant to section 9.02(b) of the Current Maxxum/Sentinel DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC is entitled to receive a management fee out of the assets of each applicable Mackenzie Trust Mutual Fund as set out in the Current Maxxum/Sentinel Management Agreement (or the other Management Agreements applicable at material times). Section 9.08(c)(ii) of the Current Maxxum/Sentinel DOT (and the equivalent provisions of other Trust Instruments applicable at material times) requires all remuneration paid by MFC, as trustee, for services provided to the Mackenzie Trust Mutual Funds, including by managers, to be reasonable.

46. Section 6.04 of the Current Maxxum/Sentinel DOT (and the equivalent provisions of other Trust Instruments applicable at material times) provides for MFC to accept a lower management fee with respect to units of a series of an applicable Mackenzie Trust Mutual Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a “management expense distribution”.

Cundill Funds

47. The Current Cundill DOT is the Trust Instrument that currently governs the Mackenzie Trust Mutual Funds described by MFC as the “Mackenzie Cundill Funds” or the “Group B Trust Funds”.
48. Pursuant to section 9.11(b) of the Current Cundill DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC, as trustee, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
49. Pursuant to section 9.02 of the Current Cundill DOT (and the equivalent provisions of other Trust Instruments applicable at material times), and sections 2.1 to 2.5 of the Current Cundill Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as trustee, has delegated to MFC, as manager, authority and responsibility for providing managerial, supervisory, administrative, distribution, registrar and transfer agent, and investment advisory services to the applicable Mackenzie Trust Mutual Funds.

50. Pursuant to section 2.10 of the Current Cundill Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to exercise its rights and discharge its duties and responsibilities as manager honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.
51. Pursuant to section 2.9 of the Current Cundill Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to comply with all applicable legislation, regulatory policy and guidelines relating to the services rendered by MFC as manager, which includes the obligations under section 116 of the *OSA* and/or section 2.1 of NI 81-107.
52. Pursuant to section 3.1 of the Current Cundill Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC is entitled to receive a management fee out of the assets of each applicable Mackenzie Trust Mutual Fund as set out in the Current Cundill Management Agreement (or the other Management Agreements applicable at material times). Section 9.11(c)(ii) of the Current Cundill DOT (and the equivalent provisions of other Trust Instruments applicable at material times) requires all remuneration paid by MFC, as trustee, for services provided to the Mackenzie Trust Mutual Funds, including by managers, to be reasonable.
53. Section 6.06 of the Current Cundill DOT (and the equivalent provisions of other Trust Instruments applicable at material times) provides for MFC to accept a lower management

fee with respect to units of a series of an applicable Mackenzie Trust Mutual Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a “management expense distribution”.

54. Section 3.4 of the Current Cundill Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) allows MFC to assign all or any part of its management fee to any person.

Universal/Focus Funds

55. The Current Universal/Focus DOT is the Trust Instrument that currently governs the Mackenzie Trust Mutual Funds described by MFC as the “Universal/Focus Funds” or the “Group C Trust Funds”.
56. Pursuant to section 9.08(b) of the Current Universal/Focus DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC, as trustee, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
57. Pursuant to section 9.02 of the Current Universal/Focus DOT (and the equivalent provisions of other Trust Instruments applicable at material times), and sections 2, 3 and 4 of the Current Universal/Focus Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as trustee, has delegated to MFC, as manager, authority and responsibility for providing management,

portfolio advisory, investment advisory and administration services to the applicable Mackenzie Trust Mutual Funds.

58. Pursuant to section 2 of the Current Universal/Focus Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to exercise its powers and discharge its duties as manager honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Section 2 of the Current Universal/Focus Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) makes MFC, as manager, responsible for any loss arising out of MFC's failure to adhere to the standard of conduct set out in section 2.
59. Pursuant to section 19(b) of the Current Universal/Focus Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to comply with the *OSA*, the rules and regulations thereunder, with equivalent legislation of all other provinces and territories where the securities are registered or qualified for sale and with the requirements of the *CSA*, which includes the obligations under section 116 of the *OSA* and/or section 2.1 of NI 81-107.
60. Pursuant to section 9.02(b) of the Current Universal/Focus DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC is entitled to receive a management fee out of the assets of each applicable Mackenzie Trust Mutual Fund as set out in the Current Universal/Focus Management Agreement (or the other

Management Agreements applicable at material times). Section 9.08(c)(ii) of the Current Universal/Focus DOT (and the equivalent provisions of other Trust Instruments applicable at material times) requires all remuneration paid by MFC, as trustee, for services provided to the Mackenzie Trust Mutual Funds, including by managers, to be reasonable.

61. Section 6.04 of the Current Universal/Focus DOT (and the equivalent provisions of other Trust Instruments applicable at material times) provides for MFC to accept a lower management fee with respect to units of a series of an applicable Mackenzie Trust Mutual Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a “management expense distribution”.

Saxon Funds

62. The Current Saxon DOT is the Trust Instrument that currently governs the Mackenzie Trust Mutual Funds described by MFC as the “Saxon Funds” or the “Group D Trust Funds”.
63. Pursuant to section 12.8 of the Current Saxon DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC, as trustee, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to perform its duties to the standard of care a reasonably prudent person would exercise in the circumstances.
64. Pursuant to section 12.3 of the Current Saxon DOT (and the equivalent provisions of other Trust Instruments applicable at material times), and sections 3.01 and 3.02 of the Current Saxon Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as trustee, has delegated to MFC, as

manager, authority and responsibility for providing management and administrative services to the applicable Mackenzie Trust Mutual Funds. Section 12.3 of the Current Saxon DOT (and the equivalent provisions of other Trust Instruments applicable at material times) only allows MFC, as trustee, to appoint a manager if the manager agrees to comply with the standard of care required under securities legislation, which includes the obligations under section 116 of the *OSA* and/or section 2.1 of NI 81-107.

65. Pursuant to section 9.01 of the Current Saxon Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to exercise its powers and discharge its duties as manager honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.
66. Pursuant to section 3.04 of the Current Saxon Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to comply with applicable securities laws and regulations, the requirements of the CSA and policy statements of securities authorities, which includes the obligations under section 116 of the *OSA* and/or section 2.1 of NI 81-107.
67. Pursuant to section 5.01 of the Current Saxon Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC is entitled to receive a management fee out of the assets of each applicable Mackenzie Trust Mutual Fund as set out in the Current Saxon Management Agreement (or the other Management Agreements applicable at material times). Section 12.1(b) of the Current Saxon DOT (and

the equivalent provisions of other Trust Instruments applicable at material times) requires all remuneration paid by MFC, as trustee, for services provided to the Mackenzie Trust Mutual Funds, including by managers, to be reasonable. Section 12.1(b) of the Current Saxon DOT (and the equivalent provisions of other Trust Instruments applicable at material times) also makes MFC's payment of remuneration subject to MFC's standard of care as trustee under section 12.8 of the Current Saxon DOT (and the equivalent provisions of other Trust Instruments applicable at material times).

68. Section 6.4 of the Current Saxon DOT (and the equivalent provisions of other Trust Instruments applicable at material times) provides for MFC to accept a lower management fee with respect to units of a series of an applicable Mackenzie Trust Mutual Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a "management expense distribution".

Ivy Funds

69. The Current Ivy DOT is the Trust Instrument that currently governs the Mackenzie Trust Mutual Funds described by MFC as the "Ivy Funds" or the "Group E Trust Funds".
70. Pursuant to section 9.08(b) of the Current Ivy DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC, as trustee, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

71. Pursuant to section 9.02 of the Current Ivy DOT (and the equivalent provisions of other Trust Instruments applicable at material times), and sections 2, 3 and 4 of the Current Ivy Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as trustee, has delegated to MFC, as manager, authority and responsibility for providing management, portfolio advisory, investment advisory and administration services to the applicable Mackenzie Trust Mutual Funds.
72. Pursuant to section 2 of the Current Ivy Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to exercise its powers and discharge its duties as manager honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Section 2 of the Current Ivy Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) makes MFC, as manager, responsible for any loss arising out of MFC's failure to adhere to the standard of conduct set out in section 2.
73. Pursuant to section 19(b) of the Current Ivy Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to comply with the *OSA*, the rules and regulations thereunder, with equivalent legislation of all other provinces and territories where the securities are registered or qualified for sale and with the requirements of the *CSA*, which includes the obligations under section 116 of the *OSA* and/or section 2.1 of NI 81-107.

74. Pursuant to section 9.02(b) of the Current Ivy DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC is entitled to receive a management fee out of the assets of each applicable Mackenzie Trust Mutual Fund as set out in the Current Ivy Management Agreement (or the other Management Agreements applicable at material times). Section 9.08(c)(ii) of the Current Ivy DOT (and the equivalent provision of other Trust Instruments applicable at material times) requires all remuneration paid by MFC, as trustee, for services provided to the Mackenzie Trust Mutual Funds, including by managers, to be reasonable.
75. Section 6.04 of the Current Ivy DOT (and the equivalent provisions of other Trust Instruments applicable at material times) provides for MFC to accept a lower management fee with respect to units of a series of an applicable Mackenzie Trust Mutual Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a “management expense distribution”.

Symmetry Funds

76. The Current Symmetry DOT is the Trust Instrument that currently governs the Mackenzie Trust Mutual Funds described by MFC as the “Symmetry Funds” or the “Group F Trust Funds”.
77. Pursuant to section 9.08(b) of the Current Symmetry DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC, as trustee, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

78. Pursuant to section 9.02 of the Current Symmetry DOT (and the equivalent provisions of other Trust Instruments applicable at material times), and sections 2, 3 and 4 of the Current Symmetry Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as trustee, has delegated to MFC, as manager, authority and responsibility for providing management, portfolio advisory, investment advisory and administration services to the applicable Mackenzie Trust Mutual Funds.
79. Pursuant to section 2 of the Current Symmetry Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to exercise its powers and discharge its duties as manager honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Section 2 of the Current Symmetry Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) makes MFC, as manager, responsible for any loss arising out of MFC's failure to adhere to the standard of conduct set out in section 2.
80. Pursuant to section 19(b) of the Current Symmetry Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to comply with the *OSA*, the rules and regulations thereunder, with equivalent legislation of all other provinces and territories where the securities are registered or qualified for sale and with the requirements of the *CSA*, which includes the obligations under section 116 of the *OSA* and/or section 2.1 of NI 81-107.

81. Pursuant to section 9.02(b) of the Current Symmetry DOT (and the equivalent provisions of other Trust Instruments applicable at material times), MFC is entitled to receive a management fee out of the assets of each applicable Mackenzie Trust Mutual Fund as set out in the Current Symmetry Management Agreement (or the other Management Agreements applicable at material times). Section 9.08(c)(ii) of the Current Symmetry DOT (and the equivalent provisions of other Trust Instruments applicable at material times) requires all remuneration paid by MFC, as trustee, for services provided to the Mackenzie Trust Mutual Funds, including by managers, to be reasonable.
82. Section 6.04 of the Current Symmetry DOT (and the equivalent provisions of other Trust Instruments applicable at material times) provides for MFC to accept a lower management fee with respect to units of a series of an applicable Mackenzie Trust Mutual Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a “management expense distribution”.

Group G Funds

83. The Mackenzie Canadian Dividend Fund (formerly the Mackenzie Canadian Large Cap Dividend Fund and the Mackenzie Maxxum Dividend Fund) and the Mackenzie US All Cap Growth Fund are currently described by MFC as the “Group G Trust Funds”. The Mackenzie Canadian Balanced Fund was formerly described as a Group G Fund prior to its recent merger into the Mackenzie Strategic Income Fund.
84. Pursuant to section 6.7 of the Amended and Restated Declaration of Trust for the Mackenzie US All Cap Growth Fund dated November 17, 2020, as amended and supplemented from time to time (and the equivalent provisions of other Trust Instruments applicable at material times), MFC, as trustee, is and was at all material times required to

exercise its powers and discharge its duties honestly, in good faith and in the best interest of the Mackenzie US All Cap Growth Fund.

85. Pursuant to section 6.4 of the Amended and Restated Declaration of Trust for the Mackenzie US All Cap Growth Fund dated November 17, 2020, as amended and supplemented from time to time (and the equivalent provisions of other Trust Instruments applicable at material times), MFC, as trustee, has delegated to MFC, as manager, the management of the business and affairs of the Mackenzie US All Cap Growth Fund.
86. Section 8.4 of the Amended and Restated Declaration of Trust for the Mackenzie US All Cap Growth Fund dated November 17, 2020, as amended and supplemented from time to time (and the equivalent provisions of other Trust Instruments applicable at material times) provides for MFC to accept a lower management fee with respect to units of a series of Mackenzie US All Cap Growth Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a “management expense distribution”.
87. Pursuant to section 6.7 of the Amended and Restated Declaration of Trust for the Mackenzie Canadian Dividend Fund dated July 31, 1996, as amended and supplemented from time to time (and the equivalent provisions of other Trust Instruments applicable at material times), MFC, as trustee, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interest of the Mackenzie Canadian Dividend Fund.
88. Pursuant to section 6.4 of the Amended and Restated Declaration of Trust for the Mackenzie Canadian Dividend Fund dated July 31, 1996, as amended and supplemented from time to time (and the equivalent provisions of other Trust Instruments applicable at

material times), MFC, as trustee, has delegated to MFC, as manager, the management of the business and affairs of the Mackenzie Canadian Dividend Fund.

89. Section 8.5 of the Amended and Restated Declaration of Trust for the Mackenzie Canadian Dividend Fund dated July 31, 1996, as amended and supplemented from time to time (and the equivalent provisions of other Trust Instruments applicable at material times) provides for MFC to accept a lower management fee with respect to units of a series of Mackenzie Canadian Dividend Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a “management expense distribution”.
90. Pursuant to section 10(a) of the Current Group G Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, is and was at all material times required to act on a basis which is fair and reasonable and exercise its powers and duties honestly, in good faith and in the best interests of each applicable Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that might be reasonably expected from a prudent manager of a mutual fund.

MANAGEMENT AGREEMENT FOR THE MACKENZIE CORPORATE CLASS MUTUAL FUNDS

91. Pursuant to sections 2, 3 and 4 of the Final Corporate Class Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFCC, on behalf of the Mackenzie Corporate Class Mutual Funds, appointed MFC to manage the Mackenzie Corporate Class Mutual Funds and the assets of the Mackenzie Corporate Class Mutual Funds. MFC was responsible for providing managerial,

supervisory, administrative and investment advisory services to the Mackenzie Corporate Class Mutual Funds.

92. Pursuant to section 2 of the Final Corporate Class Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, was at all material times required to exercise its powers and discharge its duties as manager honestly, in good faith and in the best interests of each Mackenzie Corporate Class Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Section 2 of the Final Corporate Class Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) made MFC, as manager, responsible for any loss arising out of MFC's failure to adhere to the standard of conduct set out in section 2.
93. Pursuant to section 19(b) of the Final Corporate Class Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC, as manager, was at all material times required to comply with the *OSA*, the rules and regulations thereunder, with equivalent legislation of all other provinces and territories where the securities are registered or qualified for sale and with the requirements of the *CSA*, which includes the obligations under section 116 of the *OSA* and/or section 2.1 of NI 81-107.
94. Pursuant to section 9 of the Final Corporate Class Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), MFC was entitled to receive a management fee in respect of the Mackenzie Corporate Class

Mutual Funds as set out in the Final Corporate Class Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times).

MANAGEMENT FEES ON THE MACKENZIE MUTUAL FUNDS

95. MFC, as manager, receives management fees out of the assets of the Mackenzie Mutual Funds. The management fees are calculated as a percentage of the net asset value of each series of each Mackenzie Mutual Fund (which management fees accrue daily and are payable monthly).
96. The payment of management fees to MFC out of the assets of the Mackenzie Mutual Funds reduces the net asset value of the Mackenzie Mutual Funds, which in turn reduces the value of the Securities of the Mackenzie Mutual Funds. As stated in one or more Simplified Prospectuses disseminated by the Defendants in respect of the Mackenzie Mutual Funds, management fees are among the fees and expenses that are paid by such Mackenzie Mutual Funds, “which will therefore reduce the value of your [the investor’s] investment in a Fund.” As stated in one or more Fund Facts Documents disseminated by the Defendants in respect of the Mackenzie Mutual Funds, fund expenses, including management fees, “affect you [the investor] because they reduce the fund’s returns.”
97. As stated in Simplified Prospectuses and Fund Facts Documents prepared by the Defendants to permit the issuance of Securities of the Mackenzie Mutual Funds:
 - (a) MFC can waive all or a portion of the management fees. MFC waived portions of the management fees in respect of certain Mackenzie Mutual Funds during the material time;

- (b) MFC can change the terms of the trailing commission portion of the management fees payable or cancel the trailing commissions it pays at any time; and
- (c) MFC can automatically switch or redesignate the Securities of one series of a Mackenzie Mutual Fund into Securities of another series of the same Mackenzie Mutual Fund.

TRAILING COMMISSIONS AND DISCOUNT BROKERS

- 98. MFC has paid and continues to pay a portion of the management fees that it receives out of the assets of the Mackenzie Mutual Funds to dealers, including Discount Brokers, as trailing commissions. The quantum of the trailing commission payable to a dealer is determined as a percentage of the value of the Securities of the Mackenzie Mutual Funds held by the dealer's clients (which trailing commission is paid monthly or quarterly).
- 99. The payment of management fees, within which the trailing commissions payable to Discount Brokers are embedded, depletes the assets of the Mackenzie Mutual Funds and reduces the value of the Class Members' Securities of those Mackenzie Mutual Funds and thereby diminishes their return on investment in the Mackenzie Mutual Funds.
- 100. Among other dealers, the Mackenzie Mutual Funds are sold through Discount Brokers. Discount Brokers are entities that provide order-execution only services to investors. They are regulated by IIROC as "Dealer Members". Under the IIROC Rules, Discount Brokers apply to IIROC for approval to offer an "order-execution only service", which is defined as "the acceptance and execution of orders from customers for trades that the Dealer Member has not recommended and for which the Dealer Member takes no responsibility as to the appropriateness or suitability of orders accepted or account positions held." Such

approval provides Discount Brokers with an exemption from compliance with IIROC Rules that impose requirements to assess the suitability of a client's orders and account positions. Accordingly, as a condition of the approval provided by IIROC to Discount Brokers to operate their discount brokerage businesses, Discount Brokers are prohibited from providing investment recommendations or advice to clients.

