

ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

ONTARIO SECURITIES COMMISSION

Applicant

- and -

FACTORCORP INC. AND FACTORCORP FINANCIAL INC.

Respondents

FIRST REPORT TO THE COURT  
SUBMITTED BY KPMG INC.  
AS RECEIVER AND MANAGER

October 29, 2007

## *Listing of Appendices*

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- Appendix A - Order of the Ontario Superior Court of Justice (Commercial List) dated October 17, 2007 and entered October 18, 2007
- Appendix B - Receiver and Manager's Letter to Debenture Holders dated October 29, 2007
- Appendix C - Receiver and Manager's Statement of Receipts and Disbursements for the period October 17 to October 26, 2007 re FactorCorp Financial Inc.

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## ***1. Introduction***

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### **1.1 Appointment of Receiver**

- 1.1.1 Pursuant to the Order of the Honourable Mr. Justice Morawetz dated October 17, 2007 (the "Appointment Order"), KPMG Inc. was appointed Receiver and Manager ("Receiver") of all of the undertaking, property and assets (the "Property") of FactorCorp Inc. ("FCI") and FactorCorp Financial Inc. ("FFI") (collectively, the "Companies"). A copy of the Appointment Order, which sets out the powers of the Receiver, is attached as **Appendix A**. The application for the appointment of the Receiver was made by the Ontario Securities Commission ("OSC") pursuant to section 129 of the *Securities Act* (Ontario) (the "Act").
- 1.1.2 This report deals with the Receiver's activities with respect to both FCI and FFI for the period October 17, 2007 to October 29, 2007.
- 1.1.3 KPMG Inc. was initially appointed by the Companies as Monitor pursuant to a letter of engagement dated August 1, 2007. The Companies had been operating since July 6, 2007 under certain restrictions imposed by orders issued by the OSC (the "Temporary Orders"). Those restrictions included: (i) the appointment of a Monitor, (ii) a moratorium on redemptions of debentures, and (iii) a prohibition on the sale of further debentures. The Monitor's primary objective was to review the business, operations and affairs of the Companies.

### **1.2 FFI Receivership**

- 1.2.1 The shares of FFI are held by Mr. Mark Twerdun ("Twerdun") and certain of Twerdun's family members. Twerdun is the sole officer and director of FFI.
- 1.2.2 FFI is an Ontario corporation. FFI is not a reporting issuer and is not registered with the OSC. FFI has raised approximately \$58 million by issuing non-prospectus qualified debentures to approximately 700 Ontario investors over the last approximately four years. Approximately \$50 million of those debentures remain outstanding. FFI pooled the funds raised from the issuance of the debentures and lent the funds to various sub-lenders who, in turn, lent them to various small to mid-sized businesses. However, the Receiver is aware of one instance where FFI purchased preferred shares of a sub-lender, rather than making a secured loan to that sub-lender. All of the loans were represented in FFI's Offering Memorandum as being secured. Investors purchased FFI debentures through registered mutual fund dealers and limited market dealers (the "Dealers"). FFI debentures were to be sold pursuant to the accredited investor ("A1") exemption from the prospectus requirement of section 53 of the Act. FFI received significant redemption requests, but was unable to meet all outstanding requests for redemptions. FFI suspended redemptions in May 2007.
- 1.2.3 As noted above in 1.1.3, the OSC made the first Temporary Order on July 6, 2007. It was continued and amended by subsequent Temporary Orders. While subject to the Temporary Orders, and the monitoring engagement, FFI made attempts to obtain new financing to fund, amongst other things, the redemption of

debentures. Those efforts were unsuccessful. As a result of the failure of the Companies to obtain new financing, the OSC sought and obtained the appointment of the Receiver on October 17, 2007.

### **1.3 FCI Receivership**

1.3.1 FCI is an Ontario corporation registered under Ontario securities law as a Limited Market Dealer (“LMD”).

1.3.2 Twerdun is the sole officer, director and shareholder of FCI.

1.3.3 It is the Receiver’s understanding that FCI was involved in the initial distribution of FFI debentures approximately four years ago, but since that time FCI has been essentially inactive.

### **1.4 Purpose of This Report to the Court**

1.4.1 The purpose of this First Report of the Receiver to the Court is to:

- i) report on the activities of the Receiver to date, including its preliminary review of the Property, and seek this Honourable Court’s approval of those activities as set out herein;
- ii) provide an evidentiary basis for the continuation of the receivership; and
- iii) support the Receiver’s request for advice and direction from this Honourable Court with respect to certain issues regarding confidentiality, as described in section 2.7 of this Report.

