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Citation: Nadal (Re), 2018 ONSEC 9
Date: 2018-02-28
File No. 2017-77

IN THE MATTER OF
MILES S. NADAL

REASONS FOR DECISION
(Subsections 127(1) and (10) of the *Securities Act*, RSO 1990, c S.5 and Rule 11 of the *Rules of Procedure and Forms* (2017), 40 OSCB 8988)

Hearing:	In Writing	
Decision:	February 28, 2018	
Panel:	Philip Anisman	Commissioner
Submissions by:	Raphael Eghan	For Staff of the Commission
	R. Paul Steep Shane C. D'Souza	For Miles S. Nadal

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REASONS FOR DECISION

I. INTRODUCTION

[1] This is the first proceeding in which the expedited procedure for a written hearing on an application for an inter-jurisdictional order in the Commission's new procedural rules has been adopted. For the reasons that follow, I have concluded that the proceeding should be continued as an oral hearing.

II. BACKGROUND

[2] On May 11, 2017, the United States Securities and Exchange Commission ("**SEC**") accepted an offer of settlement from Miles S. Nadal ("**Nadal**") in which he consented to the entry of an SEC order (the "**SEC Order**") under section 21C of the *Securities Exchange Act of 1934* (the "***1934 Act***"), making findings and imposing remedial sanctions and a cease and desist order solely for the purpose of administrative and other proceedings to which the SEC is a party, without admitting or denying the findings, except with respect to the SEC's jurisdiction and except with respect to exceptions to discharge under the U.S. Bankruptcy Code.[1]

[3] The SEC found that Nadal was chairman of the board, chief executive officer and president of MDC Partners, Inc. ("**MDCA**"), a Canadian corporation headquartered in New York. MDCA's common shares were traded on the NASDAQ National Market and were registered under the *1934 Act*,[2] which is equivalent to being a reporting issuer under the *Securities Act* (Ontario) (the "***Act***").[3]

[4] From 2009 through 2014, Nadal improperly received from MDCA US$11.285 million in perquisites, personal expense reimbursements and other items, without these payments being disclosed as compensation in MDCA's annual proxy statements. MDCA's proxy statements for these years disclosed average annual payments to Nadal of approximately US$645,000, but failed to disclose an annual average of approximately US$1.88 million in unidentified perquisites and personal benefits that he received. This resulted in their "understating the perquisites and personal benefits portion of Nadal's compensation by an average of almost 300% each year."[4]

[5] The SEC found that during this period, Nadal, knowingly or recklessly, solicited proxies for his election as director and approval of his compensation based on these deficient executive compensation disclosures, that the proxy statements contained materially false and misleading executive compensation disclosures and that they omitted numerous personal expenses for which Nadal had sought and obtained reimbursement as if they were proper business expenses. It also found that he improperly received payments from MDCA by submitting unsubstantiated expenses outside of MDCA's expense reimbursement process. In

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1 *In the Matter of Miles S. Nadal*, Securities Exchange Act of 1934 Release No. 80652, May 11, 2017, Parts II and V, Hearing Brief of Staff of the Ontario Securities Commission ("**Hearing Brief**"), Tab 4. This introduction is based on the findings in the SEC Order.

2 SEC Order at paras 1-3.

3 *Securities Act*, RSO 1990, c S.5, s. 1(1) "reporting issuer".

4 SEC Order at paras 4-6.

addition, he completed, signed and submitted director and officer questionnaires in which he failed to disclose his perquisites and personal benefits.[5]

[6] The SEC found, as well, that MDCA's proxy statements were incorporated by reference in its annual reports, which Nadal signed and certified. MDCA also filed a registration statement with the SEC, signed by Nadal, which incorporated deficient executive compensation disclosures in MDCA's 2013 and 2014 proxy statements, under which MDCA and/or Nadal offered and sold securities to investors. Finally, it found that from 2009 through 2014, MDCA's books, records and accounts did not accurately and fairly reflect the disposition of its assets because it incorrectly recorded payments to Nadal as business expenses, not compensation.[6]

