

BRITISH COLUMBIA SECURITIES COMMISSION  
*Securities Act, RSBC 1996, c. 418*

Citation: Re Forum National, 2021 BCSECCOM 354

Date: 20210831

**Forum National Investments Ltd. and Daniel Clozza**

|                                |  |                              |
|--------------------------------|--|------------------------------|
| <b>Panel</b>                   | Suzanne K. Wiltshire<br>George C. Glover, Jr.  | Commissioner<br>Commissioner |
| <b>Submissions Completed</b>   | March 25, 2021   |                              |
| <b>Hearing Dates</b>           | July 28, 30, 31, August 12-14, 17-21,<br>September 10, 11, 16-18, October 5-6,<br>November 9-10, 23-27, December 1-2, 16-18, 2020<br>and March 22-25, 2021 |                              |
| <b>Date of Decision</b>        | August 31, 2021  |                              |
| <b>Appearances</b>             |  |                              |
| James Torrance<br>Chris Cairns | For the Executive Director   |                              |
| Patricia A.A. Taylor           | For Daniel Clozza <sup>1</sup>   |                              |
| Daniel Clozza                  | For Forum National Investments Ltd.  |                              |
| Ashley Caron                   | For the Attorney General of British Columbia   |                              |

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<sup>1</sup> Daniel Clozza represented himself for some portions of the hearing.

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## Decision

### I. Introduction

[1] This decision concerns:

- the liability findings under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 with respect to the allegations set out in an amended notice of hearing issued June 15, 2018 (2018 BCSECCOM 181) against the respondent Daniel Clozza (Clozza) and the respondent Forum National Investments Ltd. (Forum); and
- the remainder of the May 17, 2019 application of Forum and the October 4, 2019 application of Clozza, seeking declarations that section 148 of the Act is unconstitutional and a permanent stay of proceedings in this matter or dismissal of the amended notice of hearing on various grounds.

[2] In the amended notice of hearing, the executive director alleged that:

- a) Clozza hired a stock promoter in April 2012 to assist him in conducting a market manipulation of the shares of Forum. The manipulation included:
  - the promoter publishing grossly promotional materials about Forum in May and June 2012;
  - in conjunction with the promoter publishing the grossly promotional materials, Clozza directing Forum to issue seven news releases between May 15 and June 25, 2012 that were false or misleading; and,
  - between April 11 and June 28, 2012 (the trading period), Clozza directing nominee and cross-trading of Forum shares.
- b) Forum participated in the market manipulation by issuing the false or misleading news releases.
- c) Between May 15 and June 19, 2012, RLD and MH<sup>2</sup> (RLD's company) participated in the market manipulation by paying for the promotion. During this period, both RLD and Clozza were in regular communication with the promoter and each other.

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<sup>2</sup> RLD and MH were also named as respondents in the amended notice of hearing but proceedings against them were discontinued (2020 BCSECCOM 87) after they entered into a settlement agreement (2020 BCSECCOM 76) with the executive director.

- d) By engaging in the conduct set out in the amended notice of hearing, Clozza and Forum, directly or indirectly, engaged in or participated in conduct relating to Forum's shares that they knew, or reasonably should have known, resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Forum shares, contrary to section 57(a) of the Act.
- e) As an officer and director of Forum, Clozza authorized, permitted or acquiesced in Forum's contraventions. Therefore, under section 168.2 of the Act, Clozza contravened the same provision (section 57(a) of the Act) as Forum.
- f) When Clozza tendered an affidavit denying any involvement with the promotion at a temporary order hearing in 2012, he contravened section 168.1(1)(a) of the Act because his denial was false and misleading as he hired the promoter and spoke with him during the time of the promotion.

[3] During the liability hearing, the executive director called one witness, the lead investigator for the Commission on this matter.

[4] The respondents called Clozza and five other witnesses: DougC, ML, MT, RLD and DonC.

[5] For the reasons set out below, we find that the executive director has not established, on a balance of probabilities, the allegations set out in the amended notice of hearing against Clozza and Forum. We therefore dismiss the allegations that Clozza contravened sections 57(a) and 168.1(1)(a) of the Act and that Forum contravened section 57(a) of the Act.

[6] Having dismissed the allegations in the amended notice of hearing that Clozza contravened sections 57(a) and 168.1(1)(a) of the Act and that Forum contravened section 57(a) of the Act, the applications brought by Forum and Clozza seeking dismissal or a permanent stay of these proceedings are moot. Therefore, we will not decide on the constitutionality of section 148 of the Act which provides for the issue of a non-disclosure order. We note that we have already addressed the admissibility of the texts relied on by the Commission in support of the section 148 order at issue in the applications and concluded there was nothing improper in how the texts were obtained. We find there is no evidence that the section 148 order was not properly issued by the Commission. We also find no evidence of abuse or unfairness in the use of the section 148 order by Commission staff or in any request by Commission staff prior to the issue of the section 148 order that a person being interviewed in the course of the investigation treat the interview as confidential.

## **II. Background**

[7] The events giving rise to the allegations in the amended notice of hearing occurred in 2011 and 2012.

[8] Forum was incorporated in British Columbia in 1995 and continued into Ontario in 1997. Forum's shares were traded on the Over-The-Counter Bulletin Board (OTCBB) market in the United States under the stock symbol "FMNL".

- [9] Clozza, a resident of British Columbia, was at all relevant times president and chief executive officer and a director of Forum and also a Forum shareholder.
- [10] This matter has an extensive procedural history. Much of the background is set out in a decision on a preliminary application in this matter (*Re Forum National*, 2019 BCSECCOM 257). Following that application, there continued to be requests by the respondents for further disclosure, adjournments, stays of proceedings, and a constitutional challenge plus requests for referral of certain questions to the British Columbia Supreme Court on a stated case, as well as the commencement by the respondents of a civil proceeding against Commission staff and panel members followed by requests that the panel recuse itself. We note that, in addition to delays arising from safety protocols imposed during the COVID pandemic, addressing the additional matters raised by the respondents further delayed getting to and concluding the hearing on the merits.

### **A. Market Manipulation Allegations**

#### *i. Relevant individuals and entities*

- [11] WA, a resident of the United States, was the sole owner of a company, SEFG. In May and June 2012, WA promoted the stock of Forum through SEFG and SEFG received payments for that stock promotion.
- [12] BB, a resident of the United States, introduced WA to Clozza and others at a meeting on December 10, 2011 at the Vancouver International Airport (YVR).
- [13] AG, a resident of the United States, was the sole owner of a company, SGI. WA hired AG in 2012 to promote the stock of Forum.
- [14] RLD, a resident of British Columbia, was a director, the president, secretary and sole owner of MH, a company incorporated in British Columbia. At all relevant times, he was also a secured convertible debenture holder and shareholder of Forum.
- [15] DougC<sup>3</sup>, a resident of British Columbia, was a broker at a registered investment dealer, GM, in Vancouver and the leader of a small group at GM. A number of DougC's clients traded in Forum shares during the trading period.
- [16] EC, now deceased, was a resident of British Columbia and Clozza's mother. She held a trading account at GM during the trading period.
- [17] JS, a resident of British Columbia, was a friend of the Clozza family and held a trading account at GM during the trading period.
- [18] GC, a resident of British Columbia, was a secured convertible debenture holder and shareholder of Forum who had known Clozza for some time prior to the trading period. GC held a trading account at GM during the trading period.

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<sup>3</sup> DougC was also named as a respondent in the amended notice of hearing but proceedings were discontinued against him (2020 BCSECCOM 320).

- [19] NM, a resident of British Columbia, was the sole owner of a British Columbia company (numberco), which acquired the travel club assets of Forum in December 2011.
- [20] MT, a resident of British Columbia, was at all relevant times the chief financial officer and a director of Forum. MT was intimately involved in decisions regarding the business, operations and financial affairs of numberco.
- [21] DonC, a resident of British Columbia, is Clozza's father.
- [22] RB, a resident of the United States, was the chief operating officer of Aliya Lifespan LLC (Aliya).
- [23] SM, a resident of the United States, was the managing member and chief executive officer of Aliya and also at all relevant times a director of Forum.

*ii. The Promotion*

- [24] The executive director alleges that Clozza hired WA to assist him in conducting a market manipulation of Forum shares. This included WA's publishing grossly promotional materials about Forum.

*1. YVR Meeting*

- [25] Clozza and BB had been communicating in the fall of 2011 regarding the life settlement industry and funding for Forum.
- [26] On December 10, 2011, Clozza and BB met at a restaurant at YVR (the YVR meeting).
- [27] RLD, MT and GC attended the YVR meeting at Clozza's invitation. BB brought WA to the YVR meeting. Clozza arranged for Forum to pay \$650<sup>4</sup> to BB in advance towards the flight costs of BB and WA. At the meeting, Clozza made a presentation with respect to the life settlement industry and what Forum was trying to accomplish. Following that, WA made a brief presentation respecting his ability to promote Forum on social media via Facebook and Twitter.
- [28] The evidence as to the circumstances surrounding, and purpose of, the YVR meeting is somewhat at odds.
- [29] The executive director points to the transcript of BB's interview in 2013 conducted by staff of the Securities and Exchange Commission of the United States (SEC). In that interview, BB stated that Clozza had asked him if he knew anyone involved in social media and BB said he knew WA. Clozza asked if he could meet WA. BB said he had replied that he didn't know and offered to give Clozza a phone number for WA. Later, Clozza told BB that he wanted to meet WA and paid for BB and WA to travel to YVR to meet with him, adding that BB could hear all about the life settlement industry.

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<sup>4</sup> We have not indicated whether monetary amounts referred to are in Canadian or US currency since it is not material to the decision.

