

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79795 / January 13, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17774

In the Matter of

**SOCIEDAD QUIMICA Y MINERA
DE CHILE, S.A.**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS AND
IMPOSING 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 Sociedad Quimica y Minera de Chile, S.A. (“SQM” 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, Respondent admits the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, and 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 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. This matter concerns violations of the books and records and internal control provisions of the Foreign Corrupt Practices Act (“FCPA”) by SQM. From at least 2008 to 2015, SQM made approximately US \$14.75 million in improper payments to Chilean politicians, political candidates, and individuals connected to them (collectively, “politically exposed persons” or “PEPs”). Most of the payments were made based on fictitious documentation submitted to SQM by persons and entities associated with PEPs who posed as legitimate vendors to SQM (“third party vendors”). Those payments were not supported by documentation that those third party vendors provided services to SQM. Virtually all of the improper payments to PEPs were directed and authorized by a senior SQM executive.

2. SQM violated the books and records provisions of the FCPA by failing to fairly and accurately reflect in its books, records and accounts that payments SQM ostensibly made to legitimate vendors were actually payments to PEPs. SQM also failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company was not making improper payments to PEPs.

Respondent

3. Sociedad Quimica 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.

Other Relevant Individual

4. “SQM Executive,” a Chilean citizen whose identity is known to the Commission and SQM, was an officer and high-level executive of SQM from approximately 1990 until he was terminated by the company in or around March 2015. SQM Executive was one of the officers at SQM responsible for implementing SQM’s internal accounting controls.

Facts

5. 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”). The CEO 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. SQM Executive had full discretion and authority over the use of the CEO Account.

6. From 2008 to 2015, SQM Executive directed approximately US \$14.75 million in improper payments from the CEO Account to Chilean PEPs through the use of, among other

things, fictitious invoices and contracts with third party vendors associated with those PEPs. As a result, the payments were falsely recorded as legitimate business expenses in SQM's books, records and accounts.

7. During the relevant period, SQM failed to exercise proper due diligence, verification or oversight of the CEO Account to ensure that the funds allocated to that account were used for proper and lawful purposes.

Methods Used by SQM to Make Improper Payments

8. During the relevant period, SQM made payments sourced from the CEO Account to third party vendors associated with PEPs that were based on fictitious contracts and invoices for nonexistent services. For example:

- 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 senatorial 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 receiving any supporting documentation that those services had been provided.

9. Another way improper payments were made to PEPs was by routing payments to foundations supported by politicians. Several Chilean officials sought payments from SQM Executive for foundations operated by relatives of Chilean officials or with which the Chilean officials were otherwise associated. SQM never verified that those payments to foundations were in accordance with SQM's policies or interests. Insufficient steps were taken to ensure these were legitimate charitable donations or that the payments were consistent with SQM's policies or interests.

10. In one instance, a Chilean PEP sought payments from SQM Executive to a foundation affiliated with that PEP. But since that foundation had not yet been legally established,

the payments were instead made by SQM through a service contract with a communications company.

SQM Management Failed to Exercise Proper Oversight of the CEO Account

11. SQM failed to conduct adequate due diligence on the third party entities who received payments from the CEO's discretionary fund and as a result of a lack of adequate internal accounting controls allowed payments to the third party vendors without verifying that the payments were proper, that the prices charged by the vendors were appropriate, or that SQM had ever received the services reflected on the vendor invoices and contracts.

12. SQM failed to conduct due diligence on such payments to foundations to ensure that the payments were proper and were not going to, or for the benefit of, PEPs.

13. In addition, SQM management failed to exercise any oversight of the CEO Account. For example, in one instance a finance manager sent a senior executive of SQM an email discussing reports that he was preparing related to the activities of the CEO Account. In response to the finance manager's query, the senior executive told the finance manager to send printed reports directly to SQM Executive only, stating that SQM Executive was "in charge of this." The senior executive did not conduct any oversight of the CEO Account to determine whether funds were being properly expended by SQM Executive.

14. Ultimately, SQM personnel responsible for implementing and maintaining SQM's internal accounting controls became aware of control deficiencies related to payments to PEPs but failed to take appropriate steps to prevent further payments.

15. For example, during a 2014 internal audit, SQM personnel identified six vendors paid in 2012 and 2013 that had "high risk" connections to PEPs. Each of the identified payments was made from the CEO Account and was authorized by SQM Executive. The internal audit report recommended SQM terminate any active contracts with the six high-risk vendors identified, require a compliance addendum for any future contracts, and maintain backup documentation for each contract transaction. Despite these internal audit findings, which were provided to SQM Executive and another senior executive of SQM and were summarized for SQM's board of directors, insufficient changes were made to SQM's internal accounting controls. As a result, SQM's improper payments to PEPs continued after the internal audit report for an additional six months.