[7] Nadal cooperated with an internal investigation initiated by MDCA after it received a subpoena from SEC staff, and he agreed to pay back to it US$11.285 million for the compensation that he improperly received during these years. He resigned from MDCA in July, 2015.[7]

[8] Based on this conduct, the SEC found that Nadal violated various provisions of the *1934 Act*, including its antifraud provisions, its proxy disclosure requirements, and provisions prohibiting knowing falsification of MDCA's books, records or accounts, and caused MDCA to violate other provisions relating to record keeping and disclosure.[8]

[9] The SEC ordered that Nadal cease and desist committing or causing violations of the relevant provisions of the *1934 Act*, prohibited him from acting as an officer or director of a reporting issuer in the United States for a period of five years from the date of the SEC Order and required him to pay disgorgement, prejudgment interest and a civil money penalty totaling US$5.5 million.

III. THIS PROCEEDING

[10] On December 13, 2017, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing, based on a Statement of Allegations filed by enforcement staff of the Commission ("**Staff**") the previous day, under subsections 127(1) and 127(10) of the *Act*.[9] The Statement of Allegations requested an inter-jurisdictional order requiring Nadal to resign any positions he holds as a director or officer of a reporting issuer and prohibiting him from acting as a director or officer of a reporting issuer until May 11, 2022, the final date of the similar prohibition under the SEC Order. The Notice of Hearing said that Staff elected to proceed by way of the expedited procedure for a written hearing authorized by Rule 11(3) of the Commission's new rules of procedure.[10]

[11] Rule 11(3) was adopted to provide an expeditious procedure for reciprocal orders in view of the fact that such orders were usually made on consent or without participation by the respondent, following a written hearing ordered, at Staff's

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5 SEC Order at para 7.
6 SEC Order at paras 8-10.
7 SEC Order at paras 2 and 11.
8 SEC Order at paras 12-18.
9 *Nadal (Re)* (2017), Notice of Hearing, 40 OSCB 10026; Statement of Allegations, 40 OSCB 10027; Hearing Brief, Tab 2.
10 *Rules of Procedure and Forms* (2017), 40 OSCB 8988 ("***OSC Rules***"). The *OSC Rules* became effective on November 1, 2017.

request, on the first return date of the proceeding.[11] It allows, but does not require, Staff to follow this expedited procedure.[12] If they adopt this expedited procedure, Rule 11(3) requires Staff to serve and file, without delay, the notice of hearing, statement of allegations, their hearing brief with all documents relied on and their written submissions.[13]

[12] On December 14, 2017, Staff filed the Hearing Brief containing the Notice of Hearing, Statement of Allegations and a Consent signed on behalf of Nadal by his counsel consenting to the order requested by Staff in the Statement of Allegations. Staff's Hearing Brief also contained a certificate issued under section 139 of the *Act*, with Nadal's registration history with the Commission, as shown in its records, from 2001 to August 24, 2017, the certificate's date.[14] It said that Nadal was registered as a director and officer of various registrants from 2001 to 2004 and again from 2008 to 2014, as a dealing representative in 2009 and 2010, and was currently a shareholder of three registrants.[15] The Hearing Brief also contained a section 139 certificate relating to MDCA, which said there was no record of its having been registered under the *Act*.[16]

[13] When Staff filed the Hearing Brief, they referred to the respondent's Consent and asked the Registrar whether the panel hearing this matter (the "**Panel**") required written submissions to be filed.[17] Nadal's counsel informed the Registrar the following day that Nadal was content to have the matter dealt with in writing and would not request an oral hearing.[18] In view of the information in the section 139 certificate concerning Nadal's involvement with registrants in Ontario, I asked the Registrar to send the following response to the parties:[19]

> In response to Staff's question about the need for its written submissions, the Panel (Commissioner Anisman) has requested that Staff serve and file written submissions. He has also requested that these submissions address: (i) the sanctions sought by Staff and explain why, in view of the conduct contained in the SEC's findings and Mr. Nadal's past and present association with registrants in Ontario, an order has not been requested with respect to his ability to act as

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11 See, e.g., *Soleja (Re)* (2017), 40 OSCB 955 (Order); *Cook (Re)* (2017), 40 OSCB 8977.

12 They may also bring a proceeding under Rule 11 in the usual way or follow an alternative procedure like the one described in *Dhanani (Re)* (2017), 40 OSCB 4457, 2017 ONSEC 15 ("***Dhanani***") at para 12.

13 *OSC Rules*, r 11(3)(c) and (d). The Notice of Hearing repeated this requirement; it said Staff "must serve" these documents on the respondents.

14 Hearing Brief, Tab 3.

15 Echelon Wealth Partners Inc., an investment dealer; Vestcap Investment Management Inc., a portfolio manager; and Artemis Investment Management Limited, an investment fund manager, commodity trading manager, exempt market dealer and portfolio manager.

16 Hearing Brief, Tab 3. The certificate did not refer to MDCA's status as a reporting issuer, but Staff's subsequent written submissions state that it is a reporting issuer in Ontario; Written Submission of Staff of the Ontario Securities Commission, January 12, 2018 at para 28 ("**Staff's Submissions**").

The Hearing Brief included a copy of the SEC Order and a draft of the order requested by Staff, Tabs 4 and 5, and was accompanied by an affidavit of service; Affidavit of Service of Lee Crann, sworn December 14, 2017.

17 Staff Email to Registrar, December 14, 2017.

18 Email of Paul Steep, December 15, 2017.

19 Email from the Registrar, December 18, 2017.

> an officer or director of a registrant or as a registrant, (ii) a panel's authority to make an order that is not requested in a Statement of Allegations, but of which the respondent receives notice and an opportunity to be heard, and (iii) the relevance of the fact that the SEC's order resulted from its acceptance of Mr. Nadal's offer to settle, "without admitting or denying the findings" on which it was based.

[14] The same day the Registrar received an email from Nadal's counsel, sent with Staff's permission, providing copies of identical terms and conditions applicable to the three registrants identified in the section 139 certificate and to a fourth registrant who was not so identified.[20] The terms and conditions, imposed on each of the registrants by the Director under section 28 of the *Act*, were dated December 14, 2017.

[15] The email said that Nadal and the registrants consented to these terms and conditions and asked whether it was "still necessary" to answer my questions. The terms and conditions each provided that until May 11, 2022, which is five years after the date of the SEC Order, Nadal would not be permitted, "directly or indirectly, to act as a director or officer" of the registrant, including acting "as an integral part of the mind and management of" the registrant, attempting "in any way to influence management or the board", and playing a "significant role" in the registrant's financial affairs or its business or day-to-day management.[21]

[16] On December 19, 2017, the Registrar sent the parties my response:

> The terms and conditions provided by Mr. Steep are relevant to my questions but do not fully respond to them. As the terms and conditions are limited to the four specific registrants, they do not address the general question concerning acting as a director or officer of a registrant or as a registrant, or the two other questions that follow from it, on which I requested submissions.

[17] On January 15, 2018, Staff filed Staff's Submissions with an affidavit of service.[22] Nadal's written submissions were filed on January 19, 2018.[23] Rule 11(3)(h) provides that Staff may serve and file written reply submissions within fourteen days after service of the respondent's submissions. Staff have not filed reply submissions.

IV. THE PARTIES' SUBMISSIONS

[18] Staff submitted that this Panel has authority to impose a more onerous sanction than the SEC did, but that it should not in this case. They argued that Nadal has disgorged US$11.285 million to MDCA and paid administrative penalties totaling US$5.5 million to the SEC, that the proposed order mirrors the SEC Order, which did not address registration, that Nadal cooperated with the Commission's

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[20] Email of Paul Steep, December 18, 2017; Terms and Conditions on Triumph Asset Management Inc. (now Amadeus Investment Partners Inc.), December 14, 2017.

[21] Copies of the terms and conditions applicable to all four registrants are contained in Schedule "D" to Staff's Submissions.

[22] Affidavit of Service of Lee Crann, sworn January 15, 2018.

[23] Written Submissions of the Respondent, Miles S. Nadal, January 19, 2018 ("**Nadal's Submissions**").

Compliance Registration and Regulation Branch ("**CRR**") in consenting to the imposition of the terms and conditions on the four registrants of which he is a shareholder and that CRR Staff could oppose any attempt by him to become a registrant or a director or officer of a registrant prior to May 11, 2022.[24] In Staff's submission, the order they propose is in the public interest.

[19] Nadal agreed with Staff's Submissions concerning the proposed order. Emphasizing that he neither admitted nor denied the facts found by the SEC, he argued that it would be an error in principle to impose more onerous sanctions than the SEC had. He submitted that his Consent to the proposed order, which resulted from negotiations with Staff and CRR Staff, was a settlement that should be approved as it is within a range of reasonable outcomes, the standard applicable to settlements.[25] Nadal said he consented to the specific order and sanctions proposed, not to the Panel making another order under subsection 127(1); on this basis he consented to the admission of the SEC Order, opted not to tender evidence and agreed to an expedited proceeding. He argued it would be procedurally unfair to impose more onerous sanctions in view of these concessions.[26]

[20] In his submission, as with a proposed settlement, the only decision available to the Panel is to approve or reject the order; if it is rejected, an opportunity to be heard cannot cure the procedural unfairness, and the matter should go to a hearing before a different panel[27] because the Panel lacks jurisdiction to substitute new terms.[28]

V. RULING

[21] Having read the parties' submissions, I have concluded that an oral hearing is required for a full consideration of the issues in this proceeding. The written submissions do not address the implications of the fact that the SEC Order contains findings and that Nadal admitted those findings for purposes of specified bankruptcy matters or the fact that the Notice of Hearing and Statement of Allegations do not refer to registration. These and other issues identified below can best be addressed in an oral hearing.

[22] The issues raised by Nadal with respect to the nature of this proceeding and the Panel's jurisdiction, however, can be addressed now on the basis of the parties' written submissions.

A. Jurisdiction

[23] The *OSC Rules* mandate the procedure for a settlement approval hearing. The parties to a proposed settlement must first attend a confidential settlement conference.[29] The purpose of this settlement conference is to allow the parties to make confidential submissions to a panel of commissioners "to obtain guidance

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[24] Staff's Submissions at paras 60-62.
[25] Nadal's Submissions at paras 20-24, citing *Electrovaya Inc. (Re)* (2017), 40 OSCB 5795, 2017 ONSEC 25 ("***Electrovaya***"), and *R v Anthony-Cook*, 2016 SCC 43 ("***Anthony-Cook***").
[26] Nadal's Submissions at para 34.
[27] Nadal's Submissions at para 35, citing *Koonar (Re)* (2002), 25 OSCB 2691 ("***Koonar***").
[28] Nadal's Submissions at paras 35-37.
[29] *OSC Rules*, r 32.

on whether the terms of" a proposed settlement would be in the public interest.[30] In the settlement conference, the panel considers the proposed settlement and determines whether it falls within a reasonable range of appropriateness. While the panel's consideration is based on the facts agreed to in the settlement agreement, it may take into account issues of principle and facts not contained in the settlement agreement that are disclosed by the parties to provide context to enable the panel to make the necessary determination.[31] Only after such a conference can a public settlement hearing be convened.