- [30] The executive director also points to an email sent in 2013 by WA to his lawyer and a subsequent conference call between WA and his lawyer and two SEC investigators. At that time, WA said BB had called him and said he might have a client and wanted WA to fly to YVR and meet the client. WA said BB asked him to prepare a presentation in advance of the meeting, which he did.
- [31] The executive director also points to GC's evidence in his second interview with Commission investigators that as far as GC knew BB and WA were there at the YVR meeting to help get people aware of Forum because they had lots of contacts in the United States.
- [32] Clozza testified that the YVR meeting had been arranged after BB said he would be making a trip to the Pacific Northwest and it would be nice if they could get together as he would like to learn more about the life settlement industry. Clozza testified that he did not ask BB to introduce him to people involved in social media marketing and that he did not know why BB had WA with him, other than the fact that BB and WA were travelling together and WA was someone BB worked with or who worked for BB.
- [33] Clozza said that prior to the YVR meeting, he and BB had been communicating about the life settlement industry and funding for Forum and he had neither met nor been in contact with WA and BB had never given him WA's phone number. Clozza testified that WA spoke for only 10 or 15 minutes at the end of the YVR meeting. WA talked about having a great number of individuals who were following him on Facebook and Twitter and said he could re-disseminate publicly available information to his group of followers. Clozza said he told WA and BB that it sounded like spam, might even be illegal, and was not something he or Forum would be interested in.
- [34] As to the cost of a promotional campaign, there is a conflict between BB's and WA's statements. BB said WA said he was going to be paid \$70,000 for the promotion. WA said BB negotiated the amount with Clozza and he (WA) was not involved in that aspect of the discussions, except that Clozza had told him (WA) and BB that \$80,000 would not be a problem and they would be hearing from him.

## *2. Follow-up emails*

- [35] In three follow-up emails of December 13, 2011, January 12, 2012 and February 8, 2012, BB forwarded to Clozza examples of stock promotions WA had done for other issuers. In the January email, BB wrote "What we do for Forum will be more spread out over February". In the February email, BB wrote "Keep in mind that [WA] is giving you a month campaign for \$70,000".
- [36] Clozza testified that he could not recall these three emails and probably did not read them, but just glanced at them and then deleted them. He said he did not forward them to, or discuss them with, anyone.

### *3. April 3, 2012 Market Awareness Schedule*

- [37] On April 3, 2012, BB emailed Clozza, attaching a document entitled “FMNL Market Awareness Schedule for the Month of May” (Schedule). BB told Clozza “... you must decide by early in week of April 16 so [WA] can get his team lined up”. The Schedule which originated from SEFG, WA’s company, set out a five week schedule for two news releases in each of the first two weeks of May, followed by one news release in each of the following three weeks. Also attached was an invoice to BB due April 16, 2012 for a one month awareness campaign for Forum in the amount of \$70,000 that also contained banking information regarding SEFG to facilitate payment by international wire transfer.
- [38] On April 16, 2012, WA emailed BB asking if there was any word from Clozza on a Forum wire. BB replied, “Nothing yet.”
- [39] Clozza testified that he could not recall if he read or did not read the April 3, 2012 email from BB. He said he did not forward it to, or discuss or share its contents with, anyone.

### *4. Events of May 7 to 11, 2012*

- [40] On May 7 and 8, 2012, Clozza and BB exchanged four phone calls. The first three were from BB to Clozza and were very short, the longest being 81 seconds. The fourth was a return call from Clozza to BB of only 26 seconds.
- [41] On May 9, 2012, Clozza emailed RLD, GC and another individual proposing a lunch meeting at the Kirin restaurant. The four of them met at the Kirin the following day, May 10, 2012. Testimony of RLD and Clozza and the transcript of GC’s second interview at the Commission indicated that they frequently met at the Kirin. The executive director submitted that we should infer that the promotion was discussed at the Kirin lunch, although there was no evidence of any specific matters discussed.
- [42] On Friday, May 11, 2012, RLD emailed GC to see if he had “any cheese to kick in on this awareness program”, adding “we need to get money to them by Tuesday latest”. GC replied, asking how much and RLD answered “the bill is \$15,000”. GC responded that he was short for a couple of weeks and that he would see what he could do.

### *5. Promotional material*

- [43] WA and AG, in separate interviews conducted in 2013 by staff of the SEC, confirmed that they had published promotional material about Forum.
- [44] WA stated RLD approached him to do a marketing campaign for Forum and that he and RLD came up with the name Welsson Financial Media as the fictional third party who had hired WA to do the campaign. WA said that he created a landing page, “American Investing Report”, to promote Forum shares, that he hired Clay Trader “to do a video chart on the action of the stock” of Forum and that he hired AlphaPenny Stock to promote Forum and gave AG a budget to advertise Forum.



- [45] AG confirmed he was hired by WA, stating that WA had said he had been hired by a third party, Welsson Financial, to do a market campaign for Forum. AG created and posted landing pages on TheWallStreetBulls.com and MarketBullReport.com, domains that he owned through his company SGI, and sent out promotional newsletters on four of his other websites.
- [46] The American Investing Report landing page created by WA referred to Forum as a hidden gem and stated “you could turn a \$5,000 investment into a staggering \$41,300 in the blink of an eye”. A disclaimer on the landing page states that “AmericanInvestingReport.com has been compensated \$650,265 by a non-affiliate third party, Welsson Financial Media...”.
- [47] Clay Trader videos were captured by staff of the Commission on May 21 and 25 and June 5, 12 and 18, 2012. The Clay Trader videos refer the viewer to TheWallStreetBulls.com and MarketBullReport.com landing pages.
- [48] On June 4, 2012, the AlphaPenny Stock Newsletter posted Forum as its pick that day and followed up with a second posting on June 12, 2012.
- [49] AG stated that he posted the TheWallStreetBulls.com landing page around the time the campaign started – around May 21, 2012. The landing page included the following statements:
- FMNL is our most promising pick of 2012
  - This company offers you the chance to make staggering profits with one trade
  - Turn a \$5,000 investment into a staggering \$41,300 with FMNL
  - FMNL could be the next major acquisition story on Wall Street
  - This is your chance to take advantage of an explosive company before Wall Street’s big boys join the party!
  - One trade could make you rich and net you enormous profits! FMNL could become the hottest stock on Wall Street in 2012 with explosive growth!
- AG said the landing page was mostly cut and pasted from another landing page and that he had no reason to believe, as stated on TheWallStreetBulls.com landing page, that a \$5,000 investment into Forum could turn into \$41,300 or that Wall Street analysts were excited about Forum.
- [50] AG stated that the MarketBullReport.com landing page went online at the end of May or beginning of June 2012. He created the landing page using cut and pasted material from other landing pages and publicly available information about Forum. The page contained similar statements to those made on TheWallStreetBulls.com page.
- [51] AG also created splash pages (i.e. a page that is created and then the screen shot of it is put through different forums and chat rooms) through MarketBullReport.com and TheWallStreetBulls.com. AG stated that he sent these splash pages, containing similar statements to those made on the landing pages, to WA sometime in late May/early June and WA then went to different forums and chat rooms (for example, InvestorsHub and StockHideout) and posted the pages.
- [52] Promotional material with respect to Forum appeared on InvestorsHub between May 21, 2012 and June 19, 2012.

6. *Payments to WA's company, SEFG*

- [53] Between them, RLD and his company, MH, paid SEFG a total of \$72,161, as follows:
- May 15, 2012 - \$14,982 by wire from RLD
  - May 29, 2012 - \$19,982 by wire from MH
  - June 1, 2012 - \$9,983 by wire from MH
  - June 11, 2012 - \$10,732 by wire from MH
  - June 19, 2012 - \$16,482 by wire from RLD
- [54] All payments sent to SEFG were sent by wire to the same SEFG account that was set out in the Schedule provided to BB by WA that was attached to the April 3, 2012 email sent from BB to Clozza.
- [55] In a settlement agreement with the executive director of the Commission, RLD admitted to making the payments and admitted that in doing so he inadvertently and unintentionally breached section 57(a) of the Act. RLD also admitted that he and MH reasonably should have known that their conduct would result in, or contribute to, a misleading appearance of trading activity in, or an artificial price for, Forum's shares.
- [56] At the hearing, RLD testified that prior to the YVR meeting, he did not know BB or WA or what BB had said to Clozza prior to that time. At the YVR meeting, BB said WA was a colleague or associate who was involved in social media and then WA made a short presentation to the effect that he could enhance awareness about Forum on Twitter and Facebook where he had a large following. RLD said that at the end of the YVR meeting, those present exchanged business cards and his card at that time would have had his name, phone number and maybe his email and might also have referred to MH. He stated that after WA's presentation, Clozza told BB and WA that WA's awareness program looked to him like spam and Clozza and Forum could not be involved. RLD said Clozza later told him he was not interested in working with WA.
- [57] RLD testified that sometime after the YVR meeting, WA began phoning him and kept pestering him to have WA raise awareness about Forum and its shares. RLD testified that he paid WA, out of curiosity and as a one-time thing, to see what would happen. He made no commitment to pay WA any more going forward. Afterwards, there were some spikes in volume and some increase in price of Forum's shares and he thought maybe what WA was doing was a good thing. So he continued on, with WA making requests for payment and RLD seeing what the outcome was before agreeing to pay more. With respect to the payments, RLD recalled WA giving him instructions regarding sending the payments to him and then he paid. RLD said he never agreed to a specific awareness program, was not given a schedule and WA did not tell him specifically what he would do other than say he would be using social media. RLD denied telling WA he did not want to reveal his identity and said he had not told WA to use the third party name, Welsson Financial Media.
- [58] RLD testified that WA had told him everything would be in keeping with US securities rules and regulations but did not tell him the specifics of what he was going to do. RLD did not recall seeing any of the promotional materials or Forum's news releases at the time, although, he may have forwarded an email from WA regarding sending "hard mailers" to others and may himself

have tried to look at material on the internet without success. RLD explained that he looked to what Forum shares were doing to decide if it was worth paying WA.

