

Citation: 2019 BCSECCOM 427

Settlement Agreement

Akash Patel

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Akash Patel (Patel) agree as follows:

Agreed Statement of Facts

Background

1. Patel is a resident of Vancouver, British Columbia.
2. MX Gold Corp. (MX Gold) is a reporting issuer incorporated in British Columbia. Its shares were traded on the TSX Venture Exchange (TSX-V). During the relevant period, MX Gold was a mining exploration company with interests in properties in south-eastern British Columbia and Mexico.
3. Patel joined MX Gold as a director in September 2010. In June 2012, Patel became the president and chief executive officer (CEO) of MX Gold. Patel ceased to be MX Gold's president and CEO in June 2016, and became the company's vice president. In January 2018, Patel resigned completely from MX Gold.
4. On January 10, 2018, the Executive Director issued an order under section 164(1) of the Act that all persons cease trading in the securities of MX Gold, due to MX Gold's failure to file required records.

Misconduct

5. Throughout the relevant period, Patel was responsible for the disclosure of mineral project information for MX Gold. In 2016 and 2017, Patel authorized MX Gold to disclose information through a corporate fact sheet, presentations, and news releases, that:
 - (a) was not supported by appropriate scientific or technical evidence;
 - (b) did not properly categorize mineral resources and mineral reserves;and
 - (c) did not include necessary information for data verification.
6. By making this disclosure, Patel caused MX Gold to breach sections 2.1, 2.2, 2.3(1)(b), 2.4, 3.1, 3.2, 3.4 and 4.2(1)(j) of National Instrument 43-101, *Standards of Disclosure for Mineral Projects* (NI 43-101).

Fact Sheet and Corporate Presentations

7. In September or October, 2016, Patel caused MX Gold to publish on its website a corporate fact sheet titled, “Aiming for Near Term Gold Production” (the Fact Sheet).
8. Patel caused MX Gold to publish on its website two corporate presentations, dated January 2017 and February 2017 respectively, that referenced its properties and projects (collectively, the Presentations). MX Gold also distributed the Presentations through social media platforms.
9. MX Gold’s publication of the Fact Sheet and the Presentations contravened the following provisions of NI 43-101:
 - (a) Sections 2.2(a) to 2.2(d), by making improper disclosure about mineral resources or mineral reserves;
 - (b) Sections 2.4(a) to 2.4(g), by failing to include all of the detailed information required for historical estimates;
 - (c) Section 3.1, by failing to disclose the name of the qualified person (QP) who prepared, supervised or approved the scientific or technical information in the Fact Sheet and the Presentations;
 - (d) Section 3.2, by failing to state that a QP had verified the data disclosed in the Fact Sheet and the Presentations; and
 - (e) Sections 3.4(a) to 3.4(e), by failing to adhere to requirements applicable to the written disclosure of mineral resources and mineral reserves.
10. The Fact Sheet contained first time disclosure pertaining to MX Gold’s Magistral property (the Magistral Disclosure), and therefore triggered the requirement to file a technical report to support the Magistral Disclosure. MX Gold has not filed the required records, contrary to section 4.2(1)(j) of NI 43-101.
11. In the presentation dated January 2017, MX Gold disclosed, for the first time, the results of a preliminary economic assessment on its Max Molybdenum property (the Max Disclosure), and therefore triggered the requirement to file a technical report to support the Max Disclosure. MX Gold has not filed the required records, contrary to section 4.2(1)(j) of NI 43-101.

News Releases

12. On July 20, 2017, Patel caused MX Gold to publish a news release titled “MX Gold Corp. Advances the Magistral Project Towards Production”, dated July 20, 2017 (the July News Release). The July News Release was signed by Patel.

13. MX Gold's publication of the July News Release contravened the following provisions of NI 43-101:
 - (a) Section 2.2(a), by failing to distinguish between a resource or a reserve;
 - (b) Section 3.1, by failing to disclose the name of the QP who reviewed the scientific or technical information in the July News Release;
 - (c) Section 3.2, by failing to state that a QP had verified the data disclosed in the July News Release;
 - (d) Sections 3.4(a) to 3.4(d), by failing to adhere to requirements applicable to the written disclosure of mineral resources and mineral reserves.

14. On September 8, 2017, Patel caused MX Gold to publish a news release titled "MX Gold Corp Receives 1,000 Tonne Per Day Throughput Estimates On The Magistral Project" (the September News Release). The September News Release was signed by Patel.

15. MX Gold's publication of the September News Release contravened the following provisions of NI 43-101:
 - (a) Section 2.1, by disclosing scientific or technical information without the supervision of or approval by a QP;
 - (b) Section 2.3(1)(b), by disclosing economic analysis based on a historical estimate;
 - (c) Sections 2.4(b), 2.4(d), 2.4(f), 2.4(g) and 2.4(i), by failing to include all of the detailed information required for a historical estimate;
 - (d) Section 3.1, by failing to disclose the name of the QP who prepared, supervised or approved the scientific or technical information in the September News Release;
 - (e) Section 3.2, by failing to include a statement that a QP had verified the data disclosed in the September News Release or a statement explaining why the data was not verified.

16. On September 11, 2017, MX Gold retracted the September News Release and acknowledged that a QP had not prepared, supervised or approved that news release contrary to NI 43-101, sections 2.1 and 3.1.

Misconduct Attributable to Patel

17. Patel, as a director and officer of MX Gold during the relevant period, authorized, permitted or acquiesced in the contraventions of NI 43-101 by MX Gold, and therefore also contravened the same provision by operation of section 168.2 of the Act.

Factors Relevant to Settlement

18. Patel cooperated with the Executive Director in reaching this Settlement Agreement.
19. Patel admits that he is ultimately responsible for the disclosure of mineral resource information for MX Gold between 2016 and 2017.
20. Patel acknowledges that he requires additional training and education to prevent future errors. In 2018, Patel completed two courses on corporate governance.

Public Interest

21. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

Undertakings

22. Patel undertakes to:
 - (a) successfully complete a course of study acceptable to the Executive Director on the requirements of NI 43-101 (the Course) within one year of the date of this settlement agreement and to provide proof in writing of attendance and successful completion of the Course to the Executive Director; and
 - (b) pay \$20,000 to the British Columbia Securities Commission in respect of settlement of this matter which sum is due and payable immediately without further demand.

Order

- ¶ 2 The Executive Director will issue an order (the Order) that:
1. under section 161(1)(d)(i), Patel immediately resign any position he holds as a director or officer of a reporting issuer;
 2. Patel is prohibited for one year:
 - (a) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any reporting issuer; and
 - (b) under section 161(1)(d)(v), from engaging in investor relations activities.

Consent to Regulatory Orders

¶ 3 Patel consents to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the Orders set out in paragraph ¶2 above.

Waiver

¶ 4 Patel waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

Counterpart

¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 6 December 6, 2019

¶ 7 Akash Patel
Akash Patel

(Redacted))
Witness Signature)
(Redacted))
Witness Name (please print))
(Redacted))
(Redacted))
Address)
(Redacted))
Occupation)

¶ 8 December 11, 2019

Peter J. Brady

¶ 9 Peter J. Brady
Executive Director