

British Columbia Securities Commission  
P.O. Box 10143, Pacific Centre  
701 West Georgia Street  
Vancouver BC V7Y 1L2

Attn: COMMSEC

Dear Commission Secretary:

**Re: Forum National Investments Inc.**

This is the application of Forum National Investments Inc. (Forum) for an adjournment of the merits hearing currently scheduled to proceed on May 6, 2019. The application is brought pursuant to Part 6 of BC Policy 15-601 and specifically section 6.4 of BC Policy 15-601 which reads as follows:

6.4 Adjournments – The Commission expects parties to meet scheduled hearing start dates. If a party applies for an adjournment, the Commission considers the circumstances, the fairness to all parties and the public interest in having matters heard and decided promptly.

**Relevant Facts**

The following facts are relevant to this application:

1. July 20, 2012 A Temporary Order and Notice of Hearing was issued naming Forum, Daniel Clozza, Martin Tutschek, and Grant Curtis as respondents;
2. August 8, 2012 The Commission revoked the temporary orders;
3. December 10, 2013 the Chair issues a Non-Disclosure Order prohibiting the respondents from speaking to potential witnesses in its defence.
4. From July 20, 2012 to June 15, 2018 staff does not set the matter down for a hearing on the merits.
5. June 15, 2018 Staff issues an “Amended Notice of Hearing” removing Martin Tutschek, and Grant Curtis as respondents and adding Robert Logan Dunn, Douglas Corrigan, and Mosaic Holdings Ltd. as respondents. Staff amends the allegations made on July 20, 2012, to include a breach of section 57(a) of the Act.
6. August 14, 2018 A set date hearing is held;
7. A Hearing on the merits is scheduled for May 6, 2019.
8. January 15, 2019 the Non-Disclosure Order was revoked.
9. On February 20, 2019 Forum asked for the disclosure documents.
10. On or around February 21, 2019, Forum received the disclosure documents via courier and reviewed them for the first time.

11. On March 15, 2019, Forum applied pursuant to the Freedom of Information and Protection of Privacy Act for documents in the possession of the Commission relating to Forum.
12. The Chair of the Commission advised, the response to the FIPPA application requires a review of over 20,000 documents which will not be ready prior to the May 6, 2019 hearing date on the merits. The Chair advises the response to the request will be made by June 12, 2019.
13. On April 8, 2019 staff advised they will call one witness, the investigator in this matter. The investigator's will Say statement includes this:

“Pesunti conducted interviews and collected documents related to the Investigation. He has reviewed the documents pre-marked as Exhibits for the hearing.”

Staff's usual process is to rely on transcripts of witnesses to prove their case without identifying which witness transcript they will rely upon until the investigator witness refers to the transcript or is off the stand. No details of Mr. Pesunti's expected evidence on the witness interviews have been provided.

Staff's list of witnesses discloses that Staff does not intend to call interviewed witnesses. The Respondents including Forum have been prevented from speaking to the witnesses as a result of the Non-Disclosure Order until January 2019 when it was revoked. Preventing the Respondents including Forum from speaking to witnesses until January 15, 2019 has caused significant prejudice to the respondents.

Forum received the disclosure documents on June 18, 2018 and reliance documents together with a supplemental list of documents on January 4, 2019. However, similar to the other respondents, Forum's ability to use any of these documents was severely hampered because Staff maintained its Non-Disclosure Order. Forum could not start to mount its defence until the Non-Disclosure Order was revoked. Forum is unable to prepare to defend the case against it in such a short period of time.

Furthermore, based on a preliminary review of Staff's documents, Forum believes that relevant documents have been withheld by Commission Staff. Therefore, Forum applied under the FIPPA for disclosure of documents in the possession of Commission relating to Forum. The Chair identified over 20,000 documents and further advised that she required more time than the allowable 30 days under FIPPA to answer the request. The most recent communication from the Chair is that the response will not be received prior to the commencement of the hearing. Therefore, Forum will be unable to gather potentially relevant documents for its defense.

Finally, I was unaware that Pay Taylor had initially and temporarily in July of 2018 advised that she was representing Forum when the new notice of hearing was issued. Regardless, Ms Taylor advised the commission at the hearing management meeting in August of 2018 that she would no longer be representing Forum. I take the position that I was on the record as the sole representative of Forum when the file went dark for over 4 years. During this time, no effort was made to contact me, or keep me apprised of the development in the file. It was not until I contacted the Commission in January of 2019, that I was provided the disclosure, and included in correspondence on this file.

### **The Grounds**

Pursuant to section 6.4 of BC Policy 15-601 and relevant Commission case law in other matters, an adjournment will be considered under certain circumstances, including the fairness to all parties and the public interest in having matters heard and decided promptly: *Re Nickford*, 2016 BCSECCOM 282.

Fairness requires that the Respondents understand the case against them. Fairness includes that the respondents are allowed time to investigate and develop their responses to Staff's allegations. The respondents were unable to start their own preparation until January 15, 2019 when the Non-Disclosure Order was revoked. Staff has had since July 20, 2012 or earlier to commence its preparation. This discrepancy in the respondents' preparation to advance their defences is prejudicial to Forum's defence and outweighs any delay in proceeding to a hearing promptly. This is particularly so where Staff's conduct caused the delay.

The FIPPA request will likely provide additional documents to the respondents that will assist them in assembling their defences. Requiring the respondents to attend a merits hearing on May 6, 2019 is both unfair and highly prejudicial because the documents will not be made available prior to the commencement of the hearing. Forum will need to assess the FIPPA response and review the documents and determine how they can assist their defences.

Staff is responsible for the delay in having the hearing on the merits decided in a timely way or promptly.

Staff further delayed this matter by issuing a purported Amended Notice of Hearing almost six years after the initial Notice of Hearing was issued. The purported Amended Notice of Hearing added new parties, changed the allegations from those leveled in June 2012. The Respondents did not become aware of this change until June 2018.

The public interest requires that the respondents have the same opportunities to assemble their defence as Staff was given to develop their allegations for the merits hearing.

### **Order Sought**

Forum submits that the matter be adjourned generally until such time as the FIPPA review is complete by the Chair, and Forum has had the opportunity to consider its defences. Forum seeks a further order that Commission Staff provide a detailed summary of the evidence Mr. Pesunti is expected to give.

Yours truly,

*Jeff Bowser*

Jeff Bowser

Director, Forum National Investments

Cc: Pat Taylor, Sean Boyle and James Torrence