## ***2. Receiver's Initial Activities***

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### **2.1 Appointment of Counsel**

- 2.1.1 Upon its appointment, the Receiver retained ThorntonGroutFinnigan LLP ("TGF") of Toronto as its counsel.

### **2.2 Insurance**

- 2.2.1 Twerdun advised the Receiver at a meeting on October 19, 2007 that the Companies did not have any insurance policies. The Receiver is reviewing the Companies' records to confirm this representation and to determine if it is advisable to obtain any insurance coverage. In the event that there is a need for insurance coverage, the Receiver will attempt to arrange same.

### **2.3 Bank Accounts**

- 2.3.1 Immediately upon the entering of the Appointment Order, the Receiver faxed notification of its appointment to Bank of Montreal ("BMO") and requested that all accounts held by the Companies be frozen, with the provision that future deposits be accepted. As noted in section 3 hereof, the Receiver opened its own accounts.

### **2.4 Books and Records**

- 2.4.1 Since its appointment, the Receiver has taken the following steps to obtain the Companies' books and records:
- attended at the Companies' offices on October 19, 2007 to meet with Twerdun. At that meeting, the Receiver took possession of all of the records then located at the Companies' office, with the exception of several documents which Twerdun claimed were subject to solicitor and client privilege. The records obtained at that visit, which comprise 11 boxes, have been catalogued by the Receiver;
  - seven boxes of (investor) files held by the Companies' solicitors, Cassels, Brock & Blackwell LLP ("Cassels") were forwarded to the Receiver's office by Cassels on October 22, 2007. The Receiver has catalogued those records;
  - on October 19, 2007, the Receiver and TGF agreed with Cassels that Twerdun would surrender his laptop and blackberry to Cassels, who would hold them under seal until the parties could arrange for an independent expert to image the data on those two devices. This process was necessary to ensure that any personal or confidential information of Twerdun's was protected and the Receiver could then have access to electronic versions of the business data. The Receiver, with the concurrence of Cassels, retained the services of the forensic technology group of Deloitte & Touche LLP ("D&T") on October 26, 2007 to carry out the imaging work. Representatives of D&T and the Receiver attended at the offices of Cassels on the afternoon of

October 26, 2007. At that attendance, the laptop and Blackberry were unsealed and the imaging process was completed by D&T. Cassels wishes to review the data with Twerdun prior to authorizing the general release of the Companies' data to the Receiver;

- the Receiver wrote to the Companies' accountants, Farnham & Company ("Farnham"), on October 24, 2007 requesting that any of the Companies' records in their possession be turned over to the Receiver. In response, Farnham advised the Receiver that they had returned all of the Companies' hard copy records in their possession to Twerdun. However, they have provided certain electronic spreadsheets to the Receiver and the Receiver is in the process of reviewing them; and
- representatives of the Receiver and TGF attended at the offices of Grant Buchan-Terrell ("GBT") on October 25, 2007 to obtain possession of the files in GBT's possession. GBT was FFI's solicitor with respect to many of the loan transactions. TGF and Cassels are in the process of setting a procedure pursuant to which claims by Twerdun that certain of the documents in those files are subject to solicitor and client privilege;

2.4.2 As Monitor, KPMG Inc. obtained copies of certain documents from the Companies. These copies are in the possession of the Receiver.

2.4.3 The Receiver is in the process of reviewing the Companies' records and, on a preliminary basis, has identified certain transactions which require investigation. The Receiver anticipates that, in its next Report to the Court, it will be in a position to comment further on the Companies' financial position, the results of the Receiver's review of the records and the Receiver's review of those transactions.

## 2.5 Communication with Creditors

2.5.1 The Receiver prepared the Statement and Report prescribed by Sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* and delivered them by regular mail to all known creditors of FFI on October 29, 2007. In addition, the Receiver prepared a letter to the debenture holders, a copy of which is included as **Appendix B** to this Report. The Receiver has:

- established a dedicated telephone line and a dedicated email address to receive inquiries from creditors; and
- established a website, which, at present, contains the Appointment Order. If the receivership is continued, the Receiver will add to the website copies of the Receiver's reports and further orders of this Court, as well as other relevant documents.

2.5.2 The mailing of the aforementioned statutory Statement and Report, and the letter, was not accomplished within the ten-day period prescribed by the BIA as the Receiver did not have complete and suitable creditor listings in electronic form

until October 29, 2007. TGF wrote to Cassels on October 23, 2007 to request their assistance in temporarily unsealing the laptop, under joint supervision, for the sole purpose of allowing the Receiver to extract the electronic version of the debenture holders' list therefrom so that the Receiver could complete the statutory mailing on a timely basis. The Receiver understands that Cassels was unable to reach Twerdun in order to accommodate this request.

