

## **FARM MUTUAL FINANCIAL SERVICES INC. SETTLEMENT NOTICE OF MOTION FOR CERTIFICATION AND SETTLEMENT APPROVAL**

This notice is directed to current FactorCorp Financial Inc. and/or FactorCorp Inc. (hereinafter together referred to as “FactorCorp”) debenture owners who purchased the debentures through agents of Farm Mutual Financial Services Inc. (“FMFS”).

On **Monday, June 14<sup>th</sup>, 2010**, a Motion for Certification and Settlement Approval (the “Motion”) will proceed before the Ontario Superior Court of Justice (the “Court”) in the action *Zopf v. Burger et al*, Ontario Court File No. CV-08-36618900 CP (the “Class Action”).

The Court will be asked to certify a class action and approve a proposed settlement of the class action. The court will consider whether the proposed settlement is fair, reasonable and adequate, and in the best interests of current Factorcorp debenture owners who purchased the debentures through agents of FMFS (“FMFS Claimants”)

As described below, current FactorCorp debenture owners who purchased the debentures through agents of FMFS may object to the proposed settlement in writing and ask to speak at the Motion.

If the Court approves the proposed settlement, another notice will be distributed to FMFS Claimants to explain how to receive payment from the settlement or how to be excluded from the class action and the settlement.

If approved by the court, the settlement is subject to the condition that the settlement may be cancelled by the Defendants depending on the number of class members that opt out and exclude themselves from the class action and the settlement.

### **IF THE SETTLEMENT IS APPROVED**

If the settlement is approved and not cancelled, eligible FMFS Claimants will receive a net recovery of approximately 50% of the principal they invested.

**Note: FMFS Claimants may also be entitled to recover from any distribution made by the trustee in bankruptcy of FactorCorp.**

### **CHOICES OF FMFS CLAIMANTS**

FMFS Claimants have the following choices

1. Object – tell the Court why he or she objects to the proposed settlement by submitting a written objection (see “How to Object to the Settlement”, below).
2. Do Nothing – await the outcome of the Motion and see if the Court approves the proposed settlement. A follow-up notice will be sent if the Court approves the proposed settlement.

Future Rights – if the Court approves the proposed settlement, another notice will explain how FMFS Claimants may participate in the settlement or ask to be excluded from the class action and the settlement distribution.

Your legal rights are affected whether you act or not. These rights and options – **and the deadlines to exercise them** – are explained further in this notice.

### **BASIC INFORMATION**

This notice was authorized by the Court because you have a right to know about a proposed settlement of the Class Action and the various individual lawsuits commenced against FMFS, its agents, directors and officers, and various other related parties. You have a right to know about your options before the Court decides whether to approve the proposed settlement. This notice explains the various lawsuits, the settlement, and your legal rights. At this time, you have the right to object to the proposed settlement and request to speak at the Motion.

### **WHO IS INVOLVED IN THE LAWSUITS?**

Robert Zopf is the plaintiff and also the proposed representative plaintiff who is suing on behalf of the current FactorCorp debenture owners who purchased debentures through agents of FMFS (“the class”). The defendants in the proposed class action and in the various individual lawsuits are the individuals and entities related to FMFS (the “Defendants”).

In a class action, a person called a “representative plaintiff” sues on behalf of people who have similar claims. All of these people comprise a “class”. The court resolves the issues for everyone affected; except for those who choose to remove themselves (opt out) from the class.

### **WHAT ARE THE LAWSUITS ABOUT?**

The Plaintiff alleges that the Defendants wrongfully sold debentures in FactorCorp to unaccredited investors and proceeded to negligently advise all purchasers to redeem the debentures without due regard for the consequences of doing so.

### **WHAT HAPPENS IF I HAVE ALREADY STARTED A LAWSUIT?**

A number of FMFS Claimants have hired their own lawyers and have started their own lawsuits against the Defendants. The lawyers that have started those lawsuits have worked on achieving this settlement and support this settlement. Regardless of whether a FMFS Claimant has started a lawsuit or not, he or she will be entitled to take part in this settlement unless he or she exercises the right to opt-out of the class proceeding that would disqualify him or her from the settlement.

### **WHY IS THERE A PROPOSED SETTLEMENT?**

A settlement is not an admission of any wrong doing by the Defendants. A court or jury did not make any decision in favor of the Plaintiffs or the Defendants. Instead, both sides have mutually agreed to settle the claims. Both sides agreed to a settlement to avoid the delays, costs, and risks associated with a trial. The opinion of the various lawyers representing FMFS Claimants is that the proposed settlement is best for all FMFS Claimants. To be effective, the settlement must be approved by the court.

### **WHO IS AND ISN'T COVERED BY THE SETTLEMENT?**

If you are a current owner of FactorCorp debentures purchased from agents of FMFS you will be entitled to compensation under the proposed settlement, unless you exclude yourself or unless you are ineligible.

The following is a *summary* of the persons ineligible to receive compensation under this settlement (a list of ineligible persons is attached as a Schedule to the Settlement Agreement—see [www.thomsonrogers.com/farm-mutual-financial-services-inc./SettlementAgreement](http://www.thomsonrogers.com/farm-mutual-financial-services-inc./SettlementAgreement)):

- a) The corporate Shareholders of FMFS, including Trillium Mutual Insurance Company;
- b) Corporate Sales Agents for FMFS;
- c) Agents employed by (b);
- d) All Defendants in the Class Action (namely the directors and officers of FMFS); and,
- e) Persons who obtained Factorcorp Debentures after the Factorcorp bankruptcy from any of the above persons.

