

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

November 20, 2015

Re: Mackensen & Company SEC Sanctions Order

Dear Trustees:

You are no doubt aware that the United States Securities and Exchange Commission issued an administrative order dated September 3, 2015 against Mackensen & Company, Inc. and Warren J. Mackensen. This letter is written because we understand that you are trustees of a municipal fund for which Mackensen & Company, Inc. serves as the investment advisor.

Neither the Charitable Trusts Unit nor any of the municipalities was aware of this proceeding, even though the SEC investigation commenced in 2012. When we found out about it, we made a referral to the New Hampshire Bureau of Securities Regulation. We also met with David Mayes, the president and current owner of Mackensen & Company, together with his lawyer.

With respect to municipal trustees, our primary concern at the CTU is that the trustees follow their fiduciary duties and obey relevant New Hampshire statutes. To that end, we offer seminars and written materials. If we believe that trustees are not complying with statutory requirements or fiduciary duties with respect to investments, we will counsel and, if necessary, take action against those trustees. That said, we do not have the jurisdiction to pursue investment managers or investment companies that work with municipalities, or with any other charitable trusts.

In light of the sanctions, trustees do have a fiduciary responsibility to review their investment relationship with Mackensen & Company. They should look at their returns and perhaps seek a meeting with Mr. Mayes. They may also wish to consult with counsel concerning their options, which could include continuing their relationship with Mackensen & Company, changing investment advisors and/or bringing legal action against the business.

We have been concerned with the solvency and continued suitability of the investments that Mackensen & Company uses with municipalities. We asked those questions of Mr. Mayes and his lawyer, and we were assured that the investments are placed in large mutual fund type products not proprietary to Mackensen & Company. We were told that the funds are all solvent and could easily withstand withdrawals by any or all of the municipalities that have funds

<http://doj.nh.gov/charitable-trusts/>

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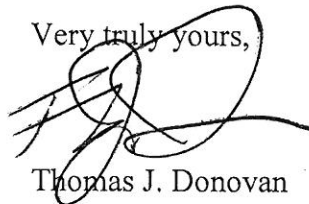
invested there. You should separately seek those assurances on behalf of your own municipality, should you decide to continue to do business with Mackensen & Company.

We have also been concerned with the nature of the violations outlined in the order, i.e. that Mackensen & Company and Mr. Mackensen misled municipalities in promotional material as to the past performance of the Mackensen & Company portfolio. That is fraudulent conduct. Municipalities may have relied upon those misrepresentations to engage Mackensen & Company. How have the municipalities been harmed by this fraud? It all comes down to money. There are statutory remedies, and they focus on losses, including whether a municipality missed out on a higher rate of return with another investment advisor by switching to or staying with Mackensen & Company. That is a fact intensive inquiry, and will vary among municipalities. We cannot perform that review; you will need to consult town counsel on that point and on whether other opportunities for relief may exist. You might also consult with the Bureau of Securities Regulation.

Finally, we learned something of the continuing relationship between Mr. Mackensen and Mackensen & Company. Mr. Mayes bought the business in 2012, shortly before the SEC investigation began. He is paying Mr. Mackensen over time. Mr. Mackensen has a right to remain on the Mackensen & Company board of directors until he is paid off, and the business name cannot be changed during that timeframe. Mr. Mackensen no longer serves in any other capacity with the business. As you can imagine, the SEC order must be a source of ongoing discussion between Mr. Mayes and Mr. Mackensen. All of this may affect how Mr. Mayes decides to continue his business.

Feel free to contact us if you have any questions.

Very truly yours,



Thomas J. Donovan
Director of Charitable Trusts
(603) 271-3591
tom.donovan@doj.nh.gov

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