## **2.6 Other Parties**

- 2.6.1 The Receiver had initiated contact with certain other interested parties and stakeholders, including the distributor/dealers of FFI's debentures and certain parties who had been in discussion with Twerdun prior to the receivership with respect to possible refinancing transactions. The discussions with potential financiers are intended to ascertain if there is continuing interest from those parties in refinancing or acquiring some or all of FFI's assets.

## **2.7 Confidentiality**

- 2.7.1 On October 5, 2007, while KPMG Inc. was acting in its capacity as Monitor, this Court granted an order (the "Confidentiality Order") which provided, among other things, that certain Confidential Information (as defined in the Confidentiality Order) be kept confidential and only be disclosed to certain Designated Individuals (also as defined in the Confidentiality Order). The Confidentiality Order also provided that, on or after October 15, 2007, the Monitor was authorized to disclose certain Confidential Information. Accordingly, the Monitor filed its Seventh Report dated October 15, 2007, in redacted form (the "Redacted Seventh Report").
- 2.7.2 If the appointment of the Receiver is extended, the Receiver is of the view that the Confidentiality Order should be terminated, thereby allowing the Receiver to use its discretion when reporting to the Court in the receivership proceedings. The Receiver should be permitted to disclose any information which it feels is in the best interests of the investors. In addition, the Receiver is of the view that the Redacted Seventh Report filed by the Monitor should remain sealed until further order of this Court.

### 3. Dealings with Customers

#### 3.1 Loans Receivable and Investments

- 3.1.1 Based on information provided by FFI, the Receiver understands that FFI's accounts receivable and investments are comprised of the following as at September 30, 2007:

Customer	Balance Due to FFI
1. Breken Financial Inc.	\$1,821,403
2. Canfactor Inc.	639,631
3. Express Commercial Services Inc.	21,156,595
4. FCB Financial Management Inc.	8,759,102
5. Forbes Hutton	12,090,397
6. Integra Investment Service Ltd.	707,134
7. Lease Capital Corporation of Canada	2,582,850
8. Mohawk Business Solutions Group	1,744,476
9. Romco Capital Partners Corporation	2,738,676
10. Spaceworks	281,500
11. Sydcom Wireless Corp.	805,710
12. W3 Connex Inc.	1,630,563
	<b>\$54,958,037</b>

#### 3.2 Communication with Customers

- 3.2.1 On October 18, 2007, the Receiver wrote to each of the Customers advising them of the Receiver's appointment, providing them with a copy of the Appointment Order and instructing them to make all payments directly to the Receiver.
- 3.2.2 Subsequent to the delivery of those letters, the Receiver telephoned the Customers to confirm that they had received the letter and to discuss the status of the loans/investments. The Receiver has held (or is scheduled to hold) meetings with certain of FFI's customers and has requested the assistance of Cassels and Twerdun with respect to those Customers which it has been unable to contact. The purpose of the Receiver's follow-up with the Customers includes confirmation of the outstanding amounts due to FFI as reflected in FFI's records and summarized above in section 3.1.1.
- 3.2.3 Integra Investment Service Ltd. ("Integra") is in receivership pursuant to an order made by the Court of Queen's Bench of Alberta. The Receiver has been in contact with Ernst & Young Inc. (the "Integra Receiver") and ascertained that the Integra Receiver has sold the real estate which underlies FFI's investment in Integra. The Integra Receiver has not yet made public the details of that sale but the Receiver is advised that such information will be forthcoming in November 2007.

## ***4. Receiver's Financial Position***

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### **4.1 Statement of Receipts and Disbursements - FFI**

- 4.1.1 The Receiver's Statement of Receipts and Disbursements with respect to FFI for the period October 17 to 26, 2007 is included as **Appendix C** to this Report. This statement indicates total funds on hand of \$636,089.98, of which \$550,000 has been invested in a term deposit.
- 4.1.2 As noted in section 2.3 hereof, the Receiver notified BMO, the Companies' bank, of the Receiver's appointment. Those bank accounts have been frozen and the Receiver has transferred a portion of the funds in the FFI's account at BMO to an operating bank account established by the Receiver at Canadian Imperial Bank of Commerce ("CIBC") in Toronto. The funds in FFI's operating account at BMO are reflected in **Appendix C**. FFI also had an "in trust" account at BMO, which had a balance of \$204 as at October 18, 2007.

### **4.2 Cash – FCF**

- 4.2.1 The funds in FCF's bank account at BMO are frozen. A balance of \$8,725.89 is in that account and the Receiver plans to transfer those funds to a new account for FCF established by the Receiver at CIBC.

