

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80652 / May 11, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17980

In the Matter of

MILES S. NADAL,

Respondent.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Miles S. Nadal (“Nadal” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. Miles S. Nadal is the former Chairman of the Board, Chief Executive Officer and President of MDC Partners, Inc. (“MDCA”), a publicly-traded marketing company. From 2009 through 2014, Nadal improperly received and failed to disclose millions of dollars in compensation from MDCA in the form of a wide range of perquisites, personal expense reimbursements and other items of value. As a result of his misconduct, Nadal violated Sections 10(b), 13(b)(5), 14(a) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, 14a-3 and 14a-9 thereunder, and caused MDCA to violate Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

Respondent and Relevant Entity

2. Respondent **Miles S. Nadal** was the Chairman of the Board, Chief Executive Officer and President of MDCA from 1986 until July 2015.

3. MDC Partners Inc. 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 Exchange Act and trades on the NASDAQ National Market under the ticker symbol “MDCA.”

Facts

4. From 2009 through 2014, Nadal improperly received from MDCA \$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.

5. MDCA’s definitive proxy statements for 2009 through 2014 disclosed approximately \$3.87 million worth of perquisites and personal benefits provided to Nadal. The proxy statements disclosed an annual \$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.

6. However, MDCA’s definitive proxy statements for 2009 through 2014 failed to disclose an annual average of approximately \$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.

7. 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.

8. MDCA incorporated its definitive proxy statements into its annual reports by reference. Nadal signed and certified these annual reports.

9. MDCA filed with the Commission 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.

10. From 2009 through 2014, 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.

11. After receipt of a subpoena from the Commission staff, MDCA launched an internal investigation, which continued after additional staff inquiries. After the internal investigation was launched, Nadal cooperated with it, agreed to pay back \$11.285 million worth of perquisites, personal expense reimbursements and other items of value that he improperly received from 2009 through 2014, and resigned from MDCA.

Violations

12. As a result of the conduct described above, Nadal violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

13. Section 14(a) of the 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 Exchange Act in contravention of such rules and regulations as the Commission 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. As a result of the conduct described above, Nadal violated Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder.

14. As a result of the conduct described above, Nadal caused MDCA to violate Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission, among other things, annual reports as the Commission may require, and Nadal violated Rule 13a-14 under the Exchange Act, which mandates, among other things, that an issuer's principal executive certify each annual report.

15. As a result of the conduct described above, Nadal caused MDCA to violate Rule 12b-20 under the Exchange Act, which requires that, in addition to the information expressly required to be included in a statement or report filed with the Commission, 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.

16. As a result of the conduct described above, Nadal caused MDCA to violate Section 13(b)(2)(A) of the 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.

17. As a result of the conduct described above, Nadal violated Section 13(b)(5) of the 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 Exchange Act.

18. As a result of the conduct described above, 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 Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Miles S. Nadal shall cease and desist from committing or causing any violations and any future violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(5), and 14(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13b2-1, 13a-14, 14a-3 and 14a-9 thereunder.

B. Nadal is prohibited for a period of five (5) years from the date of the Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

C. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$1.85 million, prejudgment interest thereon of \$150,000, and a civil money penalty in the amount of \$3.5 million, for a total of \$5.5 million, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Miles S. Nadal as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Brendan P. McGlynn, Assistant Regional Director, Philadelphia Regional Office, Division of Enforcement, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary