

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84280 / September 25, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18839

In the Matter of

PATRICIO CONTESSE
GONZÁLEZ,

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 and in the public interest that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Patricio Contesse González (“Contesse” 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:

Summary

1. This matter concerns Respondent's role in causing his employer, Sociedad Química y Minera de Chile, S.A. ("SQM"), to violate the books and records and internal accounting control provisions of the Foreign Corrupt Practices Act ("FCPA"), and his circumvention of internal accounting controls, falsification of SQM's books and records, and misleading of SQM's accountants. While acting as SQM's CEO, Respondent caused SQM to make approximately US \$14.75 million in improper payments to Chilean politicians, political candidates, and individuals and entities connected to them (collectively, "politically exposed persons" or "PEPs"). These improper payments were made over the course of seven years, from 2008 to 2015. Respondent directed and authorized these improper payments to PEPs, based on contracts, invoices, and other false documents. Most of the improper payments involved falsified documents submitted to SQM on behalf of third-party vendors associated with PEPs who posed as legitimate vendors to SQM ("third-party vendors"). Those payments were not supported by documentation that services were actually provided to SQM.

2. Respondent caused SQM's violations of the FCPA. Respondent personally caused fictitious contracts with the third-party vendors to be created, and approved the contracts, invoices and other documents, so that the improper payments would be inaccurately recorded as legitimate business expenses. His conduct caused SQM's books and records to inaccurately record the improper PEP payments as legitimate business expenses. Respondent's actions also caused SQM's internal accounting controls violations. As CEO, Respondent was responsible for SQM's internal accounting controls, including controls that related to an account through which the improper payments were made (the "CEO Account"). Those controls were deficient and contained material weaknesses. Respondent circumvented those deficient controls to cause SQM to make the improper payments to the Chilean PEPs.

3. By falsifying contracts and invoices and submitting documents Respondent knew to be false into SQM's accounting system, and by failing to inform SQM's accountants about those fictitious transactions, Respondent knowingly circumvented SQM's internal accounting controls and violated rules that prohibit falsifying a public company's books and records and omitting material facts to an accountant in connection with an audit.

4. Respondent signed certifications which were filed with SQM's Forms 20-F during the relevant period. Respondent's representations in those certifications were false, as described below.

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.

Respondent

5. Patricio Contesse González is a Chilean citizen and resident. He was SQM's Chief Executive Officer from at least 1990 to March 2015.

Other Relevant Entity

6. Sociedad Química y Minera de Chile, S.A., is a multinational mining and chemical company headquartered in Santiago, Chile. SQM's Series B shares, in the form of ADSs, have been listed on the NYSE since 1993 and are registered with the Commission pursuant to Section 12(b). The company files periodic reports with the Commission as a foreign private issuer.

Facts

A. Background

7. From at least 2008 to 2015, SQM provided discretionary funding to its office of the Chief Executive Officer through a designated account, the CEO Account. This account was intended for, among other things, travel, publicity, and advisory services for the office of the Chief Executive Officer. SQM's funding of the CEO Account ranged from US \$3.3 million in 2008 to US \$5.7 million in 2014.

8. In late 2014 and early 2015, Chilean authorities initiated tax and criminal investigations of suspicious payments SQM made to Chilean PEPs. In response to Chilean authorities' requests for relevant documents, SQM's board of directors (the "Board") formed a committee to conduct an internal investigation. On March 16, 2015, the Board terminated Contesse's employment contract.

9. On January 13, 2017, the Commission issued a settled order that SQM cease-and-desist from violating the books and records and internal control provisions of the FCPA, pay a penalty of \$15 million, and comply with certain undertakings. Also, on January 13, 2017, the Department of Justice and SQM entered into a three-year deferred prosecution agreement (DPA). As part of the DPA, SQM admitted its willful and knowing failure to implement a sufficient system of internal accounting controls and to violations of the FCPA's books and records provisions. SQM agreed to pay a criminal fine of approximately \$15 million and certain undertakings.

B. Contesse Used the CEO Account to Effect Improper Payments to PEPs

10. From at least 2008 through 2015, Contesse used the CEO Account to make payments to Chilean PEPs totaling at least \$14.75 million. These payments were made through third-party vendors.

11. Documents supporting the payments included, among other things, fictitious contracts and invoices for nonexistent services initiated by Contesse. For example, utilizing the CEO Account, Contesse caused SQM to do the following:

- a. SQM paid funds on an invoice for purported “financial services” submitted by a relative of a Chilean official. In fact, that Chilean official’s relative had not provided any services to SQM but had submitted the invoice in order to provide support for a payment by SQM to a Chilean political campaign.
- b. SQM paid several invoices submitted by third-party entities connected to a Chilean official for purported “communications advice” from the Chilean official’s chief of staff, and for purported “consulting services” by a relative of that Chilean official. SQM made these payments without receiving any supporting documentation that the “communications advice” or “consulting services” had ever been provided.
- c. An advisor to a Chilean official invoiced SQM for providing engineering and statistical services. SQM paid the invoice and booked the payment as having been made for such services, when SQM had not received those services from the advisor.
- d. A relative of a Chilean official submitted a false contract to SQM for consulting services in “areas of fertilizing tests” and received payments from SQM without SQM receiving any supporting documentation that those services had been provided.

12. Several Chilean officials sought payments from Contesse for not-for-profit foundations operated by relatives or with which the Chilean officials were otherwise associated. Contesse made these payments without regard to whether they were in accordance with SQM’s policies.

C. As CEO, Contesse Was Responsible for SQM’s Internal Accounting Controls and Circumvented Them to Make PEP Payments

13. Contesse was the CEO of SQM since before it became a public company in 1993 and was responsible for the development of SQM’s internal accounting controls at all relevant times. Contesse was also ultimately responsible for SQM’s anti-corruption policies and procedures. During SQM’s development of the anti-corruption policies and procedures, Contesse was regularly briefed and was personally trained on their implementation and use by SQM’s then head of Internal Audit.

14. In addition, Contesse served on SQM’s ethics committee and authored the cover letter to SQM’s Code of Ethics. The Code of Ethics specifically proscribed improper payments to government officials. As CEO of SQM and a member of its ethics committee, Contesse was

responsible for ensuring that SQM's internal accounting controls related to the proscription of improper PEP payments were effective.

15. As part of management's preparations for SQM's annual Form 20-F filings, the company's senior and executive officers met on a regular basis throughout the year to assess the effectiveness of the internal accounting controls. As CEO, Contesse was involved in establishing and assessing these controls.

16. In connection with the improper payments, Contesse circumvented SQM's internal accounting controls. Contesse used the CEO Account to effect the transactions.

D. Contesse Caused SQM to Make Improper Payments and Falsely Record Them

17. Contesse knew how SQM initiated, documented, authorized, and effected corporate transactions. He also understood the company's restrictive policies related to PEP transactions, both in his role as CEO and as a member of SQM's ethics committee. Nevertheless, he caused SQM to make the PEP transactions at issue in this case and, in most instances, instructed others to draft the inaccurate documents needed to support and effect the PEP payments.

E. Contesse Failed to Disclose the Improper Payments to SQM's Internal Audit Department

18. Pursuant to SQM's anti-corruption policies and procedures, SQM's Internal Audit department was to conduct regular audits of certain transactions. Upon discovery that certain high-risk transactions identified in an internal audit were initiated by Contesse, the head of Internal Audit reviewed the high-risk transactions with Contesse. Contesse failed to inform the head of Internal Audit that the transactions were improper.

19. In one instance, Contesse had directed suspicious payments to the spouse of a PEP for "communications consulting." When questioned about that transaction, Contesse told the head of Internal Audit the payments to the spouse were proper but would cease and that SQM would direct payments to a legitimate company providing these services. Despite those statements, Contesse caused SQM to continue making improper payments to the PEP's spouse.

20. In another instance, SQM had been making improper monthly payments for five years to the son of a Chilean political party official. Contesse told the head of Internal Audit that the contract with PEP's son had been completed, so no further payments would occur. The head of Internal Audit subsequently discovered that the payments to PEP's son were ongoing and instructed SQM's treasury department to cease payments to him. Those payments ceased, but almost immediately thereafter Contesse redirected the PEP payments to the PEP's aide.

F. Contesse Signed Management Representation Letters to SQM's Auditor That Contained False Information

21. In connection with audits performed by SQM's auditor during the relevant period, SQM submitted letters that contained representations by management related to the audits (Management Representation Letters). As CEO, Contesse was a signatory on SQM's Management Representation Letters.

22. For audits of fiscal years 2012 and 2013, Contesse signed Management Representation Letters, dated April 22, 2013 and April 28, 2014, respectively, that contained representations to SQM's auditor which, in light of the improper PEP transactions, made certain of those representations by Contesse misleading.

23. For example, the Management Representation Letters submitted to SQM's auditor for fiscal years 2012 and 2013 state, among other things:

- a. That SQM management had:
 - i. maintained effective internal control over financial reporting;
 - ii. disclosed to the auditor all deficiencies in the design or operation over financial reporting;
 - iii. not identified any deficiencies they believed constituted significant deficiencies or material weaknesses in internal control over financial reporting; and
- b. There had been no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the consolidated financial statements or as a basis for recording a loss contingency.

