



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Nadal (Re), 2018 ONSEC 20

Date: 2018-04-25

File No. 2017-77

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

**ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: April 25, 2018

Decision: April 25, 2018

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel

Appearances: Raphael Eghan For Staff of the Commission
Derek Ferris
Mark Skuce

Shane C. D'Souza For Miles S. Nadal

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing, and as edited and approved by the Panel, to provide a public record.

- [1] This hearing concerns a settlement agreement (the **Settlement Agreement**) between Staff of the Ontario Securities Commission (**Staff**) and Miles S. Nadal (**Mr. Nadal** or the **Respondent**). It is the proposed settlement of an inter-jurisdictional proceeding based on Cease and Desist Proceedings against Mr. Nadal brought by the United States Securities and Exchange Commission (**SEC**) pursuant to Section 21C of the Securities Exchange Act of 1934 (the **Exchange Act**).
- [2] The SEC proceeding was based on inaccurate compensation disclosure in the Proxy Statements of MDC Partners Inc. (**MDC**), of which Mr. Nadal was Chairman of the Board, Chief Executive Officer and President, occurring between 2009 and 2014. The disclosure did not include US\$11.285 million of perquisites and personal expense reimbursements, thereby substantially understating his compensation. MDC was both an SEC and Ontario reporting issuer. Such disclosure was also incorporated by reference in SEC registration statements pursuant to which MDC offered and sold securities.
- [3] The SEC approved a settlement of these allegations in which Mr. Nadal neither admitted nor denied the findings contained in the SEC's order.
- [4] The SEC's decision and order (**SEC Order**) can be found in Securities Exchange Act Release 34-80652, dated May 11, 2017.
- [5] Among other sanctions, conditions and restrictions contained in the SEC Order, Mr. Nadal was prohibited for a period of five years from acting as an officer or director of any U.S. reporting issuer. In addition he agreed to pay substantial sums as disgorgement, interest and a civil money penalty.
- [6] In this type of inter-jurisdictional proceeding, Staff of the Commission seeks to exercise the protective mandate of the Commission in the public interest by imposing market participation restrictions in light of the actions taken in other proceedings by other regulatory bodies or courts, including by a foreign regulator such as the SEC. Administrative penalties are not sought through such proceedings in reliance on findings by another authority.
- [7] It is novel for Staff to be seeking to settle an inter-jurisdictional proceeding such as this, since proceedings to reciprocate such orders can otherwise be handled in a relatively expedited basis, and sometimes in writing without a need for a live hearing.
- [8] A settlement found to have been in a reasonable range of sanctions by a Panel also has the benefit of an expedited proceeding saving time and resources, while furthering the Commission's mandate. It is an established practice for proceedings leading to a settlement to be considered in a live hearing such as this.

- [9] In many cases involving inter-jurisdictional orders like the one agreed to in this case, it will be common to also seek some bans on participation as an officer or director of a registrant, including a registered dealer.
- [10] In this case, Mr. Nadal is connected in various capacities with registered firms in Ontario, and this naturally raises the issue of whether such participant bans are required for this settlement to be considered within a reasonable range.
- [11] In the United States, restrictions on being associated with a registered broker-dealer or investment adviser, among other registration categories, can arise by the operation of certain provisions in the Exchange Act or other statutes resulting from findings of violations of the U.S. federal securities laws, and therefore these collateral consequences need not always have to be explicitly set out in an order of the SEC involving violations of the kind found in the case of Mr. Nadal. Nonetheless, these collateral effects can be appropriately taken into account when evaluating an order based on violations of U.S. securities laws, and in considering what sanctions should be imposed in Ontario.
- [12] In this case, the Settlement Agreement sets out a history of extensive and cooperative engagement between the Compliance & Registrant Registration Branch of the Commission (**CRR**) and Mr. Nadal where terms and conditions have been imposed on the four firms in which Mr. Nadal is a shareholder that prohibit him from acting as officer or director or to engage in defined conduct in respect of these firms. These restrictions operate for the same five year period sought by Staff in the Settlement Agreement under consideration in this matter, prohibiting Mr. Nadal from being an officer or director of any Ontario reporting issuer. If Mr. Nadal sought to perform these roles with another Ontario registrant not covered by these terms and conditions, CRR could appropriately consider the effect of the SEC Order and this proceeding in the exercise of its discretion as to whether Mr. Nadal's proposed roles should be permitted with regard to such firms.
- [13] Given the actions taken by CRR and its ability to consider any new application for approval of Mr. Nadal with regard to a registrant, I believe it is unnecessary for a market participation ban involving registrants to be imposed for this settlement to be in a reasonable range in this case.
- [14] The Settlement Agreement indicates that Mr. Nadal cooperated both with CRR, and with Enforcement Staff in this matter.
- [15] For these reasons I find that it is in the public interest to approve this Settlement Agreement and thereby require Mr. Nadal to resign any positions he holds as an officer or director of a reporting issuer and to prohibit him from holding any such position until May 11, 2022.

Dated at Toronto this 25th day of April, 2018.

"D. Grant Vingoe"

D. Grant Vingoe