[59] RLD testified that he had no discussions or emails with BB regarding what WA was doing. RLD agreed that he had been in regular communication with Clozza at the relevant time, saying that they spoke often by phone and frequently went to the Kirin restaurant, and that he was involved as a shareholder and debenture holder of Forum. However, he did not tell Clozza about what WA proposed to him or that he was paying WA for WA's promotional campaign to raise awareness about Forum. RLD confirmed that he was not paying WA on behalf of Forum and had never asked Forum or Clozza to pay any money for the promotional campaign that WA did.

*7. Telephone Communications between Clozza, WA and others*

[60] Clozza testified that he did not want to have anything to do with WA and that he did not discuss with WA the promotion, payment for the promotion or any involvement with RLD.

[61] Call records were obtained by Commission investigators with respect to telephone calls and texts to and from various phone numbers identified by Commission investigators as being associated with Clozza, BB, WA and RLD in the period from May 1 to June 28, 2012.

[62] The call records show numerous phone calls between numbers associated with WA and Clozza from May 23 through June 18, 2012 and also a number of texts on May 26, 2012 when Clozza attended a UFC fight in Las Vegas. The call records do not show any telephone or text communications between Clozza and WA prior to May 23, 2012.

[63] The call records show numerous calls between numbers associated with WA and RLD from May 24 through June 19, 2012. The call records do not show any telephone or text communications between WA and RLD prior to May 24, 2012.

[64] The call records show numerous calls between numbers associated with Clozza and RLD throughout the period from May 2 to June 28, 2012.

[65] The call records also show calls at various times between numbers associated with BB and Clozza from May 7 to June 13, 2012 and between numbers associated with BB and WA from May 15 to June 19, 2012. While there are records of two calls from a number associated with BB to a number associated with WA on May 15, 2012, there are no records of calls after that between BB and Clozza until May 21, 2012 and no records of calls between BB and RLD.

[66] The executive director in his submissions reviews the call records in relation to the payments made by RLD and MH to WA through SEFG.

[67] Since RLD's first payment on May 15, 2012 was made by wire to the bank account set out in the Schedule to the April 3, 2012 email sent to Clozza, the executive director argues, based on Clozza's evidence that he did not forward the Schedule to anyone, that only Clozza, BB and WA had that banking information. Based on the call records, the only person RLD was in contact with prior to May 15, 2012 was Clozza. Thus, submits the executive director, the panel should

infer that Clozza gave RLD the SEFG bank account information to make the May 15, 2012 payment to WA.

- [68] Similarly, because RLD made five payments to SEFG totaling \$72,161, and only Clozza knew WA was to be paid \$70,000, the executive director argues that the panel should infer that Clozza told RLD how much to pay WA.
- [69] The executive director submits further that the panel should infer that Clozza, WA and RLD were discussing payments to WA leading up to the payments by RLD and MH on May 28, June 1, June 8 and June 19, 2012 because the call records show phone calls between Clozza and WA, Clozza and RLD, and WA and RLD prior to each of the four payments.
- [70] We reviewed the call records. Since some of the calls in the call records are recorded in minutes, a call of two minutes duration may be closer to a call of one minute duration. The call records show a pattern of very short duration calls that may indicate calls that were not answered but went to voicemail and could include calls with no message or where a short message may have been left. Also the call records only evidence numbers associated with the caller and the receiver, not who may have placed or received the call or what may have been said. The evidence establishes that other individuals had access to the two landlines located in the home office in Clozza's residence, which were two of the three numbers identified by Commission investigators as being associated with Clozza.

### *iii. The News Releases*

- [71] The executive director alleges that in conjunction with the publication of the promotional materials, Forum issued false and misleading news releases and that Clozza directed it to do so.
- [72] Between May 15 and June 25, 2012, Forum issued seven news releases. Prior to May 15, 2012, Forum had not issued any news releases since 2009. Clozza approved all the news releases.
- [73] The May 15, 22 and June 19, 2012 news releases were about a proposed merger with Aliya, a company involved in the life settlement industry in the United States. In the May 15 news release, Forum announced it was in formal negotiations with Aliya on a working agreement to potentially merge their business interests in the US life settlement marketplace. In the May 22 release, Forum announced that formal agreements related to a potential merger with Aliya had been executed. The June 19 release announced that Forum and Aliya had executed a letter of intent for the purpose of a merger. The May 15 and 22 news releases attributed statements to RB, the chief operating officer of Aliya, and the June 19 news release included a quote attributed to RB.
- [74] RB stated in an interview conducted by the SEC that he did not provide the statement attributed to him in the May 15 news release and did not give Forum permission to issue that release. He also stated that there was nothing significant about the May 15 date. RB did not think he read the May 22 news release before it went out and stated that he did not provide the statement attributed to him. RB stated he did not receive a copy of the June 19 release before it was issued and did not provide, nor give Forum permission to use, the quote attributed to him.

- [75] SM, in a separate interview with the SEC, stated that he did not recall any significance to the May 15 date and that he did not believe Aliya gave Forum permission to issue that news release. He also stated the he did not believe he reviewed the June 19 news release but that someone from Aliya did. SM said that he did not know if RB supplied the quote attributed to RB.
- [76] Clozza testified there was no record of RB approving any of the news releases, adding Forum had no obligation to inform RB that a news release was going out because RB was not a director or officer of Forum. Clozza stated that SM, as a director of Forum, approved the content of Forum's news releases.
- [77] MT testified that his general practice was that he would circulate Forum news releases to Forum's directors prior to release and that he viewed a non-response as "tacit approval". MT said he sent the news releases to RB as a courtesy as RB was running Aliya, and Forum and Aliya had a working relationship. MT was not aware of, or could not recall, any authorization from RB regarding the statements in the news releases attributed to RB.
- [78] The executive director characterizes the May 15, 22 and June 19, 2012 news releases as misleading because the news releases attributed statements to, or quoted, RB who did not approve the statements.
- [79] The news release of May 23, 2012 concerned Forum's development of a "world class propriety [sic] software analysis and Life Settlement tracking system". The executive director asserts that this release was misleading as the product was an Excel-based spreadsheet that Forum had been using since 2007 and there is no evidence to support that the software was "world class" proprietary.
- [80] The May 29, 2012 news release announced the appointment of an individual with experience in the life settlement industry in the United States as a director of Forum. The executive director says that release is false because the individual did not execute a personal information form within 10 days of becoming a director as required of anyone who becomes a director of an OTCBB reporting issuer in British Columbia. The executive director says further that no meeting minutes or other corporate documents were provided by Forum to corroborate that the individual was appointed as a director.
- [81] In his testimony, Clozza agreed that the individual did not execute the director documents, but said that the individual had agreed orally to become a director of Forum and had acted as a director and participated in Forum board and management meetings.
- [82] The June 12 and 25, 2012 news releases concern Forum's plans to "commence" the sale of a "bond" offering securitized by senior US life settlements (i.e. the secured convertible debentures) in the face amount of \$9,000,000 describing the offering as "an industry first" and its subsequent announcement that the offering had "sold out".
- [83] The executive director says the June 12 news release was false since Forum had been selling the same secured convertible debentures since February 2011. Both Clozza and MT agreed in cross-examination that the investment product described in 2012 was the same investment product

Forum had been selling in 2011. An SEC filing discloses that approximately one-third of the face amount (\$3,150,000) of the offering was sold in the fiscal year ended September 30, 2011.

- [84] The executive director says the June 25 news release is also false because Forum never “sold out” the secured convertible debentures. Forum’s SEC filing discloses that another nine debentures were sold in fiscal 2012 (face amount \$4,350,000). Thus Forum was left with \$1,500,000 face amount of the offering on which sales did not complete. Clozza testified that Forum had sufficient commitments to purchase at the time to justify the news release and that contracts were being prepared for signature. He noted the Commission’s halt trade order with respect to Forum followed shortly after that release. Clozza submitted that “sold out” did not mean Forum necessarily had received all of the proceeds of the offering and, accordingly, the statement was correct when it was made.

*iv. Trading in Forum shares*

- [85] Prior to April 11, 2012, Forum shares were thinly traded and that had been the case since June 2010. In the fourth quarter of 2011, the share price had ranged from \$0.11 to \$0.30. There were only two trades in Forum shares from January 1 to April 10, 2012. The trade on January 9 was at \$0.22 and the trade on January 31 was at \$0.15. The total volume traded in this period was 13,510 shares.
- [86] The volume of trading and price of Forum shares began to increase after April 10, 2012. However, the number of trades remained low, the total volume traded between April 11 and May 14, 2012 was 297,190 shares and the price ranged from \$0.22 to a high of \$0.44, closing at \$0.36 on May 14, 2012.
- [87] The share price reached a high of \$0.55 on May 18, 2012, following Forum’s news release on May 15, 2012. Between May 15 and May 20, 2012, the daily number of trades began to increase and total volume traded was 531,777 shares.
- [88] After the start of WA’s promotion on May 21, 2012 and Forum’s news release of May 22, 2012 regarding a potential merger with Aliya, the price of Forum shares increased significantly. Forum shares closed on May 31, 2012 at \$0.64 after reaching a high on May 23, 2012 of \$0.94. Total volume traded between May 21 and May 31, 2012 was more than 2.2 million shares.
- [89] WA’s promotion continued through June 19 and Forum news releases were issued on June 12 and 19. The price of Forum shares continued to rise to higher levels, reaching a high of \$2.18 on June 21. WA’s final promotional material was posted on June 19, 2012 and the final Forum news release was issued on June 25, 2012. The Forum share price closed at \$1.42 on June 28, 2012. Total volume traded from June 1 to June 28 was more than 3.8 million shares.
- [90] On June 28, 2012, the Commission issued a halt trade order against Forum. However, Forum shares continued trading in other jurisdictions.

*v. Alleged nominee trading and cross-trades*

- [91] The executive director alleges that Clozza directed nominee and cross-trading in Forum shares.

*1. Alleged nominee trading*

- [92] The amended notice of hearing alleges that during the trading period, Clozza directed nominee trading in two accounts at GM through DougC: one being the account of EC and the other being the account of JS.
- [93] During the trading period, EC bought a total of 108,100 Forum shares over nine days and sold a total of 314,600 Forum shares over 14 days, realizing a net trading profit of \$101,605.85.
- [94] During the trading period, JS bought a total of 487,954 Forum shares over 30 days and sold a total of 454,260 Forum shares over 14 days, resulting in a net trading loss of \$30,790.17.
- [95] Commission investigators obtained a telephone call activity report from GM with respect to calls to and from DougC and his group at GM during the trading period for certain phone numbers that Commission investigators had identified as being associated with Clozza, EC, JS and others. The report shows the date, time, calling phone number and called number for each call, whether the call was answered or not and, if answered, the duration of the call.
- [96] With the exception of three calls on May 28, 2012, the GM call records do not show any calls during the trading period between either of the phone numbers associated by Commission investigators with EC and those of DougC and his group at GM.
- [97] The GM call records do not show any calls during the trading period between either of the phone numbers associated by Commission investigators with JS and those of DougC and his group at GM.
- [98] The GM call records do show almost daily calls between Clozza and DougC during the trading period and, as the executive director points out, some of these calls coincide with the days of trades in Forum shares in the EC and JS accounts at GM (with the exception of the trades by EC and JS on April 16 and 18 when there is no record of phone communication between Clozza and DougC). However, there are also calls on many days between Clozza and DougC when there are no trades in Forum shares in the EC and JS accounts at GM, consistent with Clozza's almost daily calling pattern with DougC as described by Clozza in his testimony.
- [99] Clozza testified that he spoke frequently with DougC about Level 2 quotes (more detailed quotes), about the market in general and other social matters. The executive director submits that Clozza's evidence in this regard is not credible when compared with the volume and frequency of calls between Clozza and DougC shown in the GM call records.
- [100] We disagree with the executive director as the GM call records are consistent as we have noted above with an almost daily phoning pattern irrespective of whether trades in Forum shares were made in the accounts of EC and JS at GM, with phone calls being made on days when there were no trades in Forum shares in the accounts of EC and JS at GM and phone calls not being made on at least two days when there were trades in Forum shares in the accounts of EC and JS at GM.

- [101] JS, in an April 2013 interview conducted by Commission staff, stated that he did not give the instructions for the trades in his GM account. The executive director relies on this evidence to support his submission that we should infer Clozza gave the instructions for trading Forum shares in JS's account.
- [102] In view of the other evidence on this point reviewed below and the overall tenor of JS's evidence during his interview conducted by Commission staff, including his avoidance of admitting that he knew certain persons that he had known for some time and even worked with, we consider JS's evidence to be unreliable.
- [103] We prefer the evidence of DonC. He testified that he met JS when JS was a teenager and a schoolmate of Clozza and MT, and that he treated JS as one of the family, almost like a son, and became a sort of mentor to him. DonC testified that in 2012 he became aware that the lawyer for the estate of DonC's common law wife, with whom DonC had been living prior to her death, proposed to sell 55,000 Forum shares held in the estate. He said that since he disagreed with the sale of the Forum shares at that time and wanted to do something for JS, he told JS he would fund JS's purchase of that block of Forum shares in the market and possibly some additional Forum shares up to a total of 100,000 shares.
- [104] DonC said he talked separately beforehand to both DougC and JS, who was at the time at the gym where he worked in Richmond, about purchasing the 55,000 Forum shares. The gym was a former asset of Forum and Forum maintained its offices in the same building as the gym. JS performed maintenance and other general duties at the gym. DonC said on another occasion he was present in person with JS on the speakerphone in Clozza's residence office when JS gave a buy order for Forum shares to DougC. Other than those trades, DonC said he had talked with JS prior to JS entering some orders and conferenced in on other calls with DougC and JS. DonC also said that he had been in Clozza's residence office while he was in the Lower Mainland in May 2012 on several occasions when JS made calls to or received calls from DougC. DonC also believed he took some calls from JS at home in Prince George that he conferenced DougC in on for JS. He also believed that on June 20 or 22, 2012 there had been a conversation at the gym location between JS and DougC but that he was uncertain if any orders had been entered then. He had no specific recollection of other trades and thought JS may have been doing some trades on his own.
- [105] As for EC, to whom DonC had been married for many years before they separated, DonC said she had traded for many years for her own account at more than one brokerage firm and EC had owned and traded shares in Forum and other securities over the years.
- [106] The executive director submits that DonC's evidence should be rejected because it is unclear and of little assistance to the panel. We disagree. While DonC rambled somewhat in giving his testimony, his evidence was consistent as to his having funded JS's trading in 2012 for the particular purpose of having JS buy the block of 55,000 Forum shares that DonC knew was going to be sold from the estate of his former common law spouse and some additional Forum shares, but not exceeding 100,000 shares in total. He also testified that he participated in at least one call with JS and DougC when JS gave DougC instructions to purchase Forum shares. DonC's evidence was also clear as to: JS having used the landlines at Clozza's residence to talk



to DougC in the period from May 13 to 27, 2012 when DonC was staying at Clozza's residence and JS was working on the residence property; JS on at least one occasion having a conversation with DougC while JS was at the gym in Richmond; and the likelihood that some of the calls from JS to DougC may have been conferenced through DonC's Prince George phone line.

[107] DougC stated when interviewed by Commission staff in December 2013 that Clozza did not give trade order instructions for the EC or JS accounts.

[108] DougC testified during the hearing that he received trading instructions directly from EC and JS, respectively. He confirmed that JS never indicated he was being pressured to trade and that JS made the trades himself and all trades seemed to have commercial motive. He recalled JS having been long in Forum stock continuously for four or five years until he closed his account in October 2012. DougC said that JS came into the GM office lots of times when he was dropping off money or just to talk and they would go out for coffee. On cross-examination he was referred to the transcript of his interview in 2013 by Commission investigators and did not dispute that at that time he had recalled JS coming into the GM office two to three times during the trading period. As for EC, whom he had known for many years, DougC said she was well informed about the stock market and did what she wanted to do when she wanted to do it.

[109] The executive director submits that DougC's evidence should be rejected because it is contradicted by the GM phone records and that even if DougC's evidence respecting JS having given trading instructions in person on a few trades is accepted, there are many other trades for which there is no phone record. However, we have DonC's evidence that JS placed trades and spoke to DougC from telephones other than either of the phone numbers used by Commission investigators to identify calls between DougC and JS. Additionally, ML testified that he had installed an internet based (VOIP) phone line at JS's home. This line could also have been used by JS to give instructions to DougC. We also have DougC's evidence that he took trading instructions from JS and EC, respectively, and not from Clozza. We do not agree that we should reject DougC's evidence. It is evidence that we believe we should consider in looking at the evidence as a whole for the purpose of drawing inferences.

[110] Clozza testified that he never traded in EC's account, never gave any instructions to trade in EC's account and that she did not act as a nominee for him. He stated that his mother had been involved in the public markets since the 1960s, always dealt with her own affairs when it related to purchases or sales of securities and was very experienced.

[111] Clozza also testified that he was not involved with JS's trading whatsoever. He testified he was not aware of JS's trading at the time but much later came to know that it was done to allow JS to purchase the Forum shares being sold from the estate of his father's common law wife.

## *2. Payments from EC to Clozza*

[112] On May 28, 2012, EC deposited a cheque from her GM trading account in the amount of \$79,327.26 into her bank account and then paid \$55,000 to Clozza by cheque dated June 1, 2012 drawn on the same bank account. EC also paid \$14,000 by cheque dated June 1, 2012 drawn on the same bank account to the municipality where Clozza resided for property taxes coming due on his residence.

[113] On June 18-19, 2012, a wire transfer for \$50,700 with respect to trading proceeds was deposited to EC's bank account and EC drew a cheque for \$45,000 on her bank account payable to Clozza which he deposited to his account on June 19, 2012.

[114] The executive director submits that EC's payments to, or to the benefit of, Clozza were from proceeds of trading Forum shares.

[115] We agree that the source of the funds EC used to make the payments to Clozza was monies she received from the trading of her Forum shares, but we have no evidence as to why EC may have made these payments. Clozza submits that the common sense approach to this points only to a mother selling some of her securities to give her son some money with the knowledge that she was very ill at the time and that it is typical within a family to have such transactions.

### 3. *Payments to EC and JS*

[116] JS received a draft for \$13,300 from Clozza and deposited it to his bank account on April 25, 2012. JS then deposited the same amount into his GM account.

[117] The executive director submits that this payment is consistent with Clozza directing the trading in JS' GM account.

[118] The separate testimony of both Clozza and his father, DonC, was that Clozza paid the \$13,300 to JS at the request of his father and that the amount was paid from monies that were DonC's but held in a bank account in Clozza's name from which Clozza, at the direction of his father, made payments from time to time. Clozza testified that he had no details as to the reason for the payment at the time it was made.

[119] The executive director submits that Clozza's testimony in this regard is not credible, that there is no documentary corroboration, and that DonC's evidence about movement of funds has inconsistencies.

[120] In our view, the testimony of Clozza and DonC with respect to this payment is credible and we accept that the payment was made by Clozza at his father's direction from funds provided at an earlier time by DonC to Clozza for the purpose of making payments for things that DonC directed Clozza to pay in respect of bills, expenses and other payments he wished to make.