[24] The panel in a settlement conference must be satisfied that the settlement is fair and reasonable and that its approval is in the public interest.[32] If the panel concludes that the proposed settlement should not be approved, a public hearing will not be convened and the members of the panel cannot participate in a subsequent hearing of the matter on its merits, unless the parties consent.[33] If the panel concludes that the proposed settlement is acceptable, it will then go to a public hearing at which the panel must include at least one of the commissioners from the settlement conference panel.[34]

[25] This is not a settlement hearing. It is an enforcement proceeding brought by Staff under Rule 11, in which Staff adopted the expedited procedure in Rule 11(3). As a result, the Commission decisions referred to in Nadal's Submissions on the role of a panel in a settlement approval hearing are not applicable.[35]

[26] The Panel has the same jurisdiction in this proceeding as in any other enforcement proceeding. Subsection 127(10) of the *Act* provides that the Commission may make an order under subsection 127(1) if a person is subject to an order of another securities regulatory authority, like the SEC, that imposes sanctions, conditions, restrictions or requirements on the person. The Commission may make a reciprocal order on the basis of the order made and facts found by the other regulatory authority.[36] Although a reciprocal order will generally be made on this basis, subsection 127(10) does not limit "the generality of" subsection 127(1); the Commission retains full discretion to make

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30 *Ontario Securities Commission Rules of Procedure* (2014), 37 OSCB 4169, r 12.1 ("***Former OSC Rules***").

31 *Electrovaya* at para 6. For example, the evidence (in addition to the SEC Order) that was provided by the parties relating to Nadal's registration history and shareholdings in registrants indicates that he is currently a shareholder in four registrants, but the section 139 certificate shows that he held shares in only three registrants as of August 24, 2017. This disparity, which is not addressed in the parties' written submissions, may be relevant to the registration issue identified in my email. Clarification might have been obtained in a confidential settlement conference.

Although these facts are part of the public record in this proceeding, additional facts disclosed in a confidential settlement conference may not be made public; *OSC Rules*, r 32(4); and see, e.g., *Assante Capital Management Ltd. (Re)* (2017), 41 OSCB 99, 2017 ONSEC 45 at para 8 ("***Assante***").

32 *Electrovaya* at paras 5-8.

33 *OSC Rules*, r 20(2); see also *Former OSC Rules*, r 12.6. These rules adopt the dictum in *Koonar* that is cited in Nadal's Submissions at para 35.

34 *OSC Rules*, r 33.

35 See Nadal's Submissions at paras 36-37, citing *Koonar* and *Rankin (Re)* (2008), 31 OSCB 3303, 2008 ONSEC 6. Both decisions preceded the adoption, in 2009, of the current settlement process.

36 See, e.g., *JV Raleigh Superior Holdings Inc.* (*Re)* (2013), 36 OSCB 4639, 2013 ONSEC 18 at para 16.

any order authorized by subsection 127(1) that "in its opinion is in the public interest."[37]

[27] Although the burden of persuasion remains with Staff, the effect of subsection 127(10) is to impose a practical burden on a respondent to adduce evidence concerning the Commission's exercise of discretion whether to make an order and the terms of any order that might be made.[38] Any such order must be proportionate in light of the respondent's circumstances as shown in the initial order and findings and any other evidence adduced by the parties.

B. Issues to be Addressed in an Oral Hearing

1. Opportunity to be Heard

[28] Consideration of a sanction relating to registration in this proceeding raises a number of issues. Nadal's Submissions state that he consented to the admission of the SEC Order, chose not to adduce evidence and agreed to the expedited procedure in reliance on the terms of the order requested by Staff. The admissibility of the SEC Order is determined by paragraph 127(10)4 of the Act, but Nadal was entitled to present evidence concerning the weight it should be given and any sanctions that might follow based on it, and Rule 11(3)(e) itself provides that he was not obligated to agree to a written hearing. As a matter of procedural fairness, Nadal is entitled to a full opportunity to address any such issue. Accordingly, if he wishes to adduce evidence with respect to any issue that he considers relevant in this proceeding or in view of my questions, he is entitled to do so and will have that opportunity in an oral hearing.

