

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

**SECURITIES ACT OF 1933**

**Release No. 10610 / March 1, 2019**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 85226 / March 1, 2019**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-19009**

**In the Matter of**

**MARK E. KUCHENRITHER,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Mark E. Kuchenrither (“Kuchenrither” 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 8A of the Securities Act of 1933 and 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:

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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.

## SUMMARY

1. Kuchenrither, the former Executive Vice President and Chief Financial Officer of EZCORP, Inc., upwardly revised the company's fiscal year 2014 financial projections to obtain a fairness opinion on a related-party transaction between EZCORP and its sole voting shareholder ("Control Shareholder"). Kuchenrither's increased projections, however, did not comply with the standard of care required in such circumstances.

2. For more than a decade leading up to the revision, EZCORP had entered into an annual consulting agreement with the Control Shareholder. As part of the company's process to evaluate related-party transactions each year, EZCORP's audit committee sought and received an opinion from an independent fairness-opinion advisor ("Advisor") that the agreement was financially fair to EZCORP.

3. In fiscal year 2014, however, the Advisor refused to issue such an opinion because, as a percentage of EZCORP's projected earnings for the upcoming fiscal year, the proposed \$7.2 million fee exceeded the upper limit of the range for comparable agreements. After the Advisor's refusal, Kuchenrither became involved in the fairness-opinion process. In this role, he increased the company's projected earnings by more than \$55 million, which was nearly 30% more than the board-approved projections initially presented to the Advisor. To come up with his revised projections, Kuchenrither assumed that EZCORP could complete a high-yield debt offering during the fiscal year, and then use a portion of the proceeds to acquire companies that would provide "bolt on" earnings to EZCORP.

4. In revising the company's fiscal year earnings projections, Kuchenrither failed to comply with standard of care for someone in his position in a variety of respects: (a) he failed to consult with appropriate EZCORP personnel to assess likelihood that EZCORP could acquire other companies in fiscal year 2014, and continued to stand by his projections even when he learned that the company's interactions with proposed acquisition targets were in "preliminary stages"; (b) based on his role on an EZCORP committee that vetted possible acquisitions, he knew or should have known that EZCORP was not in advanced discussions to acquire any company; (c) he did not consult with EZCORP's full board or senior management, who had approved budget projections similar to the initial estimates provided to the Advisor; and (d) he did not consult with any EZCORP personnel before he increased projected "bolt on" earnings for a projected target acquisition by more than 150% from internal company estimates. Despite this, he represented to the Advisor that his projections were the "most probable" for the upcoming fiscal year.

5. Kuchenrither's revised projections brought the consulting fee within the range that the Advisor considered acceptable. Relying on the increased projections, the Advisor issued an opinion that the agreement was financially fair to EZCORP. In turn, EZCORP issued a Form 8-K and Form 10-K that disclosed the related-party transaction and disclosed, among other things, details of the fairness opinion. However, EZCORP's public reports omitted material facts about how it obtained the fairness opinion.

6. As a result of the conduct above, Kuchenrither violated Section 17(a)(3) of the Securities Act and Rule 13a-14 of the Exchange Act, and caused violations of Section 13(a) and

13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-11 thereunder.

## RESPONDENT AND RELEVANT ENTITY

7. **Kuchenrither**, age 56, is a resident of Daufuskie Island, South Carolina. During the relevant period, Kuchenrither served as Executive Vice President and Chief Financial Officer of EZCORP.

8. **EZCORP**: (Ticker: EZPW), is a publicly-traded company based in Austin, Texas, and organized in Delaware. EZCORP is registered with the Commission pursuant to Section 12(b) of the Exchange Act. EZCORP has two classes of shares: its Class A shares, which are publicly traded on NASDAQ, but carry no voting rights; and its Class B shares, which carry all the voting rights, are wholly owned by the Control Shareholder.

## FACTS

### EZCORP's Fairness-Opinion Process

9. Beginning in the early-2000s, EZCORP entered into annual consulting agreements with a company ("Consulting Company") wholly owned by the Control Shareholder. Each fiscal year from 2009 to 2013, EZCORP increased the Control Shareholder's consulting fee by \$1.2 million—from \$2.4 million to \$7.2 million.

10. In September 2009, EZCORP's board approved a Policy for Review and Evaluation of Related Party Transactions. EZCORP's general counsel, under the supervision of the company's Audit Committee, developed processes and controls designed to review and evaluate related-party transactions. EZCORP's board vested its audit committee with responsibility for, among other things, approving, ratifying, rescinding, or taking other action with respect to any related-party transaction and determining the amount of such transaction.

11. EZCORP's Audit Committee engaged the Advisor, a valuation-advisory firm, to render an opinion each year on whether the annual consulting agreement was financially fair to EZCORP. In analyzing the agreement each year, the Advisor compared the proposed Consulting Company fee with EZCORP's projected revenue, earnings and other metrics for the upcoming fiscal year. The Advisor then compared these ratios with those of comparable agreements at other companies to determine if the agreement was financially fair to EZCORP.