G. Contesse Signed False Certifications

24. Rule 13a-14 promulgated under the Exchange Act requires that the chief executive officer provide a certification which is included in the filing of Form 20-F for foreign private issuers. Through that certification, Contesse was required to make, among others, the following representations:

- a. Contesse had designed, or caused to be designed SQM's internal controls over financial reporting to provide reasonable assurance of the reliability of SQM's financial reporting and the preparation of its financial statements in accordance with generally accepted accounting principles; and
- b. Contesse had disclosed to SQM's auditor all significant deficiencies in the design or operation of SQM's internal control over financial reporting which were reasonably likely to adversely affect SQM's ability to record, process, summarize, and report financial information.

25. Contesse signed the certifications related to SQM's internal control over financial reporting during the relevant years of his tenure as CEO. For SQM's fiscal years 2012 and 2013,

Contesse signed certifications included as exhibits to SQM's Forms 20-F filed with the Commission in April 2013 and 2014.

26. Contesse's certifications referenced above were false.

H. Contesse Omitted to Disclose the Improper Payments to SQM's Auditor

27. SQM included audited financial statements in its Forms 20-F filed with the Commission during the relevant period.

28. With respect to the audits of those financial statements, SQM provided copies of Contesse's certification to SQM's auditor.

29. Contesse knew, or should have known, that those certifications would be provided to, and relied upon by, SQM's auditor in connection with their audits of SQM's financial statements and in their evaluation of SQM's internal accounting controls.

30. In connection with those certifications, Contesse omitted to disclose to SQM's auditor that:

- a. He had falsified SQM's books, records, and accounts by entering, and causing to be entered, fictitious transactions to third-party vendors associated with PEPs to appear as legitimate business transactions;
- b. He had circumvented SQM's internal accounting controls to effect the improper PEP transactions; and
- c. That, as a member of SQM's management with a significant role over SQM's internal control over financial reporting, Contesse had nevertheless caused SQM to effect the improper PEP transactions.

Legal Standards and Violations

31. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

32. Section 13(b)(2)(A) of the Exchange Act requires every issuer with a class of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

33. Section 13(b)(2)(B) of the Exchange Act requires such issuers to, among other things, devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the transactions are (i) executed in accordance with management's general or specific authorization; (ii) recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") or any other applicable criteria; and (iii) recorded as necessary to maintain accountability for assets.

34. As a result of his conduct described above, Respondent caused SQM to violate Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

35. Section 13(b)(5) of the Exchange Act provides that no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record or account of an issuer described in Section 13(b)(2) of the Exchange Act. Exchange Act Rule 13b2-1 prohibits any person from, directly or indirectly, falsifying or causing to be falsified any book, record, or account subject to Exchange Act Section 13(b)(2)(A).

36. Exchange Act Rule 13b2-1 prohibits any person from, directly or indirectly, falsifying or causing to be falsified any book record, or account subject to Exchange Act Section 13(b)(2)(A).

37. By knowingly providing false documents, including fabricated invoices and contracts to SQM, and by circumventing SQM's internal controls over the CEO Account to conceal his improper payments to Chilean PEPs, Respondent violated Exchange Act Section 13(b)(5) and Rule 13b2-1 thereunder.

38. Rule 13b2-2 provides that no officer of an issuer shall directly or indirectly omit to state, or cause another to omit to state, any material fact to an accountant in connection with any audit or the preparation or filing of any document or report required to be filed with the Commission.

39. By signing the false Management Representation Letters and certifications, and causing those letters and certifications to be provided to SQM's accountants in connection with their audit of SQM, Respondent violated Exchange Act Rule 13b2-2.

40. Rule 13a-14 sets forth the requirements for certain reports filed under Section 13(a) of the Exchange Act, including specified certifications by the principal executive officer of the issuer.

41. In his certifications submitted with SQM's Forms 20-F for fiscal years 2012 and 2013, Respondent falsely stated that he had evaluated the effectiveness of SQM's internal accounting controls and that any material weaknesses in those controls had been disclosed. By signing these false certifications, Respondent violated Exchange Act Rule 13a-14.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 13b2-1, 13b2-2, and 13a-14 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$125,000 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 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 Patricio Contesse González 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 Daniel J. Wadley, Regional Director, Salt Lake City Regional Office, Securities and Exchange Commission, 351 S. West Temple, Suite 6.100, Salt Lake City, Utah 84101.

C. 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 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