101. The Defendants knew, or ought to have known, that the Unearned Management Fees were being paid to Discount Brokers as trailing commissions, thereby reducing the value of the Class Members' Securities, in circumstances where those trailing commissions were not earned by the Discount Brokers because they are not providing services and advice to the Class Members.
102. The Simplified Prospectuses issued by the Defendants to permit the offering of Securities of the Mackenzie Mutual Funds set out as a *maximum* the annual percentage rates for trailing commissions payable in respect of the Mackenzie Mutual Funds. Class Members are entitled to expect that the Defendants will comply with their duties to the Class Members and will not pay the maximum rate of trailing commission both to dealers that provide full advisory services to their clients and to Discount Brokers who provide no services or advice to their clients. Yet, the trailing commissions paid by the Class Members on each series of the Mackenzie Mutual Funds are identical to the trailing commissions paid on those same series by investors who hold their Mackenzie Mutual Funds through a full-service account.
103. The Defendants never disclosed to the Plaintiff the dollar amount of the trailing commissions paid to the Plaintiff's Discount Broker in respect of the Securities of Mackenzie Mutual Funds held by the Plaintiff.

104. The Defendants continue the practice of paying trailing commissions to Discount Brokers in respect of the Mackenzie Mutual Funds despite criticism of the practice and the imminent prohibition of the practice by regulators.
105. On January 10, 2017, the CSA released CSA Consultation Paper 81-408 – *Consultation on the Option of Discontinuing Embedded Commissions*, which addresses issues relating to mutual fund fees, including the payment of trailing commissions to dealers. In relation to the Canadian mutual fund industry generally, CSA Consultation Paper 81-408 states that, as at December 2015, “data suggests that \$25 billion of the total \$30 billion held in mutual funds in the [discount broker] channel (83%) remains in the full trailing commission paying fund series”. It concludes that “[t]he majority of DIY investors investing in mutual funds pay full trailing commission despite not receiving advice” and “many DIY mutual fund investors in the online/discount brokerage channel indirectly pay for services they do not receive.”
106. In a press release issued on May 8, 2017 entitled “Limit Series A Sales to Channels that Permit Advice: IFIC”, the Investment Funds Institute of Canada, which styles itself as the “voice of Canada’s investment funds industry”, called on regulators to ensure that mutual funds that carry a trailing commission are not sold through the Discount Broker channel.

The press release stated that:

The Investment Funds Institute of Canada (IFIC) is calling on regulators to establish rules to ensure that mutual funds carrying an embedded advisor fee are sold only in channels where advice is permitted.

“Investors who buy funds directly, for example through a discount broker, should be confident that they are not inadvertently overpaying by selecting a series that includes fees for services that are not available through that platform,” says Paul C. Bourque, Q.C., IFIC’s president and CEO.

Series A mutual funds bundle an advice fee within the product. Most companies already provide other series of funds with no or nominal trailer fees that investors can purchase if they are do-it-yourself investors or want to pay for advice separately. The industry's proposal would advance the goal of ensuring that low-trailer or no-trailer funds are available to these types of investors in a more uniform and transparent way.

"IFIC members believe that consumers should be able to choose for themselves the products, services and payment methods that best meet their needs and preferences," Bourque stated. "Today's proposal would help to achieve a goal that the industry shares with our regulators: to ensure that fees are aligned with the services that investors receive. It reflects the industry's commitment to provide Canadian consumers with real and meaningful investment choices."

107. On April 9, 2018, IIROC released its final guidance regarding order-execution only services offered by Discount Brokers. In Notice of Implementation 18-0075 dated April 9, 2018, IIROC stated that Discount Brokers face a conflict of interest by making available on their platforms mutual funds that pay a trailing commission for ongoing advice (*e.g.* Series A mutual funds). The Notice of Implementation stated:

We acknowledge that funds that pay an ongoing trailing commission to registrants (often described as a payment for advice and services provided to the investor by the registrant), and are made available by OEO firms (*e.g.*, a Series A fund), raise a conflict of interest. Under our rules, a Dealer Member must address conflicts of interest considering the best interests of the client or clients.

In the Guidance, we indicate that OEO firms should consider how they will address any compensation-related conflicts when deciding which series (or series equivalent in the case of a PTF) of a fund to make (or not make) available on their platforms. We recognize that many OEO firms have already implemented practices to address this conflict.

We expect that OEO firms will make available, whenever possible, funds that do not pay a trailing commission for ongoing advice (often referred to as a Series D fund).

When a Series D fund is not available (*e.g.*, because a fund family does not offer that type of series) and an OEO firm makes available another series that pays a trailing commission, we also expect the firm to address the conflict by rebating to the client the portion of the trailing commission for ongoing advice, or taking other similar steps.

A large majority of the publically available funds include a trailing commission. Management of the conflicts of interest relating to trailing commissions by OEO firms allows investors continued access to the widest possible range of investments.

108. On June 21, 2018, the CSA released CSA Staff Notice 81-330 – *Status Report on Consultation on Embedded Commissions and Next Steps*, in which the CSA announced its intention to publish rule changes that will prohibit the payment of trailing commissions to, and the solicitation and acceptance of trailing commissions by, dealers who do not make a suitability determination (*e.g.* Discount Brokers) in connection with the distribution of prospectus qualified mutual fund securities. The CSA stated in Staff Notice 81-330 that:

In our view, the fees paid by a vast majority of DIY investors in this channel [*i.e.* the discount brokerage channel] do not appear to align with the execution-only nature of the services they receive. We also observe no justifiable rationale for the practice of paying discount brokerage dealers an ongoing trailing commission for the sale of a mutual fund. For example, other securities including most ETFs are commonly purchased and sold by way of an upfront transaction fee. This ongoing payment may therefore be viewed as one that incentivizes the distribution of mutual funds that pay such an ongoing fee over those that do not (*i.e.* a payment for shelf space), giving rise to a conflict of interest. This is especially the case when the discount brokerage receives the same trailing commission as that of full-service dealers (which rate is typically intended to compensate full service dealers for the costs associated with providing investment advice). Moreover, in our view this fee also limits investor awareness and understanding of the fees associated with the purchase of such products in the discount brokerage channel.

109. Further to the announcement by the CSA on June 21, 2018, on September 13, 2018 the CSA published proposed amendments to securities regulatory instruments that will, when the amendments come into force, prohibit the payment of trailing commissions by fund organizations (which includes mutual fund managers) to dealers who do not make a suitability determination, such as order-execution-only dealers (*i.e.* Discount Brokers). The proposed amendments will prohibit the payment of mutual fund trailing commissions to Discount Brokers in any amount. The CSA stated that fund organizations will need to make available to Discount Brokers a class or series of securities of a mutual fund that does

not pay a trailing commission, which will result in a corresponding reduction in the rate of the management fee charged on that class or series. Existing holdings of mutual funds will also need to be switched to the class or series of securities of the mutual fund that does not pay a trailing commission. The CSA also commented that the prohibition on the payment of trailing commissions by fund organizations to Discount Brokers will eliminate “a longstanding conflict between IFMs [investment fund managers] (who have been reluctant to offer non trailing commission-paying fund series in this channel), online/discount brokerages (who have been satisfied to accept full trailing commission-paying funds), and DIY investors.”

110. On September 17, 2020, the CSA published for adoption final amendments to applicable securities regulatory instruments to prohibit the payment of trailing commissions (of any amount) by fund managers, including the Defendants, to dealers who do not make a suitability determination, including Discount Brokers. The prohibition on the payment of trailing commissions to Discount Brokers will come into force on June 1, 2022.
111. As alluded to in the above-noted press release of the Investment Funds Institute of Canada, some mutual fund families offer a series of their funds, typically called Series D, that is sold only through Discount Brokers. Series D (or similar discount series) pay a lower management fee than traditional retail series (*e.g.* Series A) because they include a reduced trailing commission to partially reflect the fact that “services and advice” are not being provided to investors through a Discount Broker.
112. The Fund Facts Documents that the Defendants have prepared and filed to permit the sale of Series D Securities of the Mackenzie Mutual Funds have acknowledged that advice is not provided to investors in Mackenzie Mutual Funds through Discount Brokers by stating,

until sometime in 2019, that trailing commissions are paid for “services” (not “services and advice”) provided by Discount Brokers to investors.

113. While the Defendants currently offer Series D Securities on most of the Mackenzie Mutual Funds, other series of the Mackenzie Mutual Funds that carry a higher trailing commission have been held, and continue to be held, by Class Members through Discount Brokers. When the Defendants introduced Series D Securities of the Mackenzie Mutual Funds, it failed to advise, permit and/or cause the Class Members to switch their existing Securities into Series D Securities.
114. In any event, the payment of any trailing commissions to Discount Brokers in respect of the Mackenzie Mutual Funds, including on Series D Securities of the Mackenzie Mutual Funds, was in breach of the Defendants’ duties to the Class Members, as pleaded herein.

RIGHTS OF ACTION

Breach of Fiduciary Duty

115. The Plaintiff asserts this right of action on his own behalf and on behalf of the Unitholder Class Members against MFC as the trustee and manager of the Mackenzie Trust Mutual Funds.
116. The Plaintiff asserts this right of action on his own behalf and on behalf of the Shareholder Class Members against MFC as the manager of the Mackenzie Corporate Class Mutual Funds.
117. As trustee of each of the Mackenzie Trust Mutual Funds, MFC is, and was at all material times, in a fiduciary relationship with the Unitholder Class Members and owes, or owed at the material times, fiduciary duties to the Unitholder Class Members.

118. As manager of each of the Mackenzie Trust Mutual Funds, MFC is, and was at all material times, a trustee *de son tort* of the Mackenzie Trust Mutual Funds. Pursuant to the Management Agreements and the Trust Instruments applicable to the Mackenzie Trust Mutual Funds, MFC at all material times undertook full responsibility for the administration of the day-to-day business and affairs of each Mackenzie Trust Mutual Fund. To carry out that responsibility as manager, MFC has possession and/or control of the property of the Mackenzie Trust Mutual Funds and administers that property. As trustee *de son tort* of each of the Mackenzie Trust Mutual Funds, MFC is, and was at all material times, in a fiduciary relationship with the Unitholder Class Members and owes, or owed at the material times, fiduciary duties to the Unitholder Class Members. As a trustee *de son tort* of the Mackenzie Trust Mutual Funds, MFC also has or had an obligation to abide by the duties and obligations of the trustee set out in the Trust Instruments.
119. Further or in the alternative, as manager of each of the Mackenzie Mutual Funds, MFC has significant discretion, power or control in relation to the business and affairs of the Mackenzie Mutual Funds and the assets of the Mackenzie Mutual Funds. MFC can unilaterally exercise that discretion, power or control so as to affect the Class Members' legal or substantial practical interests, including the Class Members' financial interests arising from their ownership of Securities of the Mackenzie Mutual Funds, the value of which are tied to the value of the assets of the Mackenzie Mutual Funds. The Class Members are particularly vulnerable to MFC holding that discretion, power or control as manager of the Mackenzie Mutual Funds.
120. MFC as manager has expressly or impliedly undertaken to act in the best interests of the Class Members, including as follows:

- (a) by the standard of care imposed on MFC as manager under the Management Agreements and under section 116 of the *OSA* and/or section 2.1 of NI 81-107; and
- (b) MFC is a signatory to the United Nations supported Principles for Responsible Investment, pursuant to which MFC (under the brand name “Mackenzie Investments”), signed a declaration in which it acknowledges its “duty to act in the best long-term interests of our beneficiaries” and affirmed its “fiduciary role” and “fiduciary responsibilities”.

121. Accordingly, as manager of each of the Mackenzie Mutual Funds, MFC is, and was at all material times, in a fiduciary relationship with the Class Members and owes, or owed at the material times, fiduciary duties to the Class Members.

122. By its acts and omissions, MFC has breached its fiduciary duties to the Class Members. MFC’s breaches include (without limitation):

- (a) paying and/or receiving the Unearned Management Fees out of the assets of the Mackenzie Mutual Funds;
- (b) failing to preserve the property of the Mackenzie Mutual Funds;
- (c) failing to maximize the value of the Securities of the Mackenzie Mutual Funds;
- (d) paying the Unearned Management Fees to the Discount Brokers for no purpose;
- (e) failing to ascertain the nature of any services being provided by Discount Brokers to the Class Members and to ascribe a reasonable value to those services, to ensure that the assets of the Mackenzie Mutual Funds are being used for proper purposes and in a reasonable amount;

- (f) failing to impose an obligation on Discount Brokers to provide particular services to Class Members in consideration for the trailing commissions;
- (g) failing to conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers are providing particular services to Class Members in respect of the Mackenzie Mutual Funds;
- (h) failing to conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers use or apply the trailing commissions for the purpose of providing particular services to Class Members in respect of the Mackenzie Mutual Funds;
- (i) permitting series of the Mackenzie Mutual Funds carrying a trailing commission to be acquired and/or held through Discount Brokers;
- (j) failing to create and make available to Class Members through Discount Brokers a series of the Mackenzie Mutual Funds that carries no trailing commission;
- (k) failing to advise, permit and/or cause Class Members to re-designate or switch their Securities of the Mackenzie Mutual Funds into a series of the Mackenzie Mutual Funds that carries no trailing commission;
- (l) in the alternative to paragraphs 122(i) to 122(k):
 - (i) permitting non-Series D (or similar discount series) Securities of the Mackenzie Mutual Funds to be acquired and/or held through Discount Brokers;

- (ii) failing to create and make available to Class Members through Discount Brokers Series D (or similar discount series) Securities of all of the Mackenzie Mutual Funds; and
- (iii) failing to advise, permit and/or cause Class Members to re-designate or switch their non-Series D Securities of the Mackenzie Mutual Funds into Series D (or similar discount series) Securities of the Mackenzie Mutual Funds;
- (m) acting in a conflict of interest by simultaneously acting as both the trustee and the manager of the Mackenzie Trust Mutual Funds, and thus paying the Unearned Management Fees to itself and negotiating the Management Agreements for the Mackenzie Trust Mutual Funds and management fees with itself;
- (n) acting in a conflict of interest by paying trailing commissions to Discount Brokers for its own benefit, effectively as a marketing expense to secure access to the Discount Brokers' clients, resulting in increased management fees for MFC as the assets of Mackenzie Mutual Funds grow through new investment capital from the Discount Broker platforms;
- (o) acting in a conflict between its own interests and the interests of the Class Members by failing to make available to Class Members holding Mackenzie Mutual Funds through Discount Brokers a series of the Mackenzie Mutual Funds that pays no trailing commission, or alternatively a reduced trailing commission, because of a concern that it would adversely affect the distribution of Mackenzie Mutual Funds through the full-service or advisory distribution channels and thereby reduce MFC's management fees;

- (p) failing to pay and/or accept a management fee reduced by the amount of the Unearned Management Fees and distributing (rebating) that amount to the Class Members as a “management expense distribution”;
- (q) failing to waive payment of the Unearned Management Fees;
- (r) failing to reduce trailing commissions paid or cancel the trailing commissions program with respect to Discount Brokers; and
- (s) MFC, as trustee of the Mackenzie Trust Mutual Funds, failing to adequately supervise MFC, as manager of the Mackenzie Trust Mutual Funds, and failing to prevent and/or rectify the misconduct of MFC, as manager of the Mackenzie Trust Mutual Funds, as particularized herein, in breach of the manager’s standard of care set out in the Management Agreements applicable to the Mackenzie Trust Mutual Funds and section 116 of the *OSA* and/or section 2.1 of NI 81-107.

123. The Plaintiff and the other Class Members have suffered loss and damage as a result of MFC’s breach of fiduciary duty as particularized herein.

Breach of Trust

124. The Plaintiff asserts this right of action on his own behalf and on behalf of the Unitholder Class Members against MFC as the trustee of the Mackenzie Trust Mutual Funds.

125. Under the Trust Instruments governing the Mackenzie Trust Mutual Funds, MFC, as trustee of the Mackenzie Trust Mutual Funds, has and had at all material times a duty to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each Mackenzie Trust Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

126. The duty under the Trust Instruments is a duty to act honestly, in good faith and in the best interests of the Unitholder Class Members and the other unitholders of the Mackenzie Trust Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. That duty is enforceable by the Unitholder Class Members and breaches of that duty are actionable by the Unitholder Class Members.
127. Alternatively, the duty under the Trust Instruments includes a duty to act honestly, in good faith and in the best interests of the Unitholder Class Members and the other unitholders of the Mackenzie Trust Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. That duty is enforceable by the Unitholder Class Members and breaches of that duty are actionable by the Unitholder Class Members.
128. Alternatively, the duty under the Trust Instruments is a duty to act honestly, in good faith and in the best interests of the Mackenzie Trust Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. The Mackenzie Trust Mutual Funds are trust relationships between MFC and the unitholders in respect of property held for the benefit of the unitholders. Any breach of the duty to the Mackenzie Trust Mutual Funds causes direct loss and damage to the Unitholder Class Members and the other unitholders of the Mackenzie Trust Mutual Funds. That duty is enforceable by the Unitholder Class Members and breaches of that duty are actionable by the Unitholder Class Members.

129. By its acts and omissions, including (without limitation) its acts and omissions set out in paragraph 122 hereof, MFC, as trustee of the Mackenzie Trust Mutual Funds, has breached its duty under the Trust Instruments and committed a breach of trust.
130. The Mackenzie Trust Mutual Funds, the Plaintiff and the other Unitholder Class Members have suffered loss and damage as a result of MFC's breach of trust as particularized herein.

Breach of Contract

131. The Plaintiff asserts this right of action on his own behalf and on behalf of all Class Members against MFC as the manager of the Mackenzie Mutual Funds.
132. Under the Management Agreements, MFC, as manager of the Mackenzie Mutual Funds, has and had at all material times a duty to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each Mackenzie Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent manager would exercise in comparable circumstances (the "**Manager's Standard of Care**"). The Management Agreements make MFC responsible for any loss that arises out of its failure to act in accordance with the Manager's Standard of Care.
133. Under the Management Agreements, MFC, as manager of the Mackenzie Mutual Funds, is and was at all material times required to comply with the *OSA*, the rules and regulations thereunder, with equivalent legislation of all other provinces and territories where the securities are registered or qualified for sale and with the requirements of the CSA, which includes the obligations under section 116 of the *OSA* and/or section 2.1 of NI 81-107 (the "**Manager's Compliance with Law Duty**").

134. The Plaintiff and the other Class Members are third party beneficiaries of the Management Agreements and, in particular, the Manager's Standard of Care and the Manager's Compliance with Law Duty contained therein.
135. The Management Agreements, and the Manager's Standard of Care and the Manager's Compliance with Law Duty contained therein, explicitly or implicitly evidence an intention to extend the benefit of those provisions to the Class Members.
136. The Manager's Standard of Care and the Manager's Compliance with Law Duty in the Management Agreements are for the protection and benefit of the holders of the Mackenzie Mutual Funds. They are intended to ensure that the manager acts in accordance with a minimum standard of care and complies with the law in administering the business and affairs of the Mackenzie Mutual Funds and dealing with the property of the Mackenzie Mutual Funds that is held for the benefit of the holders of the Mackenzie Mutual Funds, and that the manager is accountable for any loss that arises if the manager does not comply with the Manager's Standard of Care.
137. Further, the holders of the Mackenzie Mutual Funds are intended beneficiaries of the Manager's Standard of Care and the Manager's Compliance with Law Duty in the Management Agreements as they have the only realistic interest in enforcing those provisions against the manager. MFC is both trustee and manager of the Mackenzie Trust Mutual Funds. MFC will not realistically seek recovery against itself for breaches of the Management Agreements in respect of the Mackenzie Trust Mutual Funds. Similarly, MFC and MFCC are affiliates of each other, and MFCC will not realistically seek recovery against MFC for breaches of the Management Agreements in respect of the Mackenzie Corporate Class Mutual Funds.

138. By its acts and omissions, including (without limitation) the acts and omissions set out in paragraph 122 hereof, MFC, as manager, has breached the Manager's Standard of Care in the Management Agreements and is responsible for the losses arising from the breach. MFC's acts and omissions fall within the scope of the Manager's Standard of Care and provisions dealing with liability for losses in the Management Agreements.
139. By its acts and omissions, including (without limitation) the acts and omissions set out in paragraph 122 hereof, MFC, as manager, has breached section 116 of the *OSA* and/or section 2.1 of NI 81-107 and therefore breached the Manager's Compliance with Law Duty in the Management Agreements. MFC's acts and omissions fall within the scope of the Manager's Compliance with Law Duty.
140. Alternatively, the Plaintiff and the other Class Members seek recovery from MFC, as manager of the Mackenzie Trust Mutual Funds, for breach of contract on the basis of the cause of action accruing to MFC, as trustee of the Mackenzie Trust Mutual Funds.
141. MFC, as trustee, has failed and/or refused to take steps to enforce MFC's compliance, as manager, with the Management Agreements for the Mackenzie Trust Mutual Funds and/or seek compensation for breaches thereof.
142. There are special circumstances justifying the Plaintiff and the other Unitholder Class Members making a claim against MFC, including, among other things, that:
- (a) MFC is both the trustee and the manager of the Mackenzie Trust Mutual Funds. MFC will not realistically seek recovery against itself for breaches of the Management Agreements for the Mackenzie Trust Mutual Funds. It is, therefore,

impossible or difficult for MFC, as trustee, to seek recovery from MFC, as manager;

- (b) MFC, as trustee, colluded with MFC, as manager, to pay and receive the Unearned Management Fees;
- (c) the Plaintiff and the other Unitholder Class Members seek recovery of trust property in the form of the Unearned Management Fees; and
- (d) MFC, as trustee, has failed to protect the beneficiaries in that it paid the Unearned Management Fees to MFC, as manager, and failed to take steps to recover compensation for MFC's contractual breaches as manager.

143. The Plaintiff and the other Class Members have suffered loss and damage as a result of MFC's acts or omissions.

Disallowance of Improper Expenses under Section 23.1 of the Trustee Act

144. The Plaintiff asserts this right of action on his own behalf and on behalf of the Unitholder Class Members against MFC as the trustee of the Mackenzie Trust Mutual Funds.

145. The Unearned Management Fees are expenses paid by MFC from the trust property of the Mackenzie Trust Mutual Funds.

146. The expenses are not properly incurred in carrying out the trust because they are on account of trailing commissions paid or payable to Discount Brokers, and such trailing commissions are not properly paid or payable to Discount Brokers because the Discount Brokers do not provide services or advice to the Unitholder Class Members.

147. The payment of the expenses ought to be disallowed pursuant to section 23.1(2) of the *Trustee Act* (and, if necessary, the equivalent provisions of comparable Canadian legislation).

Prospectus Misrepresentation

148. The Plaintiff asserts the right of action for prospectus misrepresentation in section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation) on his own behalf and on behalf of the Unitholder Class Members against MFC as the trustee and manager of the Mackenzie Trust Mutual Funds.
149. The Plaintiff asserts the right of action for prospectus misrepresentation in section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation) on his own behalf and on behalf of the Shareholder Class Members against MFCC as the issuer of the Mackenzie Corporate Class Mutual Funds and against MFC as the manager of the Mackenzie Corporate Class Mutual Funds.
150. The Defendants have prepared, filed and disseminated Simplified Prospectuses and, since January 1, 2011, Fund Facts Documents, to permit the continuous offering to the public of Securities of the Mackenzie Mutual Funds.
151. The Fund Facts Documents are incorporated by reference into the relevant Simplified Prospectuses and form part of those Simplified Prospectuses.
152. Pursuant to section 56(1) of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation), the Simplified Prospectuses are and were required to provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed under the Simplified Prospectuses.

153. The Simplified Prospectuses are prospectuses for the purposes of section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
154. The Fund Facts Documents prepared, filed and disseminated by the Defendants in respect of the Mackenzie Mutual Funds (other than Fund Facts Documents for Series D Securities of the Mackenzie Mutual Funds for a period of time) have contained at all material times a common statement that trailing commissions are paid to dealers for the “services and advice” provided by those dealers to their clients.
155. That common statement is a misrepresentation within the meaning of the *OSA* (and, if necessary, the Other Canadian Securities Legislation). It falsely represents that trailing commissions are only paid to dealers that provide services and advice to investors, whereas in fact trailing commissions are also paid to Discount Brokers even though they do not provide services or advice to their clients. The statement is, and was at all material times, material to the Class Members.
156. The Defendants certified and signed the Simplified Prospectuses as required by NI 81-101 and Form 81-101F2, and are liable pursuant to section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
157. Until sometime in 2019, the Fund Facts Documents for Series D Securities of the Mackenzie Mutual Funds referred to “services” rather than “services and advice”. During that period, the Defendants continued to represent that trailing commissions were paid for “services and advice” in Fund Facts Documents for other series of the Mackenzie Mutual Funds that were held through Discount Brokers. The language of the Fund Facts Documents for Series D Securities of the Mackenzie Mutual Funds was then changed to “services and advice” sometime in 2019. By making the earlier amendment to the Fund

Facts Documents for Series D Securities of the Mackenzie Mutual Funds to refer to “services” rather than “services and advice”, the Defendants have acknowledged that the reference to “services and advice” in the Fund Facts Documents is and was false, misleading and/or inaccurate in respect of Mackenzie Mutual Funds held through Discount Brokers.

158. The offering of Securities of the Mackenzie Mutual Funds to which the Simplified Prospectuses and Fund Facts Documents related constituted distributions of the Securities in Ontario and/or distributions of Securities from Ontario to persons outside of Ontario. The offering was governed by the *OSA* and its subsidiary instruments and regulations, and was carried out under Ontario securities laws.
159. The Plaintiff and the other Class Members have suffered loss and damage as a result of the Defendants’ acts and omissions as particularized herein.

Relief from Oppression

160. The Plaintiff asserts this right of action on his own behalf and on behalf of the Shareholder Class Members against the Defendants.
161. MFCC is a corporation incorporated under the *OBCA*.
162. At all material times, MFC has owned all of the outstanding common shares of MFCC. MFC is an affiliate of MFCC.
163. The Plaintiff and the other Shareholder Class Members are complainants within the meaning of sections 245 and 248 of the *OBCA*.
164. The Plaintiff and the other Shareholder Class Members had reasonable expectations about the manner in which the business and affairs of the Defendants would be conducted. The

reasonable expectations of the Plaintiff and the other Shareholder Class Members included that:

- (a) the assets of each Mackenzie Corporate Class Mutual Fund would be used for proper purposes;
- (b) the Shareholder Class Members would be treated fairly by the Defendants, including that a Shareholder Class Member holding a series of a Mackenzie Corporate Class Mutual Fund would be treated fairly vis-à-vis all other persons holding that series of the relevant Mackenzie Corporate Class Mutual Fund, and the value of their Securities would not be unnecessarily diminished;
- (c) the Defendants would enter into commercially reasonable agreements; and
- (d) the Fund Facts Documents and the Simplified Prospectuses issued in respect of the Mackenzie Corporate Class Mutual Funds would provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed under the Simplified Prospectuses, and would not contain any misrepresentations.