12. For each fiscal year from 2009 through 2013, the Advisor provided an opinion that the consulting agreement was fair. After receiving each fairness opinion from the Advisor, EZCORP filed a Form 8-K disclosing the consulting agreement as a related-party transaction and including details about its terms.

### When the Advisor Refused to Provide a Fairness Opinion in Fiscal Year 2014, Kuchenrither Revised EZCORP's Earnings Projections

13. Under the proposed consulting agreement for fiscal year 2014, EZCORP agreed to

pay the Consulting Company a fee of \$7.2 million, the same amount charged for fiscal year 2013. On September 19, 2013, EZCORP's Audit-Committee Chairman sent the Advisor EZCORP's financial projections for fiscal year 2014. These projections—which were nearly identical to those approved by EZCORP's full board a few days later—provided that EZCORP expected to generate approximately \$1.085 billion in revenue and approximately \$187 million in earnings in fiscal year 2014.

14. Shortly thereafter, the Advisor informed the Audit-Committee Chairman that it would not render an opinion because, based on the company's fiscal year 2014 financial projections, the proposed consulting fee exceeded the acceptable fee-to-earnings ratio. EZCORP's general counsel notified the Control Shareholder on September 26, 2013, that the Advisor would not issue a fairness opinion, and proposed new terms to bring it in line with comparable agreements. The Control Shareholder would not agree to amend the proposed terms. The Control Shareholder suggested that Kuchenrither talk with the Advisor and explain why the current terms were appropriate.

15. On September 26, 2013, EZCORP's Audit-Committee Chairman told Kuchenrither that the Advisor would not consider the \$7.2 million consulting fee fair because EZCORP's projected earnings were less than \$240 million, and asked Kuchenrither to provide additional information that might demonstrate the fairness of the consulting fee. Four days later, Kuchenrither provided the Audit-Committee Chairman revised projections. The projections increased EZCORP's projected earnings from approximately \$187 million to \$242.9 million. Kuchenrither claimed that EZCORP could boost its fiscal year 2014 earnings by more than \$55 million based on two assumptions: (1) that EZCORP would complete a proposed \$300 million high-yield debt offering; and (2) that EZCORP would use a portion of the offering proceeds to acquire several other companies during the fiscal year.

16. The Audit-Committee Chairman forwarded Kuchenrither's revised projections to the Advisor on the same day. The Advisor agreed to reassess whether it could provide a fairness opinion.

#### Kuchenrither Had No Reasonable Basis for His Increase in EZCORP's Projections

17. Kuchenrither failed to exercise the degree of care and skill that a reasonable person of ordinary prudence and intelligence would be expected to exercise in like circumstances when he made his revisions to EZCORP's financial projections.

18. First, before Kuchenrither increased the projections, he did not consult with EZCORP's mergers and acquisitions division ("Change Capital") to ascertain the likelihood that EZCORP would acquire other companies in fiscal year 2014.

19. Second, after Kuchenrither sent the revised projections, the Advisor expressed concern about the unexpected and significant increase in the projections, and requested additional information on how EZCORP arrived at these figures. Only after the Advisor expressed concern did Kuchenrither contact a Managing Director in Change Capital to request the most recent list of companies that Change Capital had identified as potential acquisition targets. The Managing

Director emailed an acquisition-target list to Kuchenrither on October 2, 2013, two days after Kuchenrither's revised projections were sent to the Advisor. In an email transmitting the list, the Managing Director noted to Kuchenrither that, "[a]s we discussed, many of these are in the preliminary stages." She further noted that the projected revenues and earnings for the targets were simply estimates. These facts were never disclosed to the Advisor.

20. Third, as a member of EZCORP's Investment Committee, which was responsible for vetting possible acquisitions, Kuchenrither knew or should have known that EZCORP was not in advanced discussions to acquire any company at the time he sent his revised projections.

21. Fourth, apart from presenting his projections to the Audit-Committee Chairman, Kuchenrither did not vet his revised projections with EZCORP's board or senior management. In its initial projections, EZCORP's senior management had already factored in the potential impact of the contemplated high-yield debt offering in fiscal year 2014. As part of those the initial projections, EZCORP's senior management determined that the contemplated high-yield debt offering would *reduce* the company's earnings in fiscal year 2014 by more than \$10 million due to increased interest expense. As the company's CFO, Kuchenrither knew or should have known about the contemplated impact of the high-yield debt offering.

Kuchenrither Represented to the Advisor that the Increased Projections  
Reflected EZCORP's "Most Probable Results for Fiscal Year 2014"

22. After the Advisor raised concerns and Kuchenrither consulted with Change Capital, he continued to represent that EZCORP's projected earnings for fiscal year 2014 would be \$242.9 million. On October 3, 2013, Kuchenrither sent a document to the Advisor to "bridge" the increase from the initial projections to his revised projections, which he termed the "High Performance Plan."