[121] On July 10, 2012, numberco transferred \$12,054 to EC's bank account. On August 12, 2012, EC drew a cheque for \$13,800 on the same bank account and deposited it to her GM account to cover part of the debit balance in her GM account.

[122] On July 18, 2012, numberco transferred \$18,500 to JS's bank account. JS's cheque for \$18,500 drawn on the same bank account was deposited on July 23, 2012 to JS's GM account and used to cover the debit balance in his GM account of \$18,092.91.

[123] DonC testified that following the halt trade order at the end of June 2012, certain trading accounts at GM were in a debit position and he talked with each of EC and JS regarding the debit position in each of their trading accounts at GM and said he would take care of the debits. He

then asked MT to cover the debits in the GM trading accounts of EC and JS and did not tell Clozza about it at the time because it was not any of his business. DonC said he believed at the time that things would straighten out and trading in Forum shares would resume and the debit payments would find their way back to MT. DonC said he did not know the money to cover the debits had come from numberco.

[124] MT testified that DonC had asked him to provide funds to cover the debits in the accounts of EC and JS and MT had numberco transfer the requested amounts to each of EC and JS to cover their GM account debits. MT said he did not tell Clozza about the payments.

[125] Clozza testified that he knew nothing about either of the payments.

#### 4. *Cross-trades*

[126] GC cross-traded shares through his GM account to RLD and three other individuals plus one individual's wife

[127] On May 21, 2012, RLD bought 100,000 Forum shares in the market at \$0.55 and GC sold 155,000 Forum shares at the same price. On May 23, 2012, RLD bought 50,000 Forum shares in the market at \$0.92 and GC sold the same number of Forum shares at the same price. On June 19, 2012, RLD bought 50,000 Forum shares while GC sold 100,000 Forum shares, all again at the same price. GC used his trading proceeds from his GM account to pay RLD and his company, MH, approximately \$154,000 which RLD used to cover a \$105,406.42 debit in his GM trading account.

[128] Between May 29, 2012 and June 25, 2012, GC similarly cross-traded 360,000 Forum shares to the other four, bringing the total number of Forum shares cross-traded, including those bought by RLD, to 560,000.

[129] During his interviews with Commission staff, GC explained that he had obtained the funds (\$50,000) from RLD and two of the other individuals in 2011 to subscribe for one million Forum shares by way of a private placement and had promised RLD and the other two individuals that they would receive a certain number of the Forum shares he obtained, thus leaving him with the balance of the Forum shares without needing to pay anything for them. Once he had obtained the share certificate for the one million Forum shares and they were no longer restricted from free trading, the shares were put into his GM account in April 2012. He then needed to get the promised number of Forum shares to RLD and the other two individuals so they could do what they wanted with them and so he cross-traded the promised number of shares to them. With respect to the remaining individual, GC explained that he owed that individual some money in relation to a much earlier real estate deal they had done together and the cross-trade to him was to pay off that debt using the Forum shares.

[130] The executive director submits the cross-trades were enabled by Clozza and DougC to artificially increase the volume of Forum share trades and increase the Forum share price.

[131] The executive director refers us to the transcript of GC's second interview with Commission staff on December 10, 2013, where GC stated he had been at a lunch with DougC, Clozza and another individual and that they explained to him how a cross-trade worked. GC also stated that the first time he cross-traded shares he was confused so Clozza gave him a hand.

[132] The executive director also refers us to an affidavit made by GC on August 17, 2020, in which GC states that during his second interview he told the Commission investigator things that he believed the investigator wanted to hear and that the cross-trades were "of my own doing".

[133] We also note that in his initial interview with Commission staff on September 6, 2012, GC stated that he asked DougC how he could get some of his Forum shares to RLD and the other individuals and DougC then told him he could no longer just move the shares from GC's trading account at GM to someone else's trading account and that the only way it could be done was through cross-trades in the market. GC said he agreed to do the cross-trades and DougC described how to do them and then carried out the trades. GC said he just did what DougC told him to do and he did not discuss the idea of the cross-trades with Clozza beforehand. When he told Clozza soon after what he was doing, GC said Clozza was not happy about it.

[134] The executive director acknowledges that, regarding the cross-trades, GC's affidavit contradicts the evidence in his second interview transcript. The executive director also notes that both Clozza and DougC denied that they told GC how to do the cross-trades.

[135] We observe that GC's evidence in his first interview also contradicts his later statement in his second interview regarding who told him about how cross-trades worked.

[136] In our view, it is impossible to ascertain when, if ever, GC may have been telling the truth as to how he learned about doing cross-trades. Accordingly, we give GC's evidence on this point no weight.

[137] The executive director submits we should in any event find that it is likely that it was Clozza and DougC that told GC how to do the cross-trades because:

- GC was not sophisticated in the market and would not have known how to execute the cross-trades, based on portions of GC's second interview transcript.
- GC took guidance from Clozza and looked up to Clozza, again based on portions of GC's second interview transcript and also one email.
- DougC received commissions from the cross-trades.

[138] In our view, the above points are not sufficient for us to find, on a balance of probabilities, that it was Clozza who told GC how to do the cross-trades. The evidence is also insufficient to support the allegation that Clozza directed the cross-trades.

#### **B. False or misleading information allegation**

[139] Clozza filed an affidavit with the Commission on July 20, 2012. In paragraph 7 of the affidavit Clozza stated that:

- a) he did not, directly or indirectly cause the promotional materials to be prepared or published;
- b) he did not, directly or indirectly cause any payment to be made to anyone in connection with the promotional materials;
- c) he did not, directly or indirectly cause the promotional materials to be prepared or published on the websites;
- d) he had no knowledge of the content of the promotional materials except where the statements repeat information previously disclosed by Forum or are statements of verifiable fact until discovery of its publication on the internet.

### **III. Applicable law**

#### **A. Standard of proof**

[140] The standard of proof is proof on a balance of probabilities: *F.H. McDougall*, 2008 SCC 53 (CanLII).

#### **B. Circumstantial evidence and inferences**

[141] Circumstantial evidence is treated as any other kind of evidence. The weight accorded to it depends on the strength of the inference that can be drawn from it and this is a task for the trier of fact: Sopinka, SN. Lederman & AW. Bryant, *The Law of Evidence in Canada*, 2nd ed. (Toronto: Butterworths, 1999), at p. 41.

[142] Allegations of improper trading activity more often than not turn on circumstantial evidence and knowledge can be inferred from circumstantial evidence: *Podorieszach (Re)*, [2004] A.S.C.D. No. 360, paras. 76-77.

[143] Inferences must be ones which can be reasonably and logically drawn from a fact or group of facts established by the evidence: *Re Suman*, 2012 ONSEC 7 (*Suman*). As the panel stated in *Re Lim*, 2017 BCSECCOM 196, (*Lim*) at paragraph 85:

...We may make inferences, we cannot speculate. In drawing inferences, we must ensure that we do not assume a fact that has not been proven and that any inference we make is reasonable based on the facts that have been proven.

[144] The executive director is not required to prove that the inferences he invites the panel to draw are the only inferences that can be drawn from the evidence, nor must the inferences be the most obvious or the most easily drawn: *Suman*.

#### **C. Market Manipulation**

[145] Section 57(a) of the Act provides:

A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know that the conduct

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, or exchange contract

[146] The executive director must establish four elements in order to prove a contravention of section 57(a): *Lim* as followed in *Re Deyrmenjian*, 2018 BCSECCOM 125. For the purpose of this matter, those elements are:

- Did the conduct of the respondent relate to securities?
- Was there either (or both) a misleading appearance of trading activity in, or an artificial price for, that security?
- Was there the requisite causal connection between a respondent's conduct and the misleading appearance of trading activity in, or artificial price for, that security (i.e. did the respondent, directly or indirectly, engage in conduct that resulted in or contributed to the misleading appearance of trading activity in, or artificial price for, that security)?
- Did the respondent have the requisite mental state for the contravention (i.e. did the respondent know, or should they have reasonably known, that their conduct had the requisite causal connection to the misleading appearance of trading activity in, or artificial price for, that security)?

#### **D. Contraventions of the Act by a corporation attributable to officers and directors**

[147] Section 168.2(1) of the Act states:

If a person, other than an individual, contravenes a provision of this Act ..., an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention ... also contravenes the provision....

#### **E. False or misleading information**

[148] Section 168.1(1)(a) of the Act states a person must not

...make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

### **IV. Analysis**

#### **A. Market manipulation allegations**

##### *i. Conduct relating to securities*

[149] The conduct of the respondents, Forum and Clozza, is alleged to have resulted in a misleading appearance of trading activity in, or an artificial price for, shares of Forum. Thus, the alleged misconduct relates to securities.

##### *ii. Misleading appearance of trading activity or artificial price*

[150] In the fourth quarter of 2011 and prior to April 11, 2012, the start of the trading period, Forum shares had been thinly traded and the price for Forum shares had ranged from \$0.11 to \$0.30.

[151] The price of Forum shares and the volume of trading in Forum shares increased somewhat from April 11, 2012 to May 15, 2012 contemporaneously with the onset of the alleged nominee trading, likely because the shares were so thinly traded at the time.

[152] Price and volume then increased again, following the issue of the May 15, 2012 news release announcing the merger talks between Forum and Aliya.

[153] The more significant price and volume increases followed the start of the WA promotional campaign on May 21, 2012 and continued through to June 28, 2012. During the WA promotional campaign which continued through to June 19, 2012, Forum issued five more news releases, with the seventh and final news release being issued almost a week after the final posting of the WA promotional campaign. The alleged nominee trading continued throughout the trading period and the cross-trades occurred in the period between May 21 and June 25, 2012.