If you do not fall within any of the above-mentioned categories and are a current FactorCorp debenture owner who purchased from an agent of FMFS, you are eligible for compensation under the proposed settlement.

### **THE SETTLEMENT – WHAT YOU GIVE UP**

If a FMFS Claimant does not opt out of the class proceeding and the settlement is approved by the Court and is not cancelled, the debenture owner will give up the right to sue the Defendants and all related people and entities (or to be a part of any other lawsuit against the Defendants and all related people and entities) concerning the claims that this proposed settlement resolves (other than claims against the bankrupt FMFS itself and against one of its alleged insurers).

### **HOW TO OBJECT TO THE SETTLEMENT**

If you object to the proposed settlement, or some aspect of it, you can tell the Court by submitting a written objection. You may only request to speak at the Motion if you have submitted a written objection.

If you wish to make an objection, to do so you must by Friday, May 28<sup>th</sup>, 2010, write to:

**Attn: Darcy R. Merkur**  
Thomson, Rogers  
Barristers and Solicitors  
390 Bay Street, Suite 3100  
Toronto, Ontario, M5H 1W2  
Fax: 416-868-3176  
Email: dmerkur@thomsonrogers.com

Be sure to explain why you are against the proposed settlement and include your name, the amount of your debenture holdings, your address, and telephone number. Indicate whether you have a lawyer, who it is, and if you plan to come and speak at the hearing.

All objections sent by Friday, May 28<sup>th</sup>, 2010 will be disclosed to the Court at the Motion.

If you want to be represented by your own lawyer, you may hire one at your own expense.

If you object, but the settlement is approved, you will still be able to apply for a payment, as long as you don't exclude yourself (see "Opting Out from the Class Action and the Settlement", below).

#### **COURT HEARING FOR CERTIFICATION AND SETTLEMENT APPROVAL**

The Court will hold a Motion to decide whether to certify the action as a class proceeding and whether to approve the proposed settlement. You may attend and, if you have submitted a written objection, may ask to speak, but you don't have to. At the Motion, the Court will consider whether the proposed settlement is fair, reasonable and adequate, and in the best interests of the FMFS Claimants. If there are objections, the Court will consider them at the Motion. The court may reserve judgment and announce its decision after the motion.

The Motion is scheduled to be held on **Monday, June 14<sup>th</sup>, 2010 at 10:00 a.m. at:**

Ontario Superior Court of Justice  
Osgoode Hall  
130 Queen Street West  
Toronto, ON M5H 2N5

If you submit an objection to Thomson, Rogers by Friday, May 28<sup>th</sup>, 2010, you don't have to come to Court to discuss it. As long as you submit a written objection by Friday, May 28<sup>th</sup>, 2010, it will be considered by the Court.

#### **HOW TO MAKE A CLAIM**

If, and after, the Court approves the proposed settlement, and if you as a FMFS Claimant do not opt out of the class action, you will be able to make a claim for payment. A follow-up notice will be sent to you that will explain the process for making a claim. You should expect to be required to submit a completed Claims Form, which will be provided with any

follow-up notice, to the Class Action Administrator (the address for the Class Action Administrator will be provided in the follow-up notice).

You cannot at this time file a claim because the settlement has not yet been approved.

If the Court approves the proposed settlement (see “Court Hearing for Certification and Settlement Approval”, above), there will likely be a 60 day period to allow FMFS Claimants to choose to exclude themselves from the settlement (the “Opt Out Period”). If the Court approves the settlement, payments will only be made after the Opt Out Period.

The Class Action Administrator will apply the Court approved criteria for eligibility and will process payments.

If the settlement is approved, it is unlikely that any payments will be made before September 30, 2010.

### **OPTING OUT FROM THE CLASS ACTION AND THE SETTLEMENT**

If the proposed settlement is approved by the Court you will still have an opportunity to exclude yourself and keep any rights you may have to sue anyone for these claims (this is sometimes referred to as “opting out”).

If the proposed settlement is approved, a follow-up notice will explain how you can opt-out of the class action and the deadline for doing so. If as a FMFS Claimant you do not opt out you will be bound by the settlement agreement.

### **IF THE SETTLEMENT IS APPROVED IS THE SETTLEMENT THEN OFFICIAL?**

Even if the settlement is approved by the Court, the settlement may be cancelled by the Defendants depending on the number of class members that opt out and exclude themselves from the class action and the settlement.

### **GETTING MORE INFORMATION**

This notice summarizes the proposed settlement. More details are in the Settlement Agreement.

You can get a copy of the Settlement Agreement at [www.thomsonrogers.com/farm-mutual-financial-services-inc](http://www.thomsonrogers.com/farm-mutual-financial-services-inc) or by calling 1-888-223-0448.

Questions for class counsel should be directed by email, fax or telephone to:

**Darcy R. Merkur**  
**Thomson, Rogers**  
Barristers and Solicitors  
390 Bay Street, Suite 3100  
Toronto, Ontario, M5H 1W2  
Toll free: 1-888-223-0448  
Fax: 416-868-3134  
[dmerkur@thomsonrogers.com](mailto:dmerkur@thomsonrogers.com)