## ***5. Recommendation***

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The Receiver requests that this Honourable Court make an Order approving the Receiver's activities as described herein.

All of which is respectfully submitted this 29<sup>th</sup> day of October, 2007.

**KPMG INC.**

IN ITS CAPACITY AS THE COURT APPOINTED  
RECEIVER AND MANAGER OF FACTORCORP  
INC. AND FACTORCORP FINANCIAL INC.

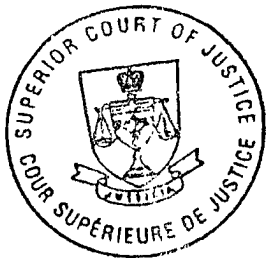


Per: J. Bradley Butcher  
Vice-President

# Appendix “A”

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 17<sup>th</sup>  
)  
JUSTICE MORAWETZ ) DAY OF OCTOBER , 2007



**ONTARIO SECURITIES COMMISSION**

Applicant

- and -

**FACTORCORP INC. and FACTORCORP FINANCIAL INC.**

Respondents

**ORDER**

**THIS MOTION**, made by the Ontario Securities Commission (the "Commission") for an Order pursuant to Section 129 of the *Securities Act* (the "Act") appointing KPMG Inc. as the Receiver and Manager, without security, of all of the property, assets and undertaking of the Respondents (collectively the "Debtor") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Application Record, Volumes 1 to 3, the Affidavit of André J. Moniz sworn August 3, 2007 and the Exhibits thereto, filed, the Affidavit of André J. Moniz sworn October 3, 2007, filed under seal and the Seventh Report of KPMG Inc. (unredacted), filed under seal, and on hearing the submissions of counsel for the Commission and counsel for the Debtor, counsel for KPMG Inc. being in attendance, and on reading the consent of KPMG Inc. to act as the Receiver and Manager:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that, pursuant to Section 129 of the Act, KPMG Inc. (the "Receiver") be and it is hereby appointed as the Receiver and Manager, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

#### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that, pursuant to Section 129 of the Act, the appointment of the Receiver shall be for a period of fifteen days subject to further Order of this Court.

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction not exceeding \$1,000,000, provided that the aggregate consideration for all such transactions does not exceed \$10,000,000;
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or Section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such secured and unsecured creditors of, investors or potential investors in and other stakeholders of the Debtor and their advisors as the Receiver deems appropriate on all matters relating to the Property and the receivership and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) without limiting the generality of (n), to report to, share information with, meet with and discuss with any regulatory bodies, including the Commission, and their advisors as the Receiver deems appropriate with respect to all matters relating to the affairs of the Debtor, the Property and the conduct of the receivership on such terms of confidentiality as the Receiver deems appropriate;

(p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

(r) to enter into arrangements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor and the power to lend money to or indemnify any such trustee, such trustee's borrowings or indemnity not to exceed \$1,000,000 unless otherwise increased by this Court;

(s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;

(t) to examine, under oath, any person reasonably thought to have knowledge of the affairs of the Debtor or any person who is or has been an agent, an officer, a director, a shareholder and/or an employee of the Debtor, respecting the Debtor or the Debtor's dealings or property; and

(u) to take any steps reasonably incidental to the exercise of these powers,

and, in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or

affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that Internet Service Providers and other persons which provide email, world wide web, file transfer protocol, Internet connection or other similar services to the Debtor and/or its present and former directors, officer, employees and agents shall deliver to the Receiver all documents, server files, archive files and any other information in any form in any way recording messages, email correspondence or other information sent or received by such directors, officers, employees or agents in the course of their association with the Debtor.

**NO PROCEEDINGS AGAINST THE RECEIVER**

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court provided that nothing herein shall prevent the commencement or continuation of any proceedings by the Commission against the Debtors or any of them including, without limitation, the proceedings commenced by Notice of Hearing issued by the Commission on July 6, 2007, the Temporary Order issued by the Commission on July 6, 2007 and the Temporary Order issued by the Commission on July 27, 2007.

**NO EXERCISE OF RIGHTS OR REMEDIES**

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor or affecting the Property are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, or (iii) prevent the filing of any registration to preserve or perfect a security interest or a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, arrangement, agreement, licence or permit in favour of or held by the Debtor without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

15. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit

amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction, provided that pursuant to subsection 14.06(1.2) of the BIA, the Receiver shall not be liable for any amount that is or could be due to an employee by the Debtor including, without limitation, any amount calculated by reference to any period of employment, service or seniority that precedes the date of this Order. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA.

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario*

*Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that the Receiver shall promptly advise the Ontario Ministry of the Environment of any obvious or known environmental condition existing on or in any of the Property in accordance with applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it in fact takes possession.

#### LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

#### RECEIVER'S ACCOUNTS

*and XPMG Inc. in its capacity as Monitor incurred to date, RB*

19. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the normal rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

20. **THIS COURT ORDERS** the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a Judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that, prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further Order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis.

26. **THIS COURT ORDERS** that the Receiver may at any time apply for its discharge in the event that the Property is not, in the opinion of the Receiver, sufficient to indemnify the Receiver for its remuneration, borrowings, costs, expenses and liabilities.

#### **GENERAL**


27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

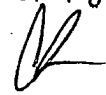
30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
MORAWETZ

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

OCT 18 2007

PER/PAR: 

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

32. THIS IS TO CERTIFY that KPMG Inc., the Receiver and Manager (the "Receiver") of all of the assets, undertakings and properties of FactorCorp Inc. and FactorCorp Financial Inc. appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the • day of July, 2007 (the "Order") made in an action having Court file number 07-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

33. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the 1st day of each month after the date hereof at a notional rate per annum equal to the rate of 1 per cent above the prime commercial lending rate of HSBC Bank of Canada from time to time.

34. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

35. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

36. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.



37. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other Order of the Court.

38. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 200\_.

**KPMG Inc.**, solely in its capacity  
as Receiver of the Property (as defined in the  
Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:



ONTARIO SECURITIES COMMISSION  
Applicant

and

FACTORCORP INC. and FACTORCORP FINANCIAL  
INC.

Respondents

Court File No.:

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced in Toronto

**ORDER**

ONTARIO SECURITIES COMMISSION  
20 Queen Street West  
Suite 1900  
Toronto, ON M5H 3S8

Melissa J. MacKewn  
Litigation Counsel, Enforcement Branch  
L.S.U.C. #39166E

Tel: 416-593-3652  
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Fax (416) 777-8818  
Internet [www.kpmg.ca](http://www.kpmg.ca)

## NOTICE TO DEBENTURE HOLDERS

October 29, 2007

Dear Sirs:

### FactorCorp Inc. and FactorCorp Financial Inc. ("FFI") (collectively, the "Companies")

We are writing to advise that KPMG Inc. was appointed Receiver and Manager (the "Receiver") of all of the property, assets and undertaking of the Companies on October 17, 2007 pursuant to an Order made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the "Appointment Order"). A copy of the Appointment Order is available at [www.kpmg.ca/factorcorp](http://www.kpmg.ca/factorcorp).

FFI's records indicate that you hold debentures issued by FFI.

The Receiver is presently undertaking a review of FFI's assets, including its loans receivable and investments, with a view to developing a realization strategy. Pursuant to the Appointment Order, the Receiver's principal mandate is to realize on the Companies' assets for the benefit of creditors. In the interim, the Receiver will take steps to collect interest and scheduled principal repayments due to FFI.

Effective immediately, interest payments to debenture holders are frozen.

The Court has not yet established a procedure for debenture holders to prove their claims; accordingly, there is no need at this point for you to correspond with the Receiver in that connection. The Receiver's periodic reports to the Court will be available at the website noted above. A copy of the Receiver's initial report pursuant to the requirement of the *Bankruptcy and Insolvency Act* is attached.

Should you have any questions, you may call the Receiver's inquiry line at 416-777-8408 or send an email to [factorcorp@kpmg.ca](mailto:factorcorp@kpmg.ca).

Yours very truly,

**KPMG Inc.**

Court Appointed Receiver and Manager of all  
of the property, assets and undertaking of  
FactorCorp Inc. and FactorCorp Financial Inc.

Per: J. Bradley Butcher  
Vice President

**FACTORCORP FINANCIAL INC.**

Statement of Receiver and Manager's Receipts and Disbursements  
For the period October 17 to October 26, 2007

<b>RECEIPTS</b>	
Funds in Company's bank account	\$666,218.66
Interest received from Customers	63,573.51
<b>Total receipts</b>	<b>729,792.17</b>
<b>DISBURSEMENTS</b>	
Monitor's fees and legal fees (1)	85,484.34
GST	8,099.85
Miscellaneous	120.00
<b>Total disbursements</b>	<b>93,704.19</b>
<b>Excess of receipts over disbursements</b>	<b>\$636,087.98</b>
<b>Represented by:</b>	
Balance in Company's bank account	\$ 50,420.94
Balance in Receiver's bank account	35,667.04
Receiver's term deposit	550,000.00
	<b>\$636,087.98</b>

(1) Paid pursuant to paragraph 19 of the Appointment Order. Amount is net of a retainer of \$50,000 paid to the Monitor by FFI in August 2007.