



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
MILES S. NADAL**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES
COMMISSION AND MILES S. NADAL**

PART I - INTRODUCTION

1. This matter is an inter-jurisdictional proceeding based on an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the *Securities Exchange Act of 1934*, Making Findings and Imposing Remedial Sanctions and a Cease-and Desist Order (File No. 3-17980), dated May 11, 2017 (the “SEC Order”) of the U.S. Securities and Exchange Commission (the “SEC”) made against Miles S. Nadal (“Nadal” or the “Respondent”).

2. The Ontario Securities Commission (the “Commission”) has issued a Notice of Hearing (the “Notice of Hearing”) to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it is in the public interest for the Commission to make an inter-jurisdictional enforcement order against the Respondent in respect of the matters described herein.

PART II - JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission (“Staff”) recommend settlement of the proceeding (the “Proceeding”) against the Respondent commenced by the Notice of Hearing in accordance with the terms and conditions set out in 0 of this Settlement Agreement. Staff and the Respondent consent to the making of an order (the “Order”) in the form attached as Schedule “A” to this Settlement Agreement based on the matter described herein.

4. For the purposes of the Proceeding only, and any other regulatory proceeding commenced by a securities regulatory authority only, the Respondent agrees with the facts set out in 0 of this Settlement Agreement and the conclusion in 0 of this Settlement Agreement.

PART III - AGREED FACTS

The Respondent

5. The Respondent is subject to the SEC Order relating to proceedings brought against him in the U.S. In relation to the SEC proceedings, the Respondent submitted an Offer of Settlement, which was accepted by the SEC. In the SEC Order, certain findings were made against the Respondent pursuant to the Offer of Settlement (the “SEC Findings”).

The SEC Findings

6. Without admitting or denying the SEC Findings in the SEC Order, the Respondent consented to the entry of the SEC Order.

7. Pursuant to the SEC Order:

- (a) The conduct for which the Respondent was sanctioned by the SEC took place from 2009 through 2014 (the “Material Time”).
- (b) The Respondent was the Chairman of the Board, Chief Executive Officer and President of MDC Partners Inc. (“MDCA”) from 1986 until July 2015. MDCA is a Canadian corporation headquartered in New York, New York, engaged in advertising, marketing and communications business. MDCA’s common shares trade on the NASDAQ National Market under the ticker symbol “MDCA”.
- (c) During the Material Time, the Respondent improperly received from MDCA USD\$11.285 million worth of perquisites, personal expense reimbursements and other items of value, without disclosure of such items as compensation in MDCA's definitive proxy statements. Items that the Respondent received, but were not disclosed, include, but are not limited to, private aircraft usage, cosmetic surgery, yacht-and-sports-car-related expenses, jewelry, cash for tips and gratuities, medical expenses for the Respondent, family members and others, charitable donations in the Respondent’s name, pet care, vacation and personal travel expenses, club memberships, and certain expenses for which supporting documentation or information was incomplete.

- (d) MDCA's definitive proxy statements for the Material Time disclosed approximately USD\$3.87 million worth of perquisites and personal benefits provided to the Respondent. The proxy statements disclosed an annual USD\$500,000 perquisite allowance; interest benefits received on interest free loans in 2009, 2010, 2011 and 2012; disability, medical, life insurance benefits in 2009 and 2010; and legal fees and the use of company aircraft and apartment in 2014.
- (e) However, MDCA's definitive proxy statements for the Material Time failed to disclose an annual average of approximately USD\$1.88 million worth of additional perquisites and personal benefits provided to the Respondent, thereby understating the perquisites and personal benefits portion of the Respondent's compensation by an average of almost 300% each year.
- (f) The Respondent solicited proxies for his election as a director and approval of his compensation by using materials that included these deficient executive compensation disclosures. The Respondent knew, or was reckless in not knowing, that the proxy statements contained materially false and misleading executive compensation disclosures, and that they omitted, among other things, numerous personal expenses for which the Respondent had sought and obtained reimbursement as if such items were proper business expenses. The Respondent also improperly received payments from MDCA by submitting unsubstantiated expenses outside of MDCA's expense reimbursement process. In addition, the Respondent completed, signed and submitted director and officer questionnaires in which he failed to disclose his perquisites and personal benefits.
- (g) MDCA incorporated its definitive proxy statements into its annual reports by reference. The Respondent signed and certified these annual reports.
- (h) MDCA filed with the SEC a registration statement, signed by the Respondent, which incorporated by reference deficient executive compensation disclosures in MDCA's April 2013 and April 2014 definitive proxy statements, and pursuant to

which MDCA and/or the Respondent offered and sold debt and/or equity securities.