16. Even when payments to "high risk" recipients were identified by the internal audit in 2014 and suspect contracts were terminated, payments were still made to recipients connected to PEPs. For example, when payments to the relative of a Chilean official were shut down in about September 2014, payments began to be made to that Chilean official's aide in about October 2014.

Falsification of SQM's Books and Records

17. SQM falsely recorded payments to the PEPs and related entities in its books and records as legitimate business expenditures. For example, as described above, SQM falsely recorded improper payments to PEPs as legitimate expenses for “financial services,” “communications advice,” “consulting services,” and “engineering services,” despite the fact that the payments were not for those services but were actually payments funneled to PEPs.

18. SQM failed to devise and maintain an adequate system of internal controls over the use of the CEO Account to ensure that the CEO Account expenditures were not used for unauthorized purposes, such as the payments to PEPs. For example, SQM’s senior management and board did not conduct adequate review and oversight of expenditures of the CEO Account, including payments to foundations; management gave complete deference to SQM Executive’s discretion of how to spend funds allocated to the CEO Account; SQM Executive was the sole authorization for expenditures; insufficient due diligence was performed on the third party entities submitting fictitious invoices and contracts; SQM’s procedures did not require independent verification that services invoiced had been provided before purchase orders were released; and SQM staff members arranged and executed the payments without oversight of those assignments by other senior management. The use of the CEO Account to make payments to PEPs was contrary to management’s authorization and SQM’s internal policies. SQM failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that its expenditures through third party vendors was done in accordance with management’s authorization.

Internal Investigation and Remedial Efforts

19. In 2015, in response to inquiries from Chilean tax authorities and related news articles in the Chilean press, SQM conducted an internal investigation based on allegations that SQM had taken improper tax deductions for payments to certain vendors. As a result of its internal investigation, SQM undertook remedial measures, including: terminating SQM Executive; creating a Corporate Governance Committee; strengthening the Internal Audit department and creating a separate Compliance and Risk Management department and requiring them report to SQM’s board of directors; hiring additional compliance and auditing staff with significant experience; expanding accounting and compliance systems; making personnel changes to General Counsel’s office; hiring outside experts to review and improve SQM’s payment process controls and approvals, including controls related to payment process, due diligence of vendors, verification of services provided, and restrictions concerning potential conflicts of interest; reformulating SQM’s Code of Ethics; enhancing mandatory training related to the Code of Ethics, compliance and internal controls; and fully cooperating with Chilean and U.S. authorities.

20. Upon the commencement of its internal investigation, SQM self-reported potential FCPA violations to the Commission and fully cooperated with the Commission’s investigation. SQM subsequently provided extensive and thorough cooperation. SQM voluntarily provided reports of its investigative findings; shared its analysis of documents and summaries of witness interviews; and responded to the Commission’s requests for documents and information and provided translations of key documents.

Legal Standards and Violations

21. 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 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 a violation.

22. 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.

23. 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.

24. As a result of the conduct described above, SQM violated Section 13(b)(2)(A) because its books and records did not accurately and fairly reflect the purpose of the transactions and disposition of assets from the CEO Account. SQM violated Section 13(b)(2)(B) because it did not devise and maintain an effective system of internal accounting controls over the CEO Account.

Undertakings

25. Respondent has undertaken to:
- a. in connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents

to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

- b. engage an Independent Compliance Monitor pursuant to the provisions set forth in Attachment A of the Offer.
- c. require the Independent Compliance Monitor to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Compliance Monitor shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Compliance Monitor will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Compliance Monitor in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- d. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Kara Novaco Brockmeyer, FCPA Unit Chief, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Mail Stop 5631, Washington, D.C. 20549, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

In determining whether to accept the Offer, the Commission has considered these undertakings.

Deferred Prosecution Agreement

26. Respondent has entered into a deferred prosecution agreement with the Department of Justice that acknowledges responsibility for criminal conduct relating to the findings in the Order. Specifically, in *United States v. Sociedad Quimica y Minera de Chile, S.A.*, Crim. No. () Respondent acknowledges responsibility for (i) one count of violating the

books and records provisions of the Foreign Corrupt Practices Act (“FCPA”), Title 15, United States Code, Sections 78m(b)(2)(A), (b)(4), (b)(5), and 78ff(a), and (ii) one count of violating the internal controls provision of the FCPA, Title 15, United States Code, Sections 78m(b)(2)(B), (b)(4), (b)(5), and 78ff(a).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose sanctions agreed to in Respondent’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, SQM cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act; and

B. Pursuant to Section 21(B)(a)(2) of the Exchange Act, SQM shall, within ten (10) days of entry of this Order, pay a civil monetary penalty in the amount of \$15,000,000 to the Securities and Exchange Commission. 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 Sociedad Quimica y Minera de Chile, S.A. 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 Charles Cain, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Mailstop 5631, Washington, DC 20549.

By the Commission.

Brent J. Fields
Secretary