[154] The executive director did not provide any analysis as to the separate impact of each of the various events above. Rather, the executive director submits that the Forum share price was artificial and the artificiality was directly attributable to the WA promotion campaign, the issue of false and misleading news releases in co-ordination with that campaign and the nominee and cross-trades in their totality.

[155] The respondents argue that the rise in price of Forum shares and volume of trading in Forum shares during the trading period is attributable to Forum's news releases, which they say are neither false nor misleading.

[156] Certainly, the Forum promotional materials prepared and disseminated by WA and AG were on their face grossly promotional and contained total fabrications designed to lead the reader to invest in Forum shares immediately in the hope of fantastic profits. The WA promotional materials were in our view key to the rising volume of trading and price of Forum shares in the period from May 21 to June 28, 2012 and led to an artificial price for Forum shares in this period. While some of the price rise and increased volume may be attributed to Forum's news releases concerning the proposed merger with Aliya and the secured convertible debenture offering, and the cross-trades added to the increased volume, in our view by far the greater portion of both the volume and the price increases resulted from the publication of WA's promotional materials.

### *iii. Causal connection*

[157] The executive director submits that Clozza, directly or indirectly, engaged in the following conduct that resulted in or contributed to an artificial price for Forum shares:

- a) hiring WA to promote Forum;
- b) ensuring that RLD paid WA for the promotion;
- c) directing Forum to issue the news releases; and
- d) directing nominee and cross-trading of Forum shares.

[158] The executive director says the findings of fact above should be inferred from the totality of the evidence, including:

- a) Clozza arranging for the YVR meeting so he could meet WA and discuss promoting Forum via social media;

- b) WA sending follow up emails to Clozza, via BB, after the YVR meeting;
- c) Clozza receiving the Schedule on April 3, 2012;
- d) Clozza being the only person who possessed the Schedule (other than WA and BB)
- e) Clozza having a number of phone calls with BB on May 7 and 8, 2012;
- f) Clozza meeting with RLD and others on May 10, 2012 where they discussed, in part, the WA promotion;
- g) WA and AG publishing promotional material that contained grossly promotional statements about Forum;
- h) RLD and MT paying \$72,161 through five payments;
- i) in May and June 2012, Clozza assuring WA that he would be paid. WA's evidence on this point was corroborated by call records and the timing of payments to WA. The only reason to pay WA was that Clozza knew, or reasonably should have known, what WA was publishing on the internet about Forum and that it was creating an artificial price for Forum shares;
- j) Clozza, through Forum, issuing seven news releases in accordance with the Schedule and the news releases being false or misleading; and
- k) Clozza receiving \$114,000 from EC, which were funds from EC's GM account and were the proceeds of trading Forum shares.

[159]The executive director submits that Forum, directly or indirectly, engaged in conduct that resulted in or contributed to an artificial price for Forum shares by issuing the news releases. The executive director submits this finding of fact should be inferred from the evidence, including, the issue of seven news releases in accordance with the Schedule and the news releases being false or misleading.

[160]We are unable to draw the inferences requested by the executive director based on the evidence drawn to our attention by the executive director as the basis for such inferences, for the reasons discussed below.

*1. Clozza*

a) The promotion and the news releases

[161]The executive director alleges that Clozza hired WA to promote Forum and submits that Clozza ensured RLD paid WA for the promotion. The executive director also alleges that Clozza directed Forum to issue the news releases to coincide with the promotion.

*i. YVR meeting*

[162]The executive director submits the evidence proves that Clozza arranged for the YVR meeting so he could meet WA and discuss promoting Forum via social media and that we should rely on the evidence of BB, WA and GC and reject Clozza's evidence in this regard.

[163]The evidence does not in our view establish that this was Clozza's purpose in arranging the YVR meeting. The evidence does establish that BB and WA were interested in making a presentation to Clozza regarding Forum hiring WA and that both of them were looking to make some money doing so, BB as a finder's fee payable to him by WA and WA from the payment to him of \$70,000 to \$80,000 for a one month online promotional campaign for Forum. The evidence also establishes that Clozza's primary purpose in attending the YVR meeting was to make a



presentation to BB consistent with his previous communications with BB regarding the life settlement industry and exploring possible funding sources for Forum. Clozza, whose testimony on this point is corroborated by RLD, indicated to BB and WA after WA's presentation that neither he nor Forum would be interested in WA doing a social media campaign.

*ii. Follow-up emails*

[164] The three follow-up emails from BB to Clozza in December 2011 and January and February 2012 regarding other promotional awareness campaigns WA had done, while consistent with WA's YVR meeting presentation, and the desire of BB and WA to have Forum hire WA for a one month campaign, in our view only demonstrate that to that point the pitch to have WA do a promotional campaign for Forum had not been successful. There is no evidence that Clozza responded to these emails or that he forwarded them on to, or discussed them with, others. This lack of evidence of further communications with BB or WA or others regarding the possibility of Forum or Clozza hiring WA to do a promotional campaign for Forum is consistent with Clozza's testimony that he was not interested in WA doing such a campaign for Forum and we see no reason to reject Clozza's testimony with regard to these emails.

*iii. Market Awareness Schedule*

[165] BB's email of April 3, 2012 with the attached Schedule prepared by WA was sent to Clozza but, consistent with Clozza's testimony, there is no evidence that Clozza forwarded the information in that email to, or discussed it with, others. Further, the executive director refers to the events set out in the Schedule as occurring during the relevant time frame, but we note that the timing of the actual promotion was not consistent with that set out in the Schedule, nor was the timing of the Forum news releases.

[166] The Schedule called for a campaign starting on May 1 and ending on May 30, with Forum issuing seven news releases on specific dates: two in week one, two in week two, and one in each of weeks three, four and five of the proposed campaign. The actual promotion campaign started on May 21 and continued through to the final posting on June 19. Forum issued seven news releases but the first Forum news release was on May 15, almost a week before WA's promotional campaign actually started on May 21, 2012, the timing of the next five news releases was not in any way consistent with the previous Schedule and the seventh and final news release was issued on June 25, almost a week after the promotion campaign ended.

[167] Further, in his April 3 email, BB also told Clozza he had to decide by early in the week of April 16 and the Schedule material also included an invoice for \$70,000 for a one month awareness campaign, with a due date of April 16, 2012. But, as noted in the April 11 email exchange between BB and WA, Clozza to that point had not responded or sent a wire. Indeed, the first payment to WA was made by RLD - not Forum or Clozza - and was not paid until May 15, 2012 and then for only \$15,000.

[168] In our view, the pitch by BB and WA to do a social media campaign for Forum was continuing in April, but without success and the Schedule attached to the April 3 email from BB to Clozza was not the schedule followed when the WA promotional campaign actually started.

*iv. Events of May 7 to 11, 2012*

[169]The executive director also refers to the following events between May 7 and 11: telephone calls between BB and Clozza on May 7 and 8, Clozza's meeting with RLD and others at the Kirin on May 10 and the emails exchanged before and after May 10. The executive director submits that those present at the Kirin on May 10 discussed the WA promotion.

[170]The four phone calls on May 7 and 8 were all very short in duration and it is not clear that BB and Clozza ever actually spoke to each other. The calls appear more likely to be calls that connected very briefly to voicemail and were then disconnected or, in the case of the one call from BB, that may have consisted of a short message left on voicemail. They are not sufficient to establish that Clozza and BB spoke at that time regarding the WA promotion.

[171]As for the lunch meeting at the Kirin restaurant on May 10, Clozza's email arranging the lunch meeting and the responses to his email merely evidence that Clozza, RLD, GC and one other individual planned to meet for lunch on May 10. The evidence establishes that Clozza often met with others such as RLD and GC at the Kirin. There is no evidence from which we could infer that the WA promotion was discussed at that lunch.

[172]Nor do the emails on May 11 between GC and RLD lead us to conclude that Clozza and the others present at the lunch on May 10 engaged in a discussion about WA's promotion of Forum. In particular we note that these emails were exchanged between RLD and GC only and do not make any reference to having discussed the WA promotion of Forum at the Kirin lunch on May 10. These emails merely indicate RLD was looking to GC to contribute to the cost of an awareness campaign about Forum. This is consistent with RLD's evidence that he had agreed with WA to carry on such a campaign, but that Clozza was not aware of his having done so.

*v. Payments*

[173]There is no dispute that RLD and MH made five payments to WA totaling \$72,161. There is no evidence that Clozza or Forum made any payments to WA or reimbursed RLD or MH for the payments they made.

[174]The executive director submits that because only Clozza had the Schedule showing WA was to be paid \$70,000 (which we note was to be a single payment due in mid-April), we should infer that Clozza told RLD how much to pay WA. We have already found that the Schedule sent to Clozza was not the schedule followed by the WA promotional campaign. We consider the facts that only Clozza received the Schedule, which sought payment of \$70,000 in mid-April, and that RLD eventually paid WA a total of \$72,161 between May 15 and June 19 in five separate payments insufficient to infer that Clozza told RLD to pay WA for the promotion or how much to pay WA.

[175]The executive director next submits that in May and June 2012, Clozza assured WA he would be paid. The evidence on which this submission is based, says the executive director, is WA's testimony to the SEC on this point, as corroborated, says the executive director, by the call records when read in conjunction with the timing of payments.

[176] WA's testimony to the SEC consists of a transcript of his interview statements to SEC investigators on April 13, 2013. WA stated that he had talked with BB and BB told him they would get \$80,000 for an online promotion of Forum and said "it's going to work". WA said he was in constant communication with BB who wanted his finder's fee and BB told him about RLD and said RLD would send the money. WA said he had telephone conversations with RLD and later exchanged texts with him and also talked with BB about doing the promotion related to Forum.