- (i) During the Material Time, MDCA incorrectly recorded payments for the benefit of, and reimbursements to, the Respondent as business expenses, and not compensation. As a result, its books, records, and accounts did not, in reasonable detail, accurately and fairly reflect its disposition of assets.
- (j) After receipt of a subpoena from SEC Staff, MDCA launched an internal investigation, which continued after additional SEC Staff inquiries. After the internal investigation was launched, the Respondent cooperated with it, agreed to pay back USD\$11.285 million worth of perquisites, personal expense reimbursements and other items of value that he improperly received during the Material Time, and resigned from MDCA.

8. Pursuant to the Respondent's Offer of Settlement, and as a result of the matters described above, the SEC found that:

- (a) the Respondent violated Section 10(b) of the U.S. Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.
- (b) As a result of the conduct described above, the Respondent violated Section 14(a) of the U.S. Exchange Act and Rules 14a-3 and 14a-9 thereunder. Section 14(a) of the U.S. Exchange Act makes it unlawful to solicit any proxy in respect of any security (other than an exempted security) registered pursuant to Section 12 of the U.S. Exchange Act in contravention of such rules and regulations as the SEC may prescribe. Rule 14a-3 prohibits the solicitation of proxies without furnishing proxy statements containing the information specified in Schedule 14A, including executive compensation disclosures pursuant to Item 402 of Regulation S-K. Rule 14a-9 prohibits the use of proxy statements containing materially false or misleading statements or materially misleading omissions.

- (c) The Respondent caused MDCA to violate Section 13(a) of the U.S. Exchange Act and Rule 13a-1 thereunder, which require every issuer of a security registered pursuant to Section 12 of the U.S. Exchange Act to file with the SEC, among other things, annual reports as the SEC may require, and the Respondent violated Rule 13a-14 under the U.S. Exchange Act, which mandates, among other things, that an issuer's principal executive certify each annual report.
- (d) The Respondent caused MDCA to violate Rule 12b-20 under the U.S. Exchange Act, which requires that, in addition to the information expressly required to be included in a statement or report filed with the SEC, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.
- (e) The Respondent caused MDCA to violate Section 13(b)(2)(A) of the U.S. Exchange Act, which requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.
- (f) The Respondent violated Section 13(b)(5) of the U.S. Exchange Act, which prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2) of the U.S. Exchange Act.
- (g) The Respondent violated Rule 13b2-1, which prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record, or account subject to Section 13(b)(2)(A) of the U.S. Exchange Act.

The SEC Order

9. Pursuant to the SEC Order, and among other sanctions, conditions, restrictions or requirements imposed on him, the Respondent is prohibited for a period of five years from the date of the SEC Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the U.S. Exchange Act, or that is required to file reports pursuant to Section 15(d) of the U.S. Exchange Act.

10. MDCA was a reporting issuer in Ontario throughout the Material Time. The Respondent is currently a shareholder of four firms registered in Ontario (the “Registered Firms”). The Respondent was previously a director, and registered as an officer and/or dealing representative, of two of these Registered Firms. The Respondent was also previously a director of various other companies registered in various capacities with the Commission.

A. MITIGATING FACTORS

11. The Respondent has cooperated fully with Enforcement Staff.

12. The Respondent has also cooperated fully with Compliance & Registrant Registration (“CRR”) Staff and consented to terms and conditions imposed by the Director of CRR on December 14, 2017. The terms and conditions were imposed on the registration of the four Registered Firms, of which the Respondent is a shareholder, but not a registered officer or director. The Registered Firms also consented to the terms and conditions, which are identical for each Registered Firm. The terms and conditions consented to by the Respondent and the Registered Firms are as follows:

