

**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c.S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF  
FACTORCORP INC., FACTORCORP FINANCIAL INC., AND  
MARK IVAN TWERDUN**

**TEMPORARY ORDER  
(Sections 127 and 144 of the Act)**

**WHEREAS** it appears to the Ontario Securities Commission (the "Commission") that:

1. FactorCorp Inc. ("FactorCorp") is an Ontario corporation registered under Ontario securities law as a Limited Market Dealer.
2. FactorCorp Financial Inc. ("FactorCorp Financial"), is an Ontario corporation that is not a reporting issuer and is not registered with the Commission.
3. Mark Ivan Twerdun ("Twerdun") is the controlling shareholder and sole director and officer of both FactorCorp and FactorCorp Financial.
4. FactorCorp/FactorCorp Financial has/have raised approximately \$50 million by issuing non-prospectus qualified debentures to approximately 700 Ontario investors over the last three to four years in a continuous distribution.
5. FactorCorp/FactorCorp Financial pool(s) the funds raised from the issuance of debentures and lends them to various sub-lenders who, in turn, lend them to various small to mid-sized businesses. Such loans are stated by FactorCorp and FactorCorp Financial to be secured.
6. Investors purchased FactorCorp Financial debentures primarily through a registered mutual fund dealer and limited market dealer (the "Dealer"). FactorCorp/FactorCorp Financial debentures were sold pursuant to the accredited investor ("AI") exemption from the prospectus requirement of section 53 of the Ontario *Securities Act* (the "Act").
7. It appears that the FactorCorp/FactorCorp Financial debentures were sold by the Dealer in circumstances where the AI exemption may not have been available, contrary to sections 25 and 53 of the Act.
8. The Dealer has submitted significant repayment requests to FactorCorp/FactorCorp Financial on behalf of clients who may not qualify as AI's under securities law.
9. FactorCorp/FactorCorp Financial is/are not able to meet all outstanding requests for repayments.

10. FactorCorp/FactorCorp Financial is/are considering alternatives for the restructuring of its/their business, operations and affairs (the “Alternative Arrangements”).
11. Staff of the Commission (“Staff”) believe that it is in the public interest that investor funds be protected and a monitor be put in place to review the business, operations and affairs of FactorCorp and FactorCorp Financial.

**AND WHEREAS** the Commission issued an order on July 6, 2007 (the “Temporary Order”);

**AND WHEREAS** the respondents applied for a variation of the Temporary Order;

**AND WHEREAS** the Commission held a hearing on July 20 and 25, 2007 to consider whether to vary and/or extend the Temporary Order;

**AND WHEREAS** on July 20, 2007, the Commission extended the Temporary Order dated July 6, 2007, until July 25, 2007 at 5:00 p.m., unless further extended by the Panel;

**AND WHEREAS** on July 25, 2007, the Commission further extended the Temporary Order dated July 6, 2007, until July 27, 2007 at 5:00 p.m. to permit Staff and the respondents to reach agreement on appropriate variations to the Temporary Order;

**AND WHEREAS** at the hearing held on July 25, 2007, the Panel advised Staff and the respondents that if they were to fail to reach an agreement by 5:00 p.m. on Thursday July 26, 2007, the Panel would issue its own order.

**AND WHEREAS** Staff and the respondents failed to reach an agreement on the variations to the Temporary Order;

**AND WHEREAS** on July 27, 2007 the Commission was of the opinion that it was in the public interest to make an Order;

**AND WHEREAS ON JULY 27, 2007, THE COMMISSION ORDERED** that, pursuant to subsection 127(1) of the Act that:

- (a) pursuant to paragraph 127(1)2, all trading in any securities by and of the respondents cease except that Twerdun is permitted to trade, in his name only, in securities that have not been issued by FactorCorp or FactorCorp Financial, for his own account or for the account of a registered retirement savings plan or registered retirement income fund (as defined in the *Income Tax Act* (Canada)) in which he has legal and beneficial ownership and interest; and
- (b) pursuant to paragraph 127(1)3 of the Act, but subject to paragraph (a) above, all exemptions contained in Ontario securities law do not apply to the respondents; and

- (c) pursuant to paragraph 127(1) of the Act, the following terms and conditions are imposed on the registration of FactorCorp and Twerdun, effective immediately:
- (i) Twerdun, FactorCorp and any company controlled, directly or indirectly, by Twerdun, and FactorCorp including but not limited to FactorCorp Financial, are prohibited from making repayments and participating in or acquiescing to any act, directly or indirectly, in furtherance of a redemption of securities of FactorCorp and FactorCorp Financial;
  - (ii) Twerdun and FactorCorp are prohibited from transferring their controlling interest in any company including but not limited to FactorCorp Financial; and
  - (iii) Twerdun and FactorCorp shall cause FactorCorp and FactorCorp Financial to retain a monitor (the "Monitor"), selected by Staff, by 5:00 p.m. Eastern Time on August 1, 2007. The Monitor's primary objective will be to review the business, operations and affairs of FactorCorp Financial, FactorCorp and any company controlled, directly or indirectly, by Twerdun, FactorCorp and FactorCorp Financial involved with the issuance of securities and related proceeds. The Monitor shall be retained on terms to be established by Staff.

**AND WHEREAS THE COMMISSION FURTHER ORDERED** that the above noted terms and conditions supplemented and did not replace any other specific terms and conditions that applied to Twerdun and FactorCorp and Twerdun and FactorCorp continued to be subject to all applicable general terms, conditions and other requirements contained in the Act and any Regulations made thereunder; and

**AND WHEREAS THE COMMISSION FURTHER ORDERED** that, pursuant to subsection 127(6) and 144 of the Act, the Temporary Order, as varied herein, should take effect immediately and would expire on the thirtieth day after its making unless extended by the Commission;

**AND WHEREAS** KPMG Inc. was appointed Monitor by FactorCorp and FactorCorp Financial;

**AND WHEREAS THE COMMISSION** has considered status update memoranda to the Commission from the Monitor dated August 15 and August 24, 2007 and a letter to the Monitor from counsel for the Respondents dated August 24, 2007, filed, and the submissions of the parties;

**AND WHEREAS THE COMMISSION** is of the opinion that it is in the public interest to continue the Temporary Order, as varied on July 27, 2007;

**IT IS ORDERED** that, pursuant to subsection 127(6) and 144 of the Act, the Temporary Order, as varied herein, shall continue for an additional thirty days expiring on September 27, 2007, unless further extended by the Commission

**DATED** at Toronto this 27<sup>th</sup> day of August, 2007.

*“Robert L. Shirriff”*

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Robert L. Shirriff

*“ Suresh Thakrar”*

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Suresh Thakrar