

# 2012 BCSECCOM 294

## Temporary Order and Notice of Hearing

### Forum National Investments Ltd., Daniel Clozza, Martin Tutschek, and Grant Curtis

(collectively, the Respondents)

#### Section 161 of the *Securities Act*, RSBC 1996, c. 418

¶ 1 The British Columbia Securities Commission (Commission) will hold a hearing at which the Executive Director will tender evidence, make submissions and apply for an order that all persons cease transferring or trading the securities of Forum National Investments Ltd. (Forum National) under sections 161(1)(b) of the Securities Act, RSBC 1996, c. 418 (the Act), and for orders against the Respondents under sections 161, 162 and 174 of the Act, based on the following facts:

#### Background

1. Forum National was incorporated in British Columbia, and continued into Ontario on November 12, 1997. It is a registered public company, and its shares trade on the Over-The-Counter Bulletin Board market in the United States (OTCBB) under the stock symbol “FMNL”. Forum National has carried on its business in or from British Columbia at all material times.
2. Since September 15, 2008, Forum National has been:
  - (a) an OTC issuer pursuant to British Columbia Instrument 51-509 – *Issuers Quoted in the U.S. Over-The-Counter Markets*; and
  - (b) a reporting issuer under the Act.
3. Daniel Clozza (Clozza), Martin Tutschek (Tutschek), and Grant Curtis (Curtis) are all residents of British Columbia.
4. Clozza is the President, Chief Executive Officer, and a director of Forum National.
5. Tutschek is the Chief Financial Officer and a director of Forum National.
6. Curtis is a shareholder of Forum National.

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### **Sudden change in the market**

7. On April 11, 2012, Forum National's share price closed at USD \$0.15, and the trading volume was 110,000. On that date, Forum National had approximately 42,440,000 shares outstanding, and a market capitalization of approximately USD \$6,366,000.
8. During May and June of 2012, the market for Forum National shares experienced a sudden increase in trading volume and price, which coincided with certain news releases and an internet promotional campaign.
9. On July 18, 2012, Forum National's shares closed at USD\$2.80, it had approximately 43,141,000 outstanding shares, and a market capitalization of about USD \$120,794,000.

### ***News Releases***

10. During the past 18 months, Forum National has issued only seven news releases related to its business operations (News Releases). The News Releases were issued during the same period that Forum National was being promoted over the internet.
11. The News Releases indicate that between May 15, 2012 and June 25, 2012, Forum National had taken significant steps to expand its viatical insurance settlement business. These claims cannot currently be independently verified with publicly available information.

### ***Internet Promotion***

12. In May and June of 2012, Forum National was also the subject of a promotional campaign conducted over the internet. Numerous promotional flyers and videos were published on various websites (Internet Material).
13. Some of these internet stock promotion websites explicitly stated that over USD \$650,000 had been spent to promote Forum National. The Internet Material did not disclose who funded the promotional campaign.
14. The Internet Material was highly promotional and predicted a significant increase in the share price of Forum National, generally projecting a target price of USD \$10.00 a share. The Internet Material urged investors to act quickly in order to maximize their returns.

### ***Questions about trading***

15. During the relevant time period, accounts in the names of individuals associated with Clozza engaged in significant trading:

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- (a) Between April 20, 2012 and June 22, 2012, the account belonging to Clozza's 74-year-old mother bought 98,600 shares and sold 314,600 shares of Forum National, for gross profits of \$121,679.
- (b) Between April 26, 2012 and June 28, 2012, Curtis' account received a transfer of one million Forum National shares, bought an additional 54,275 shares, and sold 735,625 shares, for gross profits of \$738,041.
16. These two accounts are held at a branch of a registered investment dealer located in Vancouver, British Columbia (Dealer). The Dealer had at least 53 separate accounts that held positions or traded in Forum National during the relevant time.
17. Commission staff, concerned about Forum National's overall trading, contacted the company. Through counsel, Forum National denied that it, Clozza, or any of its other officers or directors had any knowledge of who had been responsible for the Internet Material.
18. Commission staff advised Forum National that, in light of the unusual trading activity and increase in share price, the company should issue a news release disclosing that:
- it had reviewed the Internet Material;
  - it did not agree with the statements made in Internet Material; and
  - none of Forum National or its officers and directors had any knowledge about who had funded the Internet Material.
19. To date, Forum National has declined to issue such a news release.
20. On June 28, 2012, the Executive Director issued an order under section 89 of the Act halting the trading of securities in Forum National until the end of July 20, 2012 (Halt Trade Order).

