

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 98546 / September 27, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21731**

**In the Matter of**

**Nicole M. Fernandez-  
McGovern,**

**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 Nicole M. Fernandez-McGovern (“Fernandez-McGovern” 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 Respondent 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 a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer of AgEagle Aerial Systems Inc. ("AgEagle"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in AgEagle's securities.

#### **Respondent**

3. Fernandez-McGovern, age 50, has been subject to Section 16(a) of the Exchange Act as an officer of AgEagle since March 26, 2018. Fernandez-McGovern has served as the Chief Financial Officer of AgEagle since that date and as the Executive Vice President of Operations of AgEagle since 2021.

#### **Issuer**

4. AgEagle (f/k/a EnerJex Resources, Inc. until March 26, 2018) is a Nevada corporation with its principal place of business in Kansas. AgEagle common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NYSE (ticker: UAVS).

#### **Applicable Legal Framework**

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security

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<sup>1</sup> 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.

registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”).

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 report within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Exchange Act Rule 16a-1(f) defines the term “officer” to include an issuer’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer.

8. Although the Commission has encouraged the practice of many issuers to “help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing,” Section 16 places the responsibility to report changes in securities ownership on insiders.<sup>2</sup>

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<sup>2</sup> Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25789 (May 13, 2003).

9. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.<sup>3</sup> The failure to timely file a required report, even if inadvertent, constitutes a violation.<sup>4</sup>

**Respondent Failed to File Required Section 16(a) Reports on a Timely Basis**

10. As an officer of AgEagle, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) since March 26, 2018, and remains subject to those requirements. Respondent timely filed an initial statement of beneficial ownership on Form 3 on April 5, 2018.

11. Subsequently, Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	6/30/2018	7/3/2018	5/21/2019
4	9/30/2018	10/2/2018	5/21/2019
4	12/31/2018	1/3/2019	5/21/2019
4	1/1/2019	1/3/2019	5/21/2019
4	3/31/2019	4/2/2019	5/21/2019
4	6/30/2019	7/2/2019	9/11/2020
4	9/30/2019	10/2/2019	9/11/2020
4	12/31/2019	1/3/2020	9/11/2020
4	3/31/2020	4/2/2020	9/11/2020
4/A	4/1/2020	4/3/2020	12/23/2020

<sup>3</sup> See, e.g., SEC v. e-Smart Technologies, Inc., 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct”).

<sup>4</sup> Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at \*2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at \*7 (Mar. 21, 2002) (Commission opinion) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809, 68 Fed. Reg. at 25792 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	4/13/2020	4/15/2020	9/11/2020
4/A	5/14/2020	5/18/2020	9/11/2020
4	6/30/2020	7/2/2020	9/11/2020
4	9/8/2020	9/10/2020	9/11/2020
4	9/17/2020	9/21/2020	9/25/2020
4	9/30/2020	10/2/2020	12/23/2020
4	10/19/2020	10/21/2020	12/23/2020
4	11/17/2020	11/19/2020	12/23/2020
4	12/17/2020	12/21/2020	12/23/2020
4	12/21/2020	12/23/2020	10/1/2021
4	12/31/2020	1/5/2021	10/1/2021
4	1/19/2021	1/22/2021	10/1/2021
4	2/17/2021	2/19/2021	10/1/2021
4	3/5/2021	3/9/2021	10/1/2021
4	3/17/2021	3/19/2021	10/1/2021
4	3/31/2021	4/2/2021	10/1/2021
4	4/19/2021	4/21/2021	10/1/2021
4	5/4/2021	5/6/2021	10/1/2021
4	5/17/2021	5/19/2021	10/1/2021
4	6/17/2021	6/22/2021	10/1/2021
4	6/30/2021	7/2/2021	10/1/2021
4	11/01/2021	11/03/2021	6/10/2022
4	12/31/2021	1/4/2022	6/10/2022
4	1/1/2022	1/4/2022	6/10/2022
4	3/1/2022	3/3/2022	6/10/2022
4	3/31/2022	4/4/2022	6/10/2022

12. Nearly all of Respondent's reportable transactions between June 2018 and March 2022 were reported late and primarily involved stock and options award grants and exercises, and open-market sales of AgEagle's common stock reported as pursuant to a 10b5-1 plan. Among

Respondent's late-reported stock sales were sales on seven dates between January 2021 and June 2021 with an aggregate market value of approximately \$1.38 million, none of which were reported until October 1, 2021. Respondent also failed to file required Forms 5 to report transactions that should have been reported on Forms 4 during AgEagle fiscal years 2018, 2019, 2020, and 2021 but were not.

13. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

#### **Respondent's Remedial Efforts**

14. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

#### **IV.**

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall 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). Payment shall be made in the following installments: \$31,250 within 14 days of the entry of the Order; \$31,250 within 120 days of the entry of the Order; \$31,250 within 240 days of the entry of the Order; and \$31,250, plus all accrued interest, within 360 days of the entry of the Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. 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 Nicole M. Fernandez-McGovern 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 Thomas Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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, she shall not argue that she is entitled to, nor shall she 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 she 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.

Vanessa A. Countryman  
Secretary