165. Those reasonable expectations arose in part from the statutes governing the Defendants' formation and internal governance, applicable securities laws, and the disclosure documents for the Mackenzie Corporate Class Mutual Funds.

166. The Defendants acted in a manner contrary to the reasonable expectations of the Plaintiff and the other Shareholder Class Members by, among other things:

- (a) entering into agreements to pay the Unearned Management Fees and paying the Unearned Management Fees out of the assets of the Mackenzie Corporate Class

Mutual Funds when it knew that the Unearned Management Fees would be disbursed to the Discount Brokers for no purpose;

- (b) treating the Shareholder Class Members unfairly by requiring them to pay, directly or indirectly, a trailing commission to a Discount Broker in circumstances where the Shareholder Class Member is not receiving services or advice from the Discount Broker;
- (c) treating a Shareholder Class Member holding a series of a Mackenzie Corporate Class Mutual Fund through a Discount Broker unfairly vis-à-vis persons holding that series of the Mackenzie Corporate Class Mutual Fund through a distribution channel other than a Discount Broker, by requiring the Shareholder Class Member holding through a Discount Broker to pay, directly or indirectly, the same trailing commission as the other persons in circumstances where the Shareholder Class Member is not receiving services or advice from the Discount Broker, whereas the other persons are receiving services and advice from their dealers; and
- (d) issuing Fund Facts Documents that contained misrepresentations, as particularized herein.

167. The conduct of the Defendants was oppressive and unfairly prejudicial to the Plaintiff and the other Shareholder Class Members, and unfairly disregarded their interests.

168. The Plaintiff and the other Shareholder Class Members have suffered loss and damage as a result of the Defendants' acts and omissions as particularized herein.

169. The Plaintiff and the other Shareholder Class Members seek relief pursuant to section 248 of the *OBCA*, including compensation for the loss and damage that they have suffered.

DAMAGE SUFFERED BY THE CLASS MEMBERS

170. The Mackenzie Mutual Funds, the Plaintiff and the other Class Members have suffered loss and damage as a result of the Defendants' acts and omissions particularized herein.
171. As a result of the payment of the Unearned Management Fees out of the assets of the Mackenzie Mutual Funds, the value of the assets of the Mackenzie Mutual Funds has been significantly reduced.
172. As a result of the payment of the Unearned Management Fees out of the assets of the Mackenzie Mutual Funds, there has been a significant reduction in the value of the Securities of the Mackenzie Mutual Funds held by the Class Members and/or the value of the distributions received by the Class Members on their Securities of the Mackenzie Mutual Funds (whether received in cash or reinvested in additional Securities).
173. The Plaintiff and the other Class Members have also suffered loss and damage as a result of the loss of opportunity to earn a reasonable return on investment if the Unearned Management Fees had not been paid out of the assets of the Mackenzie Mutual Funds.
174. The Defendants knew, or ought to have known, that as a result of their acts and omissions particularized herein, the Class Members would suffer loss and damage.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

175. The Plaintiff pleads that this action has a real and substantial connection with Ontario because, among other things:
- (a) the Plaintiff is resident in Ontario;
 - (b) each of MFC and MFCC is domiciled in Ontario;

- (c) each of MFC and MFCC carries on business in Ontario;
- (d) each of the Mackenzie Mutual Funds is, or was at material times, a reporting issuer in Ontario;
- (e) each of the Mackenzie Trust Mutual Funds is formed pursuant to Trust Instruments governed by the law of Ontario;
- (f) the Simplified Prospectuses and Fund Facts Documents referred to herein were disseminated in Ontario;
- (g) a substantial portion of the Class Members reside in Ontario; and
- (h) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

RELEVANT LEGISLATION

176. The Plaintiff pleads and relies on the *CJA*, the *CPA*, the *Trustee Act*, the *OSA* (and, if necessary, the Other Canadian Securities Legislation) and the *OBCA*.

PLACE OF TRIAL

177. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

December 6, 2018

SISKINDS LLP
275 Dundas Street, Unit 1

London, ON N6B 3L1

Michael G. Robb (LSO#: 45787G)
Tel: 519-660-7872
Fax: 519-660-7873
Email: michael.robb@siskinds.com

Garett M. Hunter (LSO#: 71800D)
Tel: 519-660-7802
Fax: 519-660-7803
Email: garett.hunter@siskinds.com

Gigi Pao (LSO#:80151M)
Tel: 226-636-1615
Email: gigi.pao@siskinds.com

SISKINDS LLP
165 Queen Street W Suite 1155
Toronto, ON M5H 2M5

Anthony O'Brien (LSO#: 56129U)
Tel: 416-594-4394
Fax: 519-672-6065
Email: anthony.obrien@siskinds.com

Lawyers for the Plaintiff

SCHEDULE "A"
MACKENZIE TRUST MUTUAL FUNDS

1. Mackenzie All China Equity Fund
2. Mackenzie Balanced ETF Portfolio
3. Mackenzie Canadian Bond Fund
4. Mackenzie Canadian Money Market Fund
5. Mackenzie Canadian Short Term Income Fund
6. Mackenzie Conservative ETF Portfolio
7. Mackenzie Conservative Income ETF Portfolio
8. Mackenzie Corporate Bond Fund
9. Mackenzie Cundill International Fund
10. Mackenzie Diversified Alternatives Fund
11. Mackenzie Emerging Markets Fund
12. Mackenzie Emerging Markets Large Cap Fund
13. Mackenzie Emerging Markets Small Cap Fund
14. Mackenzie Floating Rate Income Fund
15. Mackenzie Global Credit Opportunities Fund
16. Mackenzie Global Environmental Equity Fund
17. Mackenzie Global Equity Income Fund
18. Mackenzie Global Inflation-Linked Fund
19. Mackenzie Global Leadership Impact Fund
20. Mackenzie Global Strategic Income Fund
21. Mackenzie Global Sustainability and Impact Balanced Fund
22. Mackenzie Global Tactical Bond Fund
23. Mackenzie Global Tactical Investment Grade Bond Fund
24. Mackenzie Growth ETF Portfolio
25. Mackenzie Growth Fund
26. Mackenzie High Diversification Emerging Markets Equity Fund

27. Mackenzie High Diversification European Equity Fund
28. Mackenzie High Diversification Global Equity Fund
29. Mackenzie High Diversification International Equity Fund
30. Mackenzie High Diversification US Equity Fund
31. Mackenzie Income Fund
32. Mackenzie International Dividend Fund
33. Mackenzie Investment Grade Floating Rate Fund
34. Mackenzie Moderate Growth ETF Portfolio
35. Mackenzie Monthly Income Balanced Portfolio
36. Mackenzie Monthly Income Conservative Portfolio
37. Mackenzie Multi-Strategy Absolute Return Fund
38. Mackenzie North American Corporate Bond Fund
39. Mackenzie Private Canadian Focused Equity Pool
40. Mackenzie Private Global Conservative Income Balanced Pool
41. Mackenzie Private Global Equity Pool
42. Mackenzie Private Global Fixed Income Pool
43. Mackenzie Private Global Income Balanced Pool
44. Mackenzie Private Income Balanced Pool
45. Mackenzie Private US Equity Pool
46. Mackenzie Sovereign Bond Fund
47. Mackenzie Strategic Bond Fund
48. Mackenzie Strategic Income Fund
49. Mackenzie Unconstrained Fixed Income Fund
50. Mackenzie USD Global Strategic Income Fund
51. Mackenzie USD Global Tactical Bond Fund
52. Mackenzie USD Ultra Short Duration Income Fund
53. Mackenzie US Dividend Fund
54. Mackenzie US Dividend Registered Fund

55. Mackenzie US Small Cap Fund
56. Mackenzie US Strategic Income Fund
57. Mackenzie Cundill Canadian Balanced Fund
58. Mackenzie Cundill Canadian Security Fund
59. Mackenzie Cundill Value Fund
60. Mackenzie Canadian Growth Balanced Fund
61. Mackenzie Canadian Growth Fund
62. Mackenzie Canadian Resource Fund
63. Mackenzie Global Equity Fund
64. Mackenzie Global Dividend Fund
65. Mackenzie Ivy International Fund
66. Mackenzie Canadian All Cap Dividend Fund
67. Mackenzie Canadian All Cap Value Fund
68. Mackenzie Canadian Small Cap Fund
69. Mackenzie Global Small Cap Fund
70. Mackenzie Ivy Canadian Balanced Fund
71. Mackenzie Ivy Canadian Fund
72. Mackenzie Ivy Foreign Equity Fund
73. Mackenzie Ivy Global Balanced Fund
74. Symmetry Balanced Portfolio
75. Symmetry Conservative Income Portfolio
76. Symmetry Conservative Portfolio
77. Symmetry Fixed Income Portfolio
78. Symmetry Growth Portfolio
79. Symmetry Moderate Growth Portfolio
80. Symmetry Canadian Bond Fund
81. Symmetry Canadian Equity Fund
82. Symmetry Global Bond Fund

83. Mackenzie Emerging Markets Opportunities Fund
84. Symmetry Low Volatility Fund
85. Symmetry EAFE Equity Fund
86. Symmetry US Equity Fund
87. Symmetry Comprehensive Equity Fund
88. Mackenzie Canadian Balanced Fund
89. Mackenzie Canadian Large Cap Dividend Fund
90. Mackenzie US All Cap Growth Fund