2. SEC Order and Findings

[29] Nadal, and Staff, should also have an opportunity to address the issues raised by my questions, but not fully addressed in their written submissions. First, the significance of the findings in the SEC Order and of Nadal's admission with respect to other proceedings must be addressed. The authorities cited by Staff and Nadal do not consider this issue.

[30] Staff's Submissions rely on *Re Graham*, in which the Commission accepted allegations in an SEC complaint as a basis for "reciprocating" an order of the United States District Court ("**USDC**") to which the respondent had consented without admitting or denying the allegations.[39] On the basis of this decision, Staff submits that the Panel can rely on the findings in the SEC Order.

[31] Nadal argues that *Graham* should not be followed, in part because Graham informed Staff that he did not oppose the order requested and did not appear, but more importantly because the decision in *Graham* preceded the *Lines* decision of the British Columbia Court of Appeal ("**BCCA**").[40] In *Lines*, the BCCA held a decision of the British Columbia Securities Commission ("**BCSC**") unreasonable because the BCSC had relied only on an order of the USDC, to which the respondents had consented without admitting or denying the

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37 *Elliott (Re)* (2009), 32 OSCB 6931, 2009 ONSEC 26 at para 27; *Pierce (Re)*, 2016 BCSECCOM 188.

38 *Dhanani* at paras 8-9; *Global 8 Environmental Technologies Inc. (Re)* (2017), 40 OSCB 7127, 2017 ONSEC 31 at para 13; see also Bryant, Lederman and Fuerst, *The Law of Evidence in Canada* (3d ed. 2009) at 109-111 ("tactical burdens").

39 *Graham (Re)* (2009), 32 OSCB 7202, 2009 ONSEC 33 ("***Graham***"). The respondent had also waived findings of fact and conclusions of law in the proceeding before the USDC; para 19.

40 *Lines v British Columbia (Securities Commission)*, 2012 BCCA 316 ("***Lines***").

allegations, when it imposed more onerous sanctions than those in the USDC's order. As in *Graham*, the respondents had also waived findings of fact and conclusions of law.[41] The BCCA's decision was based on the fact that there was no evidence to support a more onerous sanction because there was neither a finding by a court or regulatory authority nor an admission that Lines had broken any law and thus no evidence of wrongdoing.[42]

[32] In this case, although the SEC Order may reflect a no-contest settlement, the SEC made findings of fact and of multiple violations of the *1934 Act* in its order, and Nadal admitted these findings for specified purposes under the U.S. Bankruptcy Code. The effect of these provisions of the SEC Order, therefore, must be addressed, and the parties should have an opportunity to do so, if so advised, before the Panel makes any determination of the terms of any reciprocal order that may be in the public interest.[43]

3. Effect of Consent

[33] Staff and Nadal seek the reciprocal order to which Nadal agreed. Nadal's Submissions characterize this agreement as a settlement and their submissions that the order is in the public interest as joint submissions.[44] If a sanction relating to registration is to be considered, the effect of Nadal's Consent and/or the joint submission raise several issues that must be addressed.

[34] It is clear that the appropriate sanction in a proceeding like this one is a matter for the Commission's discretion. The question is how the exercise of this discretion should be affected by the Consent and/or joint submission of the parties. Nadal has cited the Commission's *Electrovaya* decision and the Supreme Court of Canada's decision in *Anthony-Cook*. Both relate to approval or acceptance of settlements. How should the standards in these decisions apply, if at all, to a proceeding like this one in light of the procedure required for settlements in the *OSC Rules*?

[35] If they are applicable, the standards adopted in these two cases may not be the same. As quoted in Nadal's Submissions, the standard in *Electrovaya* for approval of a settlement is whether "the sanctions agreed to by the parties are within a reasonable range of appropriateness in light of the facts admitted in the settlement agreement, taking into account the settlement process and its benefits",[45] while the standard for rejection of a joint sentence submission in a criminal proceeding is "whether the proposed sentence would bring the administration of justice into disrepute", that is, whether it is "so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down."[46]

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41 See, e.g., Final Judgment as to Defendant Brian Lines, *SEC v Lines*, CA No. 07-11387 (DLC), September 29, 2010 (DCNY). When approving a no-contest settlement, the Commission, like the USDC, does not make findings of fact, but relies on Staff's declaration that the facts and conclusions in the settlement agreement are true; see *Assante* at para 7.

