

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82110 / November 17, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3907 / November 17, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18285

In the Matter of

MICHAEL C. SABATINO,
CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 4C AND 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934 AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Michael C. Sabatino, CPA (“Respondent” or “Sabatino”) pursuant to Sections 4C¹ and 21C of the Securities

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

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 Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, 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 finds³ that:

Summary

1. Michael C. Sabatino, is the former Senior Vice President and Chief Accounting Officer of MDC Partners Inc. (“MDCA”), a publicly-traded marketing company. From 2009 through 2014, Sabatino’s conduct contributed to the improper receipt by Miles S. Nadal, MDCA’s then Chairman and Chief Executive Officer, of millions of dollars in undisclosed compensation in the form of a wide range of perquisites, personal expense reimbursements and other items of value. As a result of his misconduct, Sabatino violated Exchange Act Rule 13b2-1, and caused MDCA to violate Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 14a-3 and 14a-9 thereunder.

Respondent, and Relevant Entity and Individual

2. Respondent **Michael C. Sabatino**, age 53, is a resident of New York. He was the Senior Vice President and Chief Accounting Officer of MDCA from 2005 until he resigned in

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ 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.

July 2015. Sabatino has been licensed as a certified public accountant in the State of New York since 1988.

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."

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

Facts

5. Pursuant to MDCA's policies and procedures, Sabatino's responsibilities as Chief Accounting Officer included the review and approval of Nadal's requests for expense reimbursements.

6. From 2009 through 2014, MDCA paid to Nadal \$11.285 million worth of perquisites, personal expense reimbursements and other items of value, without disclosing such items as compensation in its definitive proxy statements. Sabatino approved nearly all of these payments to Nadal. Items for which Nadal received reimbursement with approval from Sabatino 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.

7. 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.

8. Each year, Sabatino reviewed and assisted with the preparation of MDCA's definitive proxy statements, including the executive compensation sections. 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.

9. MDCA incorporated its definitive proxy statements into its annual reports by reference. Sabatino reviewed and signed these annual reports.

10. From 2009 through 2014, MDCA incorrectly recorded payments for the benefit of, and reimbursements to, Nadal as business expenses, and not compensation, based in part of Sabatino's approval of Nadal's expense reimbursement requests. As a result, MDCA's books,

records, and accounts did not, in reasonable detail, accurately and fairly reflect its disposition of assets.

11. In addition, MDCA failed to devise and maintain internal accounting controls relating to payments for the benefit of, and reimbursements to, Nadal that were sufficient to provide reasonable assurances that transactions were recorded as necessary to maintain the accountability of assets. These failures included, for instance, MDCA's practice of reimbursing several thousands of dollars a month to Nadal for cash payments of "tips and gratuities," with Sabatino's approval, based solely on a line item in Nadal's monthly expense submissions. By way of further example, MDCA paid, with Sabatino's approval, more than \$1.5 million for the benefit of Nadal outside of its monthly expense reimbursement process.

12. After receipt of a subpoena from the Commission staff, MDCA launched an internal investigation, which continued after additional staff inquiries. Sabatino cooperated with the internal and Commission investigations. After the internal investigation was launched, Nadal paid back \$11.285 million worth of perquisites, personal expense reimbursements and other items of value that he improperly received from 2009 through 2014. Nadal resigned from MDCA in July 2015.

Violations

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, Sabatino caused MDCA to violate Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder.

14. Section 13(a) of the Exchange Act and Rule 13a-1 thereunder 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. As a result of the incorporation of deficient proxy statements by reference in its annual reports, MDCA violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder. As a result of the conduct described above, Sabatino caused these violations.

15. As a result of the conduct described above, Sabatino 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, Sabatino 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, Sabatino caused MDCA to violate Section 13(b)(2)(B) of the Exchange Act, which requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to maintain accountability for assets.

18. As a result of the conduct described above, Sabatino willfully⁴ 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.

Findings

19. Based on the foregoing, the Commission finds that Sabatino engaged in conduct within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Sabatino shall cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13b2-1, 14a-3 and 14a-9 thereunder.

B. Sabatino is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After one year from the date of this order, Sabatino may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

⁴ This use of the word "willfully" does not reflect a finding that Sabatino acted deliberately, with intent to violate the law or with knowledge that he was doing so. A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Sabatino's work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or

3. an independent accountant. Such an application must satisfy the Commission that:

(a) Sabatino, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Sabatino, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in Respondent's or the firm's quality control system that would indicate that Sabatino will not receive appropriate supervision;

(c) Sabatino has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Sabatino acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Sabatino to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Sabatino's character, integrity professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts

and circumstances basis with due regard for protecting the integrity of the Commission's processes.

E. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$70,000 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 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 Michael C. Sabatino, CPA 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.

F. 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