SCHEDULE "B"
MACKENZIE CORPORATE CLASS MUTUAL FUNDS

1. Mackenzie Strategic Income Class
2. Mackenzie Canadian Growth Balanced Class
3. Mackenzie Ivy Canadian Balanced Class
4. Mackenzie Ivy Global Balanced Class
5. Mackenzie Canadian All Cap Dividend Class
6. Mackenzie Canadian All Cap Value Class
7. Mackenzie Canadian Growth Class
8. Mackenzie Canadian Large Cap Dividend Class
9. Mackenzie Canadian Small Cap Class
10. Mackenzie Cundill Canadian Security Class
11. Mackenzie Cundill US Class
12. Mackenzie US Growth Class
13. Mackenzie US Mid Cap Growth Class
14. Mackenzie US Mid Cap Growth Currency Neutral Class
15. Mackenzie Cundill Value Class
16. Mackenzie Emerging Markets Class
17. Mackenzie Global Growth Class
18. Mackenzie Global Small Cap Class
19. Mackenzie Ivy European Class
20. Mackenzie Ivy Foreign Equity Class
21. Mackenzie Ivy Foreign Equity Currency Neutral Class
22. Mackenzie Ivy International Class
23. Mackenzie Global Resource Class
24. Mackenzie Gold Bullion Class
25. Mackenzie Precious Metals Class
26. Symmetry Balanced Portfolio Class

27. Symmetry Conservative Income Portfolio Class
28. Symmetry Conservative Portfolio Class
29. Symmetry Equity Portfolio Class
30. Symmetry Growth Portfolio Class
31. Symmetry Moderate Growth Portfolio Class
32. Mackenzie High Diversification Canadian Equity Class
33. Mackenzie Private Canadian Focused Equity Pool Class
34. Mackenzie Private Global Equity Pool Class
35. Mackenzie Private Income Balanced Pool Class
36. Mackenzie Private US Equity Pool Class

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**SECOND FRESH AS AMENDED STATEMENT OF
CLAIM**

Siskinds LLP

Barristers & Solicitors
275 Dundas Street, Unit 1
London, ON N6B 3L1

Michael G. Robb (LSO#: 45787G)

Garett M. Hunter (LSO#: 71800D)

Gigi Pao (LSO#:80151M)

Tel: 519-660-7872

Fax: 519-660-7873

65 Queen Street West, Suite 1155

Toronto, ON M5H 2M5

Anthony O'Brien (LSO#: 56129U)

Tel: 416-594-4394

Fax: 519-672-6065

Lawyers for the Plaintiff

SCHEDULE "B"
LITIGATION PLAN

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHEN POZGAJ

Plaintiff

- and -

MACKENZIE FINANCIAL CORPORATION
and MACKENZIE FINANCIAL CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

LITIGATION PLAN

Pursuant to section 5(1)(e)(ii) of the *Class Proceedings Act, 1992* (“**CPA**”), the Plaintiff proposes that this Litigation Plan be followed with respect to these proceedings, subject to the Court’s approval.

INTERPRETATION

1. This Litigation Plan is subject to, and should be read in conjunction with, the stay order of Justice Akbarali dated August 1, 2023 made in the action styled *Ciardullo v. 1832 Asset Management et al.*, Court File No. CV-22-00684723-00CP.

DEFINED TERMS

2. Capitalized terms that are not defined in this litigation plan (“**Plan**”) have the meanings attributed to them in the proposed Second Fresh as Amended Statement of Claim.

REPORTING AND COMMUNICATION

3. Siskinds LLP (“**Class Counsel**”) has posted information about the nature and status of this action on its website, <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/> (“**Website**”). That information will be updated regularly. Copies of important, publicly available court documents, court decisions, notices, documentation, and other information relating to the action are or will be accessible on the Website.
4. The Website also contains a communication webpage, a feature that permits putative Class Members to submit inquiries to Class Counsel, which are sent directly to a designated member of the Class Counsel team, who will promptly respond.

DOCUMENT MANAGEMENT

5. Class Counsel will use data management systems to organize, code, and manage the documents produced by the Defendants and all relevant documents in the Plaintiff’s possession. The agreement of the Defendants’ counsel will be sought to facilitate the electronic exchange of documents. Once the volume of documents to be produced in this action is determined, Class Counsel may retain the services of a third-party document management firm for assistance.
6. Kalloghlian Myers LLP, as counsel to the plaintiff in the 2022 Action, shall, on a go-forward basis until the stay is lifted in the 2022 Action, provided that the 2022 Action has not been settled, discontinued or finally dismissed, will be provided with a copy of all affidavits of documents, productions, transcripts of examination for discovery, motion materials, and transcripts of cross-examinations in this proceeding, with Kalloghlian Myers LLP and the plaintiff in the 2022 Action being subject to the deemed undertaking rule and only permitted

to use any such materials for purposes of observing the progress of the 2018 Action and preserving the rights of the plaintiff in the 2022 Action.

LITIGATION SCHEDULE

7. Absent agreement among counsel, the Plaintiff will ask the Court to set a litigation schedule for the remaining steps in the action.
8. From time to time, the Plaintiff or Defendants may ask that the litigation schedule be amended.

RESOURCES AND EXPERTISE

9. The Plaintiff has retained Class Counsel as his counsel in this action. Class Counsel has the experience, resources and expertise to prosecute this action on behalf of the Class.

MEDIATION

10. The Plaintiff will participate in a mediation if the Defendants are prepared to do so. If the parties reach a proposed settlement of the action and the court approves the settlement, this Plan will require amendment.

NOTICE OF CERTIFICATION AND OPT OUT PROCEDURE

11. Notice of certification (“**Certification Notice**”) will be circulated to advise Class Members, among other things, that:
 - a. the Court certified the action as a class proceeding;
 - b. a person may only opt out of the class proceeding by sending a written opt out election to the recipient designated by the Court, before a date and time fixed by the Court;

- c. a person may not opt out of the class proceeding after the date fixed by the Court;
and
 - d. if the common issues are resolved in favour of the Class, claimants may be required to register, file a claim and submit documentation to a designated person in order to be entitled to any compensation.
12. The Certification Notice, in a form approved by the Court, will be distributed and published in the following manner:
- a. posted by Class Counsel on the Website, in English and French;
 - b. provided by Class Counsel to any person who requests it;
 - c. posted by the Defendants on SEDAR;
 - d. disseminated as a press release in Canada across Canada Newswire (in English and French);
 - e. published once in the business section of the national edition of *The Globe and Mail*, in English;
 - f. published once in the business section of *La Presse*, in French;
 - g. published as an internet Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days; and
 - h. sent electronically and/or in paper form to appropriate broker/dealers in Canada, with a cover letter requesting that they bring the Certification Notice to the attention of their clients who may be Class Members.

13. The Plaintiff will appoint an independent person to receive the opt out notices and report to the court the names and addresses of the persons who opt out by the date fixed by the court.
14. The Plaintiff will pay the costs in the first instance, reserving the right to seek recovery of these costs from the Defendants by order of the judge presiding at the common issues trial.

REFINEMENT OF COMMON ISSUES

15. Following the completion of discovery, the parties may seek an amendment of the order certifying this action to deal with any necessary refinements to the common issues.

TRIAL OR SUMMARY JUDGMENT ON THE COMMON ISSUES

16. The common issues will be determined in two phases in accordance with the stay order dated August 1, 2023 made in the 2022 Action.
17. If appropriate, the Plaintiff or Defendants may seek summary judgment on one or more common issues.
18. The Plaintiff will ask the Court to hold the hearing on the merits (whether a motion for summary judgment or common issues trial) no later than one (1) year after the completion of the examinations for discovery and the production of information required by undertakings and any motions.

INDIVIDUAL CLASS MEMBER PARTICIPATION AFTER JUDGMENT ON THE COMMON ISSUES

19. Once the common issues have been determined, the parties will bring a motion to the Court for directions as to the process to be employed to determine any individual issues that remain.

MOTION FOR DIRECTIONS

20. Class Counsel and the Defendants may apply at any time to the court for directions.

CLASS COUNSEL'S FEES AND THE COSTS OF ADMINISTRATION

21. After the trial of the common issues or summary judgment, the Plaintiff will ask the court to approve an agreement respecting fees and disbursements between him and Class Counsel. To the extent that the approved Class Counsel's fees, disbursements and applicable taxes are not completely paid by the costs recovered from the Defendants, the Plaintiff will ask the court to order that the unpaid balance be a first charge on any recovery either by way of aggregate or individual assessment.
22. If the court awards damages in the aggregate, Class Counsel will ask the court to order payment of their fees, disbursements and applicable taxes as a first charge on the aggregate amount.
23. If the court does not award damages in the aggregate and requires the Class Members to prove their damages through individual assessments, Class Counsel will ask the court to order payment of their fees, disbursements and applicable taxes as a first charge on the awards made at individual assessments.

24. FURTHER ORDERS CONCERNING THIS PLAN

25. This Plan may be amended from time to time by directions given at case conferences or by further order of the Court.

26. EFFECT OF THIS PLAN

27. This Plan shall be binding on all Class Members who do not opt out in accordance with the procedure directed by the Court whether or not they make a claim under the Plan.

SCHEDULE "C"
LONG-FORM NOTICE

**MACKENZIE MUTUAL FUNDS CLASS ACTION
REGARDING TRAILING COMMISSIONS PAID TO DISCOUNT BROKERS**

NOTICE OF CERTIFICATION AND OPT-OUT DEADLINE

Read this notice carefully as it may affect your legal rights

This notice is to certain investors in the units or shares of Mackenzie Mutual Funds other than certain persons and entities associated with the defendants, further described below.

THE CERTIFICATION ORDER

By Order dated [date], the Ontario Superior Court of Justice (“**Court**”) has certified *Stephen Pozgaj v Mackenzie Financial Corporation and Mackenzie Financial Capital Corporation*, File No. CV-18-00610311-00CP (“**Class Action**”) as a class proceeding pursuant to the Ontario *Class Proceedings Act, 1992*. The Court has appointed Stephen Pozgaj as the representative plaintiff for the class defined as follows (“**Class**” and “**Class Members**”):

All persons, wherever they may reside or be domiciled, who held or hold units of a Mackenzie Trust Mutual Fund or shares of a Mackenzie Corporate Class Mutual Fund through a Discount Broker, except for the Excluded Persons, from December 6, 2003 to [the date of the certification Order].

The Class Action pertains to Mackenzie Trust Mutual Funds and Mackenzie Corporate Class Mutual Funds. “Mackenzie Trust Mutual Funds” are defined as:

All mutual fund trusts (including, without limitation, all series thereof) of which Mackenzie Financial Corporation (“**MFC**”) is trustee, was trustee or may be trustee at any time prior to the conclusion of the trial of the common issues in this proceeding (but only in respect of the period during which MFC is trustee, was trustee or may be trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been or may be terminated, (ii) those mutual funds that have been or may be merged into other mutual funds, and (iii) those mutual funds that have undergone or may undergo name change.

“Mackenzie Corporate Class Mutual Funds” are defined as:

All mutual funds (including, without limitation, all series thereof) that are, were or may be constituted as a separate class of shares of Mackenzie Financial Capital Corporation (“**MFCC**”), including, for greater certainty, (i) those mutual funds that have

been or may be terminated, (ii) those mutual funds that have been or may be merged into other mutual funds, and (iii) those mutual funds that have undergone or may undergo name changes.

Excluded from the Class are MFC and MFCC (“**Defendants**”); the parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of MFC or MFCC at any time on or after December 6, 2003; the past and present members of the independent review committee of each Mackenzie Mutual Fund; the past and present members of a board of any Mackenzie Mutual Fund; and the past governors of any Mackenzie Mutual Fund.

Certification is a procedural matter that defines the form of the class action. The merits of the claims in the action, and the allegations of fact on which the claims are based, have not been finally determined by the Court. The Defendants dispute the claims asserted against them.

The Class Action will now proceed to trial as a class action. The Court has identified the issues that will be dealt with collectively. The Class Action will proceed in Toronto, Ontario.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendants paid trailing commissions, out of the Mackenzie Mutual Fund assets, to Discount Brokers.

The Mackenzie Trust Mutual Funds are trusts governed by trust instruments. MFC is the trustee and manager of the Mackenzie Trust Mutual Funds. It is alleged that MFC breached its trust, fiduciary and contractual duties because the trailing commissions paid to Discount Brokers are excessive, inflated and/or unearned.

MFC is also the manager of the Mackenzie Corporate Class Mutual Funds. It is alleged that MFC breached its fiduciary and contractual duties, and that the Defendants acted oppressively, because the trailing commissions paid to Discount Brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendants made misrepresentations about the nature of the trailing commission payments in the fund facts documents they have prepared and filed with securities regulators to permit the sale of units or shares of the Mackenzie Mutual Funds.

On behalf of the Class, the Class Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Class Action advances claims under section 23.1 of the *Trustee Act*, section 248 of Ontario's *Business Corporations Act* and for breach of trust, breach of fiduciary duty and breach of contract.

If you wish to pursue other claims against the Defendants relating to the matters at issue in the Class Action, you should immediately seek independent legal advice.

DO NOTHING IF YOU WANT TO PARTICIPATE IN THE CLASS ACTION

Class Members who want to participate in the Class Action are automatically included and do not have to do anything at this time.

YOU MUST OPT OUT IF YOU DO NOT WANT TO BE BOUND BY THE CLASS ACTION

Each Class Member who does not validly opt out of the Class Action will be bound by the terms of any judgment or settlement, whether favourable or not, and will not be allowed to prosecute an independent action.

Class Members who do not want to be bound by the outcome of the Class Action must "opt out," meaning that they must exclude themselves from the Class Action in accordance with the following procedure.

If you wish to opt out of the Class Action, you must complete, sign and return (by mail or courier) the opt-out form provided at Appendix "A" hereto to RicePoint Administration Inc.

In order for your opt-out to be valid, your complete and signed opt-out form must be postmarked by no later than [DATE].

A Class Member who opts out will not be entitled to participate in the Class Action.

CLASS COUNSEL AND LEGAL FEES

The representative plaintiff and the Class are represented by Siskinds LLP ("**Class Counsel**"). Class Counsel are conducting the Class Action on a contingent fee basis.

In the event of success, Class Counsel will make a motion to the Court for approval of their fees and disbursements to be paid from the funds recovered in the Class Action.

A Class Member will not be required to pay any costs in the event that the Class Action is unsuccessful.

Class Members have the right to seek intervenor status in the Class Action. A Class Member who intervenes in the Class Action may be required to pay legal costs arising from the Class Action.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information are available on Class Counsel's website at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions>.

Questions relating to the Class Action may be directed to Class Counsel:

Gigi Pao
Siskinds LLP
275 Dundas Street, Unit 1
London, ON, Canada N6B 3L1
Tel: 416-594-4390
Email: gigi.pao@siskinds.com

If you require assistance in the French language, please contact Class Counsel using the contact details above and we will direct your inquiry to an appropriate person.

The publication of this notice was authorized by the Ontario Superior Court of Justice

(PLEASE CIRCLE THE APPROPRIATE LANGUAGE)

I believe that **I am / the organization that I represent** is a member of the Class in the Class Action.

I believe that **I am not / the organization that I represent is not** amongst the persons and entities excluded from the Class Action.

I understand that by opting out of the Class Action, **I will not be eligible / the organization that I represent will not be eligible** for any benefit that may be available to the Class upon resolution of this matter, if and when such resolution may occur.

I, _____ (print your full name), **OPT OUT FROM THE CLASS ACTION** and wish to be excluded from this class action.

I wish to opt out from this class action for the following reason(s) (*optional*):

I, _____ (print your full name), **CERTIFY** that the information provided herein is complete and true.

Date

Signature

In order to validly opt out, you must complete and send this Opt-Out Form by no later than [DATE] to:

[Administrator contact details, including mail and courier details]

SCHEDULE "D"
SHORT-FORM NOTICE

DRAFT TEXT (subject to design)

**MACKENZIE MUTUAL FUNDS CLASS ACTION
REGARDING TRAILING COMMISSIONS PAID TO DISCOUNT BROKERS
NOTICE OF CERTIFICATION AND OPT-OUT DEADLINE**

**HAVE YOU HELD UNITS OR SHARES OF
A MACKENZIE MUTUAL FUND
THROUGH A DISCOUNT BROKER?**

The Superior Court of Justice of Ontario has certified a class action which permits a defined group of investors (the “Class”) to pursue claims against Mackenzie Financial Corporation and Mackenzie Financial Capital Corporation (“Defendants”). It is alleged that the Defendants paid excessive, inflated, and/or unearned trailing commissions to Discount Brokers out of the assets of the Mackenzie Mutual Fund trusts. The class action claims monetary damages on behalf of the Class. The allegations made in the class action have not been proven and are contested by the Defendants.

If you wish to participate in the class action, **DO NOTHING.**

If you do not wish to participate in the class action, be bound by or receive any benefits from it, you must opt out by sending the opt-out form to RicePoint Administration Inc. by [DATE].

To obtain a copy of the opt-out form or for other important information regarding the class action:

- Visit <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>
- Call toll-free 1 800 461 6166 ext 1615 (North America)
- Call 226-636-1615 (Outside North America)

*The publication of this notice was authorized by
the Superior Court of Justice of the Province of Ontario*

SCHEDULE "E"
INTERNET BANNER

Have you held units or shares of a Mackenzie Mutual Fund through a discount brokerage?

You may be included in a class action certified by the Ontario Superior Court of Justice.

Click to learn your legal rights, including how to opt-out of the class action.

<https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(CERTIFICATION, NOTICE AND OPT-OUT)**

Siskinds LLP
275 Dundas Street, Unit 1
London, ON N6B 3L1

Michael G. Robb (LSO#: 45787G)
Garrett M. Hunter (LSO#: 71800D)
Gigi Pao (LSO#: 80151M)
Tel: 519-660-7872
Fax: 519-660-7873

Suite 1155, 65 Queen Street West
Toronto, ON M5H 2M5
Anthony O'Brien (LSO#: 56129U)
Tel: 416-594-4394
Fax: 519-672-6065

Lawyers for the Plaintiff