



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**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 FactorCorp Inc. (“FactorCorp”) was an Ontario corporation registered under Ontario securities law as a Limited Market Dealer (“LMD”);

AND WHEREAS, FactorCorp Financial Inc. (“FactorCorp Financial”) was an Ontario corporation that was not a reporting issuer and was not registered with the Commission;

AND WHEREAS Mark Twerdun (“Twerdun”) was the controlling shareholder and sole director and officer of both FactorCorp and FactorCorp Financial;

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

AND WHEREAS on July 27, 2007 the Commission varied the Temporary Order and ordered pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (as amended) (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;

- (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)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 Temporary Order, as varied on July 27, 2007, was further varied on October 26, 2007 to apply to Twerdun only;

AND WHEREAS, the Temporary Order, as varied, was extended by Orders of the Commission dated: August 27, 2007, September 26, 2007, October 26, 2007, December 6, 2007, February 13, 2008, April 15, 2008, June 16, 2008, August 29, 2008 and January 5, 2009. Pursuant to the January 5, 2009 Order, the Temporary Order, as varied, was extended to expire on March 5, 2009, unless further extended by the Commission;

AND WHEREAS on August 1, 2007 KPMG Inc. ("KPMG") was appointed Monitor by FactorCorp and FactorCorp Financial pursuant to the Temporary Order, as varied;

AND WHEREAS by Order of the Superior Court of Justice dated October 17, 2007, KPMG was appointed Receiver and Manager (the "Receiver") over the assets, undertakings and properties of FactorCorp and FactorCorp Financial and by Order of the Superior Court of Justice dated October 30, 2007, the appointment of the Receiver was confirmed and extended until further Order of the Court;

AND WHEREAS by Order of the Superior Court of Justice dated March 25, 2008, FactorCorp and FactorCorp Financial were adjudged bankrupt, a Bankruptcy Order was made against FactorCorp and FactorCorp Financial and KPMG Inc. was appointed Trustee of the Estates of FactorCorp and FactorCorp Financial (the "Trustee");

AND WHEREAS the Commission has previously considered various Reports of the Receiver acting as Monitor and in its capacity as Receiver, pleadings and the endorsements of the Honourable Justice Mossip, dated September 21, 2007, in Court File No. CV-06-00227-00, and the endorsement of the Honourable Justice Morawetz, dated March 25, 2008, in Court File No. 31-OR-207506 T, as previously filed, and the submissions of the parties;

AND WHEREAS on March 5, 2009, the Commission considered the Report of the Trustee's Preliminary Administration of the Estates of FactorCorp and FactorCorp Financial dated April 24, 2008, the Trustee's First Report dated December 4, 2008 and a Brief of Correspondence dated March 4, 2009 and has heard submissions from counsel for Staff and Twerdun;

AND WHEREAS Staff of the Commission consent to, and Twerdun, through counsel, does not oppose, the making of this Order;

AND WHEREAS the Commission is of the opinion that it is in the public interest to continue the Temporary Order, as previously varied, for the period expiring on April 8, 2009, unless further extended by the Commission;

AND WHEREAS at the return of this matter on April 8, 2009 at 10:00 a.m., Staff will advise as to their intention to proceed in this matter;

AND WHEREAS by Authorization Order made April 1, 2008, pursuant to subsection 3.5(3) of the Act, any one of W. David Wilson, James E. A. Turner, Lawrence E. Ritchie, Paul K. Bates or David L. Knight, acting alone, is authorized to exercise the powers of the Commission under the Act, subject to subsection 3.5(4) of the Act, to make orders under section 17 of the Act;

IT IS ORDERED that the Temporary Order, as varied on October 26, 2007, be continued for the period expiring on April 8, 2009 at 10:00 a.m., unless further extended by the Commission, as follows:

- (a) pursuant to paragraph 127(1)2, all trading in any securities by Twerdun 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 Twerdun; and
- (c) pursuant to paragraph 127(1)1 of the Act, the following terms and conditions are imposed on the registration of Twerdun, effective immediately:
 - (i) Twerdun, and any company controlled, directly or indirectly, by him, 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 without the prior written consent of the Receiver and/or Trustee; and
 - (ii) Twerdun is prohibited from transferring his controlling interest in any company including but not limited to FactorCorp and FactorCorp Financial.

DATED at Toronto, this 5th day of March, 2009.

“Lawrence E. Ritchie”

Lawrence E. Ritchie, Vice-Chair