### **Unexplained attempts to transfer shares**

21. On July 5, 2012, Clozza and Tutschek attended the offices of Forum National's transfer agent in Vancouver, British Columbia (Transfer Agent). They carried with them share certificates representing approximately 2.7 million shares of Forum National. Among these, were certificates in the names of Curtis and Tutschek.
22. Clozza instructed the Transfer Agent to "overnight" transfer the share certificates into the name of a Bahamian company (Bahamian Entity), by way of a United States based brokerage firm (American Brokerage). The Transfer Agent informed the Commission.

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23. On July 10, 2012, the Dealer informed the Commission that some of the accounts holding Forum National shares had instructed the Dealer to transfer their holdings to the American Brokerage. Accounts in the names of Bahamian companies, including the Bahamian Entity, were among those that provided transfer instructions.
24. On July 9 and 12, 2012, the Executive Director obtained freeze orders from the Commission under section 151 of the Act. Among other things, the freeze orders blocked attempts to transfer certain share certificates held at the Transfer Agent, and certain accounts held at the Dealer.
25. On July 16, 2012, Tutschek sent the Transfer Agent a Treasury Direction signed by Clozza and Tutschek on July 11, 2012, directing it to issue share certificates representing 137,500 shares in Forum National. The Transfer Agent refused.

### **Continuing investigation**

26. Commission enforcement staff are actively investigating this matter.

### **Public Interest**

- ¶ 2 It is in the public interest that the Commission issue orders under sections 161 and 162 of the Act.

### **Temporary Order**

- ¶ 3 The Executive Director considering the length of time to hold a hearing under section 161(1) of the Act to be prejudicial to the public interest, orders:
  - (a) under section 161(1)(b) of the Act that all persons cease trading in the securities of Forum National; and
  - (b) under section 161(d)(v) of the Act that Forum National, Clozza, Tutschek and Curtis be prohibited from engaging in investor relations activities.
- ¶ 4 The Executive Director considers it necessary to impose on this order a condition under section 172 of the Act that no person be permitted to transfer or facilitate the transfer of Forum National shares in any way.

### **Hearing Process**

- ¶ 5 A hearing (the Hearing) will be held at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **July 31, 2012 at 10:00 am**, at which time the Executive Director will ask the Commission to extend the temporary order until:
  - (a) The Executive Director has had a reasonable opportunity to investigate the:

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- (i) source and funding of the Internet Material;
  - (ii) connection, if any, of the Internet Material to the Respondents;
  - (iii) reasons for the increased price and trading volume in shares of Forum National; and
  - (iv) attempts to circumvent or violate the Halt Trade Order through transferring and issuing shares of Forum National;
- (b) Forum National has adequately disclosed to the public the extent to which the company and each of its directors, officers and insiders were involved in or had any knowledge of the Internet Material; and
- (c) Forum National has provided the Executive Director with information that adequately supports the claims made in its News Releases.
- ¶ 6 Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 7 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Secretary to the Commission at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcsc.bc.ca.
- ¶ 8 If the Respondents or their counsel do not appear at the Hearing, the Executive Director may apply to have questions of liability and sanction heard at the same time and determinations adverse to the Respondents may be made.
- ¶ 9 July 20, 2012
- Paul C. Bourque
- ¶ 10 Paul C. Bourque, Q.C.  
Executive Director