



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 TWERDUN**

**ORDER**

**WHEREAS** on May 12, 2009, the Ontario Securities Commission (the “**Commission**”) issued a Notice of Hearing (the “**Notice of Hearing**”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) in relation to a Statement of Allegations of the same date filed by Staff of the Commission (“**Staff**”), as amended by an Amended Statement of Allegations filed by Staff on October 13, 2011, in respect of FactorCorp Inc. (“**FCI**”), FactorCorp Financial Inc. (“**FFI**”) and Mark Twerdun (“**Twerdun**”) (collectively, the “**Respondents**”);

**AND WHEREAS** a hearing on the merits in this matter was held before the Commission on October 3, 5, 6, 7, 12, 13, 14 and 17, 2011 and November 24, 2011 (the “**Merits Hearing**”);

**AND WHEREAS** following the Merits Hearing, the Commission issued its Reasons and Decision with respect to the merits on February 22, 2013 (the “**Merits Decision**”);

**AND WHEREAS** the Commission determined that the Respondents had not complied with Ontario securities law and had acted contrary to the public interest, as described in the Merits Decision;

**AND WHEREAS** on April 18, 2013, the Commission held a hearing with respect to the sanctions and costs to be imposed in this matter (the “**Sanctions and Costs Hearing**”);

**AND WHEREAS** Staff and Twerdun appeared and made submissions on sanctions and costs, and no one appeared on behalf of FCI and FFI although J. Bradley Butcher (“**Butcher**”), a Vice President of KPMG Inc. which was appointed as the Trustee of the consolidated estate of FCI and FFI, was served with notice of the hearing;

**AND WHEREAS** Staff sought to introduce the Affidavit of Butcher sworn April 8, 2013 as evidence on sanctions;

**AND HAVING** heard the submissions of Staff and Twerdun, the Panel invited the parties to make written submissions to the Panel on the following questions (collectively, the “**Questions**”):

1. Is the Affidavit of Butcher sworn April 8, 2013, including the Exhibits to the Affidavit, admissible evidence in the Sanctions and Costs Hearing, and if so, what weight should be given to such evidence?
2. Does the clause in the Notice of Hearing stating that the Commission may make “such other order as the Commission may consider appropriate” allow the Commission to impose market prohibition orders that were not requested in the Notice of Hearing?
3. On what basis has Staff requested an order for the disgorgement of the amounts set out in subparagraph 9(i) and paragraph 34 of Staff’s Written Submissions on Sanctions and Costs, considering that paragraph 10 of subsection 127(1) of the Act authorizes an order for disgorgement of “any amounts obtained” as a result of the non-compliance by the Respondents with Ontario securities law and considering the findings in the Merits Decision?

**IT IS ORDERED THAT:**

1. Staff shall serve and file written submissions with respect to the Questions by May 10, 2013 at 5:00 p.m.;
2. The Respondents shall serve and file written submissions with respect to the Questions by May 17, 2013 at 5:00 p.m.; and

3. The Sanctions and Costs Hearing is adjourned to May 22, 2013 at 10:00 a.m.

**DATED** at Toronto this 18<sup>th</sup> day of April, 2013.

*“Christopher Porter”*

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Christopher Portner