42 *Lines* at paras 29 and 32-33.

43 This is the issue to which my third question was directed.

44 Nadal's Submissions at para 15.

45 *Electrovaya* at para 5; Nadal's Submissions at para 20.

46 *Anthony-Cook* at paras 5 and 34; Nadal's Submissions at para 21.

Both standards are contextual. If one is to be applied here, is the seemingly stricter standard in *Anthony-Cook* appropriate for regulatory proceedings like this one? The reasoning in a recent decision of an Investment Industry Regulatory Organization of Canada hearing panel may be relevant to this question.[47]

4. More Onerous Sanction

[36] The parties' submissions address the broad question of whether the Panel has jurisdiction to impose a more onerous sanction than one requested by Staff, but neither directly addresses my question relating to a sanction not requested in a statement of allegations and neither refers to Commission jurisprudence addressing this issue.[48]

[37] My question concerning sanctions not requested in a statement of allegations has two aspects. The first is the potential imposition of a more onerous sanction than requested by Staff, but of the same type. The second is the potential for a sanction of a type not identified in the statement of allegations, as is the case here, as Staff's request relates to acting as a director or officer of a reporting issuer and not to registration or registrants. This issue should be addressed in light of any regulatory precedents.[49] Prior Commission decisions imposing a more onerous sanction of the type Staff requested may also be relevant.[50]

VI. ORDER

[38] The parties should have an opportunity to address all of these issues before the Panel makes any determination concerning the terms of an order under subsection 127(1). The *Statutory Powers Procedure Act* provides that a panel may hold both written and oral hearings in a proceeding.[51] The *OSC Rules* recognize a panel's discretion to hold a hearing in writing or otherwise; they provide, both generally and with respect to expedited reciprocal hearings, that a hearing shall be conducted in writing if the parties consent, unless a panel orders otherwise.[52] In the exercise of this discretion, I shall make an order continuing this hearing as an oral hearing so that the parties may have an opportunity to adduce any evidence they consider relevant and to make additional submissions.

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47 See *Jacob (Re)*, 2017 IIROC 17.

48 The decisions cited by the parties involve reciprocal orders imposing more onerous sanctions than the initial order being reciprocated, but the sanctions were requested by Staff; see, e.g., *Graham*; *Lines*; *Pierce*; *Bochinski (Re)*, 2017 BCSECCOM 300; see also *Dhanani* at para 9 n 19.

49 See, e.g., *Jawhari (Re)* (2017), 40 OSCB 8551, 2017 ONSEC 36; *Cook (Re)*, 2017 BCSECCOM 260.

50 See, e.g., *Limelight Entertainment Inc.* (*Re*) (2008), 31 OSCB 12030, 2008 ONSEC 28; *Merax Resource Management Ltd. (Re)* (2012), 35 OSCB 11545, 2012 ONSEC 45.

51 RSO 1990, c S.22, s 5.2.1.

52 *OSC Rules*, r 11(3)(f) and 23(2).

[39] A number of alternatives are open to the parties. Nadal or Staff may wish to adduce evidence relating to an issue they have not raised as a result of Nadal's Consent or to adduce additional evidence concerning Nadal's involvement in registrants' activities. In view of the issues identified above, they may also wish to make additional written submissions. These are matters for the parties. For this reason, my order will require the parties to determine how they wish to proceed and to contact the Registrar to schedule a prehearing attendance or an oral hearing on the merits.

Dated at Toronto this 28th day of February, 2018.

"*Philip Anisman*"

Philip Anisman