[177] However, WA said, it never worked. He advertised for Forum but he was not paid what he had been told. Instead of getting a wire transfer for \$80,000, he got a wire transfer for \$14,982 on May 15, 2012 from RLD. WA said he then asked BB where the rest of the money was and threatened BB who said he would talk to RLD. After that, BB told WA that WA should just talk to RLD. So WA talked to RLD. WA said the pressure he applied to BB and RLD brought in "the CEO" who was Clozza. WA said RLD was never picking up the phone and the only way he knew the message that he wanted to be paid was getting to RLD was when he saw money had been wired to him.

[178] As for Clozza, WA said he could only recall a couple of phone calls with Clozza. WA stated that the only thing discussed was WA getting his money and that he wanted Clozza to pass on the message that he wanted his money. WA said Clozza told him RLD was not a scammer and RLD would pay him and the money would come but there might be some delays. WA said Clozza came into the mix more as a mediator. WA said Clozza was not talking about Forum, but was defending RLD as a trustworthy person who would pay, i.e. Clozza was just vouching for RLD. WA confirmed that Clozza never said he, himself, would pay. At one point, WA said, "That's all RLD hired me for, FMNL."

[179] AG, in the transcript of his interview with SEC investigators on April 29, 2013, said that WA identified RLD as the person who had approached WA to start a marketing campaign about Forum.

[180] RLD's testimony was that WA had pestered him to do an awareness program about Forum and that he finally decided to see what would happen and sent the first payment to WA. RLD's testimony was that he did not tell Clozza about what WA proposed to him or that he was paying WA to raise awareness about Forum. RLD also confirmed that he was not paying WA on behalf of Forum and had never asked Forum or Clozza to pay any money for the awareness work WA did.

[181] While there are some inconsistencies between WA's statements and RLD's testimony as to whether it was BB or WA who approached RLD or whether it was RLD who approached WA to do an awareness campaign related to Forum, the evidence establishes that WA and RLD were in direct communication with each other regarding the promotion and that as far as WA was concerned, RLD had hired WA to do a promotion of Forum and that WA looked to RLD to pay for the promotion and RLD did so.

*vi. Telephone Communications*

- [182]The executive director refers to the call records which show calls between telephone numbers identified by Commission investigators as being associated with Clozza, WA, and RLD during the time when the payments were made by RLD and MH to WA.
- [183]We note that the first payment on May 15, 2012 preceded the first call between WA and Clozza recorded in the call records.
- [184]The executive director submits that since Clozza had been given the bank account information needed to wire money to WA's company in the Schedule materials attached to the April 3, 2012 email from BB, Clozza was the only person who could have given that banking information to RLD and must have done so. However, Clozza testified that he did not forward to, nor discuss the information in the attachment with, anyone. This is consistent with RLD's testimony that he did not tell Clozza what WA had proposed or that he was paying him to do an awareness campaign about Forum. When or from whom RLD obtained the banking information to make the first payment is not clear from the evidence, although BB and WA also had that information. The evidence we do have is not sufficient to infer, on a balance of probabilities, that Clozza provided that information to RLD.
- [185]The call records show that there were phone calls and some texts between Clozza and WA in the days preceding the second through fifth payments made by RLD and MH to WA's company. Those records also show that there were calls between numbers associated with Clozza and RLD at that time. However, those call records also show that RLD and WA were communicating directly with each other. While in many cases the calls were of very short duration and from their pattern appear to be hang-ups after reaching voicemail or perhaps short messages left on voicemail often followed by what would appear to be return calls, in each case some of the calls were of longer duration. We also note Clozza's submission that where the calls were not to his cell phone but to one of the two land lines in his home office, such calls may have been made or answered by others, such as DonC if he was visiting.
- [186]Clozza testified that he had no specific recollection as to what he and WA may have talked about on the calls in May and June 2012. Clozza added that WA had become a shareholder of Forum and that he "may have been talking to him, just like I was talking to everybody else that I called those days, or returning calls".
- [187]Having reviewed all of the call records, we do not find the fact of, or the timing of, the telephone calls among Clozza, WA and RLD sufficient to permit us to infer, as the executive director suggests we should, that Clozza, WA and RLD were discussing the four payments to WA on May 28, June 1, June 8 and June 19, 2012 for the WA promotion of Forum. They were all talking, separately, to each other, but about what is unclear.
- [188]There was no reason for RLD to talk to Clozza about the payments as RLD was talking directly to WA. WA's and AG's statements to the SEC were that WA was dealing directly with RLD with respect to WA's promotion of Forum. RLD's testimony is that he did not tell Clozza what he was doing with WA or that he was paying WA to promote Forum. WA's statements regarding what he recalled as two calls with Clozza are not inconsistent with RLD's testimony

that it was he alone who agreed to, and paid WA for, the promotion. WA's testimony regarding his telephone conversations with Clozza was that Clozza was not involved in the WA promotion and they did not discuss Forum, but that Clozza was vouching for RLD as a trustworthy person who would pay. As WA testified, he was using BB and then Clozza as a way of getting a message to RLD who would not answer his calls to pay. WA said he was in no way looking to Clozza to pay.

[189] Nor does the fact that there are no more records of calls after June 19 between WA and Clozza or between WA and RLD after the final payment to WA's company on June 19 lead us to infer, as the executive director suggests, that the calls between WA and Clozza were about Clozza "assuring" payment for the WA promotion. We do, however, agree with the executive director that Clozza's evidence that he did not discuss RLD's paying WA's company with WA is inconsistent with WA's testimony. As WA stated to the SEC, those calls ceased because he had received the payments he was looking for from RLD and there was no longer a reason to call RLD or Clozza. We note also that after July 19 there remained an ongoing pattern of calls between Clozza and RLD, just as there had been a similar pattern of calls between them prior to any payments to WA's company.

[190] On the evidence as a whole, we are unable to infer, as the executive director suggests we should, that, on a balance of probabilities, Clozza knew, or reasonably should have known, what WA was publishing on the internet about Forum and that it was creating an artificial price for Forum shares or that Clozza ensured that RLD paid WA's company for the WA promotion.

*vii. News releases*

[191] The evidence establishes that Clozza, as Forum's CEO, approved all of the news releases.

[192] The executive director's principal submission regarding the news releases is that we should infer that Forum, as approved by Clozza, issued the seven news releases "to coincide with" the promotion as set out in the Schedule attached to BB's April 3, 2012 email to Clozza as part of his effort to manipulate the market for Forum shares.

[193] In our view, the evidence does not support such a finding on a balance of probabilities. As we have outlined above, the news releases were not, as the executive director argues, issued in accordance with the Schedule. The first news release was issued almost a week prior to the launch of the WA promotion, the last news release was issued almost a week after the final posting in the WA promotional campaign and the issue of the other five news releases was not in keeping with the timing set out in the Schedule. If anything, by the time WA began the promotion on May 21, 2012, there was a new schedule and RLD was WA's client and not Forum or Clozza. We are unable on the evidence before us to infer that Forum's news releases were issued to "coincide" with the Schedule. Nor are we able to tie the issue of the news releases to the WA promotion given the timing of the first and last news releases outside the period of the promotional campaign and the fact there is no evidence that the subsequent news releases were coordinated with any other schedule, if indeed there was one, with respect to the WA promotion.

- [194] The executive director also submits that in order to issue news releases timed to coincide with the WA promotion, Forum (as directed by Clozza) issued news releases that were false or misleading. The executive director further submits that the news releases were designed to increase the share price of Forum and the volume of trading in Forum shares.
- [195] With respect to the three news releases relating to the proposed merger with Aliya, the executive director says they are misleading but only in the sense that these releases attributed statements to RB and quoted RB without his permission. The executive director submits this could lead a reader into thinking Aliya is agreeing with the statements in the news releases attributed to its management, creating a favourable view in the market of the proposed merger. However, the executive director does not submit that the contents of the news releases overall are misleading and, based on all of the evidence, we do not consider them misleading.
- [196] In our view, the news releases with respect to the software analysis and life settlement tracking system and the appointment of an individual with experience in the life settlement industry as a director of Forum did not result in any significant market impact. While there is some dispute as to the accuracy of these news releases, given their lack of market impact there is no need to address them further.
- [197] The first of the two news releases in June 2012 with respect to Forum's offering of convertible secured debentures was inaccurate in describing the offering as "new" when the total amount of the offering included the proceeds of a number of convertible secured debentures sold in fiscal 2011. Thus, the first of these news releases was somewhat misleading in describing the offering as "new", but, based on all of the evidence, not materially.
- [198] The second of these news releases referred to the offering of convertible secured debentures as being "sold out". Clozza's evidence was that Forum had sufficient commitments to purchase the secured convertible debentures for the offering to be described as sold out at the time of the news release and that the purchase contracts were in preparation at the time Forum was halt traded. Subsequently, some of the sales did not complete. We accept Clozza's evidence that Forum had commitments to purchase all of the secured convertible debentures offered at the time the second news release was issued. Accordingly, in our view, the second news release was not false or misleading at the time it was made.
- [199] The negotiations for a proposed merger of Forum with Aliya and the Forum secured convertible debenture offering were real events and the news releases related to them appear to have been appropriately made at or about the times of those events. So while five of the news releases were issued during the period that the WA promotion was running, the evidence does not, in our view, support an inference that the news releases were, at the direction of Clozza, made in support of the WA promotion, timed to coincide with the WA promotion or made in accordance with the Schedule.

*viii. EC's payments to Clozza*

- [200] The executive director points to Clozza's having received \$114,000 from EC from her proceeds of trading of Forum shares, presumably as one aspect of Clozza's motivation for the market manipulation. Clozza's evidence is that at the time his focus was on completing the merger with

Aliya and the upcoming showing of his already taped appearance on the Dragons' Den television show which would give Forum and its involvement in the life settlement industry a great deal of publicity. In the context of what was going on at the time, we do not see the receipt of \$114,000 from EC's trading profits as a reason for Clozza to have engaged in an effort to manipulate the market for Forum shares, including hiring WA to promote Forum or ensuring that RLD paid WA for the promotion.

*ix. Conclusion*

[201] Accordingly, considering the evidence in its entirety, we do not find, on a balance of probabilities, that Clozza, directly or indirectly, hired WA to promote Forum; ensured that RLD paid WA for the promotion; knew, or reasonably should have known, that WA was publishing grossly promotional material at the time of the publication of that material; or directed Forum to issue false or misleading news releases timed to coincide with the WA promotion.

b) Alleged nominee trading and cross-trades

[202] The executive director submits that Clozza's conduct in relation to the alleged nominee trading and cross-trading resulted in or contributed to an artificial price for Forum shares.

*i. Alleged nominee trading*

[203] The executive director submits that the trading in the EC and JS accounts was designed to create liquidity and demand for Forum shares and was also designed to be done in the same time frame as the WA promotion and the Forum news releases that were a part of that promotion.

[204] The executive director submits that we should infer that Clozza placed trade instructions in EC's and JS's trading accounts at GM based on the totality of the evidence, including:

- The GM phone records, in particular the lack of communication between GM personnel and phone numbers identified by Commission staff as being associated with EC and JS and the numerous phone calls between Clozza and GM personnel in the time frame of the nominee trades in EC's and JS's GM trading accounts.
- JS's statement that he did not give trading instructions for his GM account.
- EC's payment of \$114,000 to, or to the benefit of, Clozza.
- Clozza's payment of \$13,300 to JS on April 25, 2012.
- Numberco's payment of \$12,054 to EC on July 10, 2012 to cover part of the trading debit in her GM account.
- Numberco's payment of \$18,500 to JS on July 18, 2012 to cover the trading debit in his GM account.

[205] The executive director submits further that when the GM call records are considered in conjunction with Clozza's role in the WA promotion and the issuance of the news releases, the reasonable and logical inference is that Clozza was placing trade instructions to create an artificial price for Forum shares.

[206] However, we have found that the executive director has not established, on a balance of probabilities, that Clozza hired WA to promote Forum, ensured RLD paid WA for the

promotion, or timed the Forum news releases to coincide with the WA promotion, and so this further submission does not aid us in our consideration of the GM call records.

[207] The executive director also submits that the evidence of DougC, DonC and Clozza regarding trading instructions in the accounts of EC and JS should be rejected, because:

- Clozza's evidence that he spoke with DougC about Level 2 quotes, the market in general, and other social matters, is not credible given the volume and frequency of the phone calls between Clozza and DougC.
- DougC's evidence that he received trading instructions from JS and EC is contradicted by the GM phone records.
- DougC's evidence that JS gave trading instructions in person is limited to two to three trades and, even if this evidence is accepted, there are many other trades for which there is no phone record.
- JS's evidence contradicts DougC's evidence.
- DonC's evidence was unclear and of little assistance since, with one or two exceptions, DonC was unable to give any specific evidence about witnessing JS's trades.

[208] In the "Background" section above, we have given a number of reasons for not rejecting the evidence of these witnesses. Their testimony is part of the totality of the evidence that we have considered. With respect to the above submissions, to the extent we have not already addressed them in the Background section, we add the following:

- The GM phone records do not in our view contradict DougC's evidence but leave us with uncertainty as to how the trading instructions were conveyed if not through the phone numbers of EC and JS identified by Commission investigators as being associated with each of them, respectively. That uncertainty is answered, in part, by the evidence that JS gave some trading instructions in person and also that JS used phones at Clozza's residence and at the gym in Richmond to speak with DougC and had an additional VOIP internet based phone installed at his house that he could have used to make calls and give trading instructions.
- The absence of calls in the GM call records from telephone numbers associated by Commission staff with JS and EC is not proof that JS and EC did not contact DougC or others at GM using other phones or other means to give trading instructions.
- There is no doubt that the evidence of JS and DougC is contradictory, but that contradiction runs both ways. It is our decision as to which we give greater weight and for the reasons previously stated we give no weight to JS's statements during his interview that he did not give trading instructions for his GM account.

[209] On the evidence before us, Clozza's payment of \$13,300 to JS is not, as the executive director suggests, consistent with Clozza directing the trading in JS's account at GM. We find that this payment is, however, consistent with DonC's testimony that he covered JS's purchase of up to 100,000 Forum shares during the trading period in 2012 and that he had a prior arrangement for Clozza to make payments upon his direction from his monies which were in a bank account in



Clozza's name and thus he directed the payment of this amount to JS from what were his own funds.

[210]The executive director submits we should find that numberco was an extension of Forum and was used to pay trading account debits in the accounts of EC and JS at GM and that Clozza was aware of these payments by numberco for the benefit of EC and JS.

[211]There was obviously a close relationship between Forum and numberco following the sale of Forum's travel business assets to NM in December 2011. And why, having paid \$500,000 for those assets, numberco would go on to loan Forum more than \$2 million between 2012 and 2014 (mainly after the trading period), is unknown. But in our view, this is not sufficient to find that numberco was an extension of Forum. There is little evidence of Clozza's involvement in numberco. The evidence suggests that NM and MT made decisions regarding numberco and DonC and MT, not Clozza, provided business advice to NM regarding numberco.

[212]Both MT and DonC testified that DonC asked MT to pay the trading account debits of JS and EC with GM and that they did not tell Clozza. Clozza testified that he knew nothing at the time about the payments made by numberco. The executive director says this evidence should be rejected as it is inconsistent with other evidence and does not make sense because: DonC had previously asked Clozza to pay JS from DonC's own funds; DonC could have asked Clozza to pay EC's trade debit from DonC's own funds; and DonC had confirmed he had sufficient funds to pay JS's and EC's trade debits. The executive director also submits MT is not credible but for reasons unrelated to MT's evidence on the specific point above. We do not consider the executive director's arguments provide a sufficient basis to reject the evidence of DonC, MT and Clozza on the specific point above.

[213]We find on the evidence before us that Clozza did not participate in arranging for the payments by numberco of the trading account debits of EC and JS with GM and that Clozza was not aware of these payments at the time they were made.

[214]We find the totality of the evidence insufficient for us to infer, on a balance of probabilities, that Clozza placed trade instructions in EC's and JS's trading accounts at GM. The evidence is also insufficient to support a finding that the trading in EC's and JS's accounts at GM was designed by Clozza to create liquidity and demand for Forum shares in the same time frame as the WA promotion and the Forum news releases.

*ii. Cross-trades*

[215]We have already found in the Background section that the evidence does not support, on a balance of probabilities, a finding that Clozza told GC how to cross-trade shares to others through the market. We also found the evidence insufficient to support the allegation that Clozza directed the cross-trades. The evidence is also insufficient to support a finding that Clozza enabled the cross-trades to artificially increase the volume of Forum shares traded or increase the price of Forum shares.

c) Conclusion

[216] We find the evidence insufficient to support a finding that Clozza, directly or indirectly, engaged in conduct that he knew, or reasonably should have known, resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Forum shares.

2. *Forum*

[217] The testimony of Clozza and MT, respectively, confirms that they both approved the Forum news releases issued in May and June, 2012. The evidence also shows that content from some of the news releases was included in the WA promotional material.

[218] The executive director submits that the Forum news releases were timed to coincide with the WA promotion and that, as a result, they were directly connected to the WA promotion and so Forum engaged in conduct that resulted in or contributed to an artificial price for Forum shares.

[219] This would have required either Clozza or MT to have organized, on behalf of Forum, that timing in coordination with WA. We have already found that the evidence does not support a finding that Clozza timed the Forum news releases to coincide with the WA promotion. There is no evidence to suggest that MT was, directly or indirectly, involved in the WA promotion. As we have noted above in discussing the lack of causal connection with respect to Clozza, we are unable to tie the issue of the Forum news releases to the WA promotion, given the timing of the first and last news releases outside the period of the WA promotional campaign and because the news releases were not made in accordance with the Schedule. And, there is no evidence of a later revised schedule having been provided to Forum through either Clozza, MT or anyone else for Forum.

[220] The fact that content from some of the Forum news releases appeared in the WA promotional materials is not surprising since they were publicly issued and the use of public information is consistent with WA's stated method of putting together promotional material. Without more, this does not prove a causal connection to Forum.

[221] We find the evidence insufficient to support a finding that by issuing the seven news releases in May and June 2012, Forum, directly or indirectly, engaged in conduct that it knew, or reasonably should have known, resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Forum shares, contrary to section 57(a) of the Act.

*iv. Section 168.2*

[222] As we have not found that Forum contravened section 57(a) of the Act, there is no basis upon which to find under section 168.2 of the Act that Clozza, as an officer and director of Forum, has contravened section 57(a) of the Act by authorizing, permitting or acquiescing in such a contravention by Forum.

**B. False or misleading information allegation**

[223] We have found that the evidence is insufficient to establish that Clozza, directly or indirectly, hired WA to promote Forum, ensured WA was paid for the WA promotional campaign or knew, or reasonably should have known, about the contents of the WA promotional material. We therefore find the evidence insufficient to conclude that the statements made by Clozza in his affidavit of July 20, 2012 were false or misleading, in breach of section 168.1(1)(a) of the Act.

**V. Conclusion**

[224] The evidence is insufficient to find that Forum or Clozza contravened section 57(a) of the Act. We dismiss the allegations in the amended notice of hearing that Clozza breached section 57(a) of the Act. We dismiss the allegations in the amended notice of hearing that Forum breached section 57(a) of the Act.

[225] Having found the evidence insufficient to establish that Clozza breached section 168.1(1)(a) of the Act, we dismiss that allegation.

August 31, 2021

**For the Commission**

Suzanne K. Wiltshire  
Commissioner

George C. Glover, Jr.  
Commissioner