



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

**STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)**

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. ORDER SOUGHT

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraphs 4 and 5 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):
 - (a) against Miles S. Nadal (**Nadal**) that:
 - i. Nadal resign any positions that he holds as a director or officer of any reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act; and
 - ii. Nadal 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.

B. FACTS

Staff make the following allegations of fact:

3. Nadal is subject to an order made by the U.S. Securities and Exchange Commission (the **SEC**) dated May 11, 2017 (the **SEC Order**) that imposes sanctions, conditions, restrictions or requirements upon him.
4. In relation to the SEC proceedings, Nadal submitted an Offer of Settlement (the **Offer of Settlement**), which was accepted by the SEC. In the SEC Order, certain findings were made against Nadal pursuant to the Offer of Settlement (the **Findings**). Without admitting or denying the Findings, Nadal consented to the entry of the SEC Order.

(i) The SEC Proceedings*Background*

5. The conduct for which Nadal was sanctioned took place from 2009 through 2014 (the **Material Time**).
6. Nadal was the Chairman of the Board, Chief Executive Officer and President of MDC Partners, Inc. (**MDCA**) from 1986 until July 2015.
7. MDCA is a Canadian corporation headquartered in New York, New York, engaged in the advertising, marketing and communications businesses. The company's common stock is registered under Section 12(b) of the Securities Exchange Act of 1934 (the **US Exchange Act**) and trades on the NASDAQ National Market under the ticker symbol "MDCA."

Facts – SEC Order

Pursuant to the SEC Order:

8. During the Material Time, Nadal 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 Nadal 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 Nadal, family members and others, charitable donations in Nadal's name, pet care, vacation and personal travel expenses, club memberships, and certain expenses for which supporting documentation or information was incomplete.

9. MDCA's definitive proxy statements for the Material Time disclosed approximately USD\$3.87 million worth of perquisites and personal benefits provided to Nadal. 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.
10. 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 Nadal, thereby understating the perquisites and personal benefits portion of Nadal's compensation by an average of almost 300% each year.
11. Nadal solicited proxies for his election as a director and approval of his compensation by using materials that included these deficient executive compensation disclosures. Nadal 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 Nadal had sought and obtained reimbursement as if such items were proper business expenses. Nadal also improperly received payments from MDCA by submitting unsubstantiated expenses outside of MDCA's expense reimbursement process. In addition, Nadal completed, signed and submitted director and officer questionnaires in which he failed to disclose his perquisites and personal benefits.

12. MDCA incorporated its definitive proxy statements into its annual reports by reference. Nadal signed and certified these annual reports.
13. MDCA filed with the SEC a registration statement, signed by Nadal, 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 Nadal offered and sold debt and/or equity securities.
14. During the Material Time, MDCA incorrectly recorded payments for the benefit of, and reimbursements to, Nadal 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.
15. 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, Nadal 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.

Violations

16. Pursuant to Nadal's Offer of Settlement, and as a result of the conduct described above, the SEC found that:
 - (a) Nadal violated Section 10(b) of the US 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, Nadal violated Section 14(a) of the US Exchange Act and Rules 14a-3 and 14a-9 thereunder. Section 14(a) of the US 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 US 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) Nadal caused MDCA to violate Section 13(a) of the US Exchange Act and Rule 13a-1 thereunder, which require every issuer of a security registered pursuant to Section 12 of the US Exchange Act to file with the SEC, among other things, annual reports as the SEC may require, and Nadal violated Rule 13a-14 under the US Exchange Act, which mandates, among other things, that an issuer's principal executive certify each annual report.
- (d) Nadal caused MDCA to violate Rule 12b-20 under the US 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) Nadal caused MDCA to violate Section 13(b)(2)(A) of the US 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) Nadal violated Section 13(b)(5) of the US 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 US Exchange Act.

- (g) Nadal 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 US Exchange Act.

(ii) The SEC Order

17. Under the SEC Order and among other sanctions, conditions, restrictions or requirements imposed on him, Nadal is prohibited for a period of five (5) 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 US Exchange Act, or that is required to file reports pursuant to Section 15(d) of the US Exchange Act.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

18. In the Offer of Settlement, Nadal agreed to be made subject to an order of the SEC imposing sanctions, conditions, restrictions or requirements upon him.
19. Nadal is subject to an order of the SEC imposing sanctions, conditions, restrictions or requirements.
20. Pursuant to paragraphs 4 and 5, respectively, of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company, or an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that a person or company is to be made subject to sanctions, conditions, restrictions or requirements may form the basis for an order in the public interest made under subsection 127(1) of the Act.
21. Nadal is currently a shareholder of three companies registered in Ontario. Nadal was previously a director, and registered as an officer and/or dealing representative, of two of these companies.

22. Nadal was also previously a director of various other companies registered in various capacities with the Commission.
23. Staff allege that it is in the public interest to make an order against Nadal.
24. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

DATED at Toronto this 12th day of December, 2017.

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