- (a) Until May 11, 2022, Miles S. Nadal will not be permitted, directly or indirectly, to act as a director or officer of the [Registered Firm]. For clarity, Mr. Nadal will not be permitted, directly or indirectly, to:
 - (i) act as an integral part of the mind and management of the [Registered Firm], or perform functions similar to those normally performed by an officer or director of the [Registered Firm], including:

1. participating in any meeting of a board, or any committee thereof, in respect of proposing, nominating and appointing new officers or directors;
 2. participating in any meeting of the board or any committee of the board;
 3. providing instructions or direction to management of the [Registered Firm] or to any legal or financial advisors on behalf of the [Registered Firm];
 4. having signing authority for the [Registered Firm]; and
 5. hiring or supervising key staff of the [Registered Firm];
- (ii) participate in any decisions with or attempt in any way to influence management or the board of the [Registered Firm], or make any recommendations in relation to decisions:
1. affecting the compliance by the [Registered Firm] with securities legislation, including its system of controls and supervision; and
 2. relating to the preparation of any filing or disclosure documents required to be submitted or filed by the [Registered Firm] under Ontario securities law, except as required by law in respect of Mr. Nadal's individual filing requirements;
- (iii) play a significant role (other than as a shareholder) in the [Registered Firm]'s financial affairs; and
- (iv) play a significant role in the business or day-to-day management of the [Registered Firm].

PART IV - ORDER IN THE PUBLIC INTEREST

13. The Respondent acknowledges and admits that based on the SEC order summarized at paragraphs 8 to 9, above, it is in the public interest to make the Order consented to by the parties pursuant to subsections 127(1) and (10) of the Act.

PART V - TERMS OF SETTLEMENT

14. The Respondent agrees to the terms of settlement set forth below.

15. The Respondent consents to the Order, pursuant to which it is ordered that:

- (a) the Respondent resign any positions that the Respondent holds as a director or officer of any reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act; and
- (b) the Respondent be prohibited from becoming or acting as a director or officer of any reporting issuer until May 11, 2022, pursuant to paragraph 8 of subsection 127(1) of the Act.

16. The Respondent acknowledges that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this proceeding to take effect in those other jurisdictions automatically, without further notice to the Respondent. The Respondent should contact the securities regulator of any other jurisdiction in which the Respondent intends to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VI - FURTHER PROCEEDINGS

17. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the matters described in 0 of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the matters set out in 0 of this Settlement Agreement as well as the breach of this Settlement Agreement.

18. The Respondent waives any defences to a proceeding referenced in paragraph 17 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

19. The parties will seek approval of this Settlement Agreement at a public hearing (the “Settlement Hearing”) before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission’s *Rules of Procedure*, adopted October 31, 2017.

20. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

21. If the Commission approves this Settlement Agreement:

- (a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

22. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission’s jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

23. If the Commission does not make the Order:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the Settlement Hearing will be without prejudice to Staff and the Respondent; and
- (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

24. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

25. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

26. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this 23rd day of April, 2018.

“Kelly Grier”

“Miles S. Nadal”

Witness:

Miles S. Nadal

DATED at Toronto, Ontario this 23rd day of April, 2018.

ONTARIO SECURITIES COMMISSION

By: **“Jeff Kehoe”**

Name: Jeff Kehoe

Title: Director, Enforcement Branch

**SCHEDULE “A”
DRAFT ORDER**



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FILE NO.: 2017-77

**IN THE MATTER OF
MILES S. NADAL**

(Names of panelists comprising the panel)

(Day and date order made)

ORDER

(Section 127 of the
Securities Act, RSO 1990 c S.5)

WHEREAS on ____, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the approval of a settlement agreement dated ____, 2018 (the **Settlement Agreement**) between Miles S. Nadal (the **Respondent**) and Staff of the Commission (**Staff**);

ON READING the Statement of Allegations dated December 12, 2018 and the Settlement Agreement and on hearing the submissions of representatives of Staff and the Respondent;

IT IS ORDERED THAT:

- (a) the Settlement Agreement is approved;
- (b) the Respondent resign any positions that the Respondent holds as a director or officer of any reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**); and

- (c) the Respondent be prohibited from becoming or acting as a director or officer of any reporting issuer until May 11, 2022, pursuant to paragraph 8 of subsection 127(1) of the Act.

[Commissioner]

[Commissioner]

[Commissioner]