23. Even though he was advised that EZCORP was in preliminary stages with most of the target-list companies, he explained to the Advisor that EZCORP could increase its earnings by approximately \$75 million by acquiring companies on the target list. To account for the probability that EZCORP would not acquire all of the priority target companies, he "risk adjusted" the list to assume that EZCORP would only acquire 75% of the possible "bolt on" revenues. He also claimed that the targets were "only a sampling" of the acquisitions that EZCORP could make.

24. Prior to sending the target list to the Advisor, Kuchenrither modified Change Capital's bolt-on earnings projections for the largest company on the list ("Company A") by 150%—from \$12 million to \$30 million. Kuchenrither did not consult with any EZCORP or Change Capital personnel prior to revising the estimate. Kuchenrither failed to disclose this information to the Advisor. Based on the companies on Kuchenrither's priority target list, EZCORP needed to acquire Company A in order to satisfy the \$55 million increase.

25. After Kuchenrither provided his High Performance Plan, the Advisor requested additional assurances, and provided a Statement of Representation ("Statement") for Kuchenrither to sign. The Statement contained the following representations:

- “The projected financial results of the Company provided to you by us and set forth as ‘FY 14 High Performance Plan’ . . . represent, to the best of our knowledge and belief, the most probable results for fiscal year 2014 based upon current assumptions that are reasonable and appropriate.”
- “We have disclosed to you all material information regarding the Company and the proposed Agreement necessary to assist you in rendering your Opinion and we have not omitted any information that would render any other information we have provided to you misleading, or withheld information that, in our view, could reasonably be expected to affect your analysis or the outcome of your Opinion.”

26. Kuchenrither signed the Statement on October 5, 2013. Four days later, the Advisor agreed to issue a fairness opinion based on the increased earnings projections in Kuchenrither’s High Performance Plan and based on his representations in the Statement. Thereafter, EZCORP’s Audit Committee approved the Consulting Company agreement for fiscal year 2014.

#### EZCORP Filed a Misleading Form 8-K and Form 10-K

27. On October 15, 2013, EZCORP filed a current report on Form 8-K disclosing the 2014 consulting agreement as a related-party transaction. In the report, EZCORP represented the following:

- EZCORP’s Audit Committee “implemented measures designed to ensure that the extended engagement was considered, analyzed, negotiated and approved objectively.”
- EZCORP engaged “a qualified, independent financial advisory firm for the purpose of evaluating [the agreement] . . . and that firm counseled and advised the committee in the course of its consideration and evaluation of the [Consulting Company] relationship and the proposed terms.”
- EZCORP’s Audit Committee “sought, received and relied upon an opinion from that independent financial advisory firm to the effect that the consideration to be paid to [the Consulting Company] pursuant to the [agreement] is fair to the Company from a financial point of view.”
- The independent financial advisory firm “analyzed numerous separate comparable public company advisory engagements [and] described the structure of the [Consulting Company] contracted fee and compared the amount of the fee to [EZCORP’s] various financial metrics such as revenues and [earnings].”
- EZCORP Audit Committee considered whether the proposed consulting fee was appropriate given the analytics provided by the Advisor and determined that, even though the fee fell in the upper range of comparable data, the proposed agreement was “fair to, and in the best interests of, the Company.”

28. But EZCORP's Form 8-K omitted to state material facts necessary in order to make the foregoing statements not misleading, specifically: (1) that the Advisor refused to provide a fairness opinion based on EZCORP's initial fiscal year 2014 projections; (2) that the Advisor only issued the fairness opinion based on Kuchenrither's revised projections; and (3) the increased projections had no reasonable basis. Because of these omissions, the Form 8-K was misleading.

29. In the first half of November 2013, EZCORP's underwriter postponed its planned high-yield debt offering indefinitely due to EZCORP's lower-than-expected performance in the fourth quarter of 2013. Completing the debt offering in fiscal year 2014 was essential to Kuchenrither's High Performance Plan. The postponement of the debt offering made it even more unreasonable to believe that EZCORP would realize Kuchenrither's increased projections in fiscal year 2014.

30. On November 27, 2013, EZCORP filed its annual report with the Commission on Form 10-K. The report described the consulting agreement in general terms similar to those in the Form 8-K, namely that EZCORP's audit committee had obtained the Advisor's opinion that the consulting fee was fair to EZCORP. But the 10-K was misleading because it failed to disclose the same information that was omitted from the Form 8-K, described above.

31. Kuchenrither certified the Form 10-K as the company's CFO. As part of that certification, he attested to, among other things, "[b]ased on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report."

## **VIOLATIONS**

32. Securities Act Section 17(a)(3) makes it unlawful "to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." As a result of Kuchenrither's negligent conduct described above, he created the false appearance for the Advisor that his increased financial projections represented EZCORP's "most probable" performance for fiscal year 2014. This false appearance induced: (a) the Advisor to opine that the consulting fee was fair to EZCORP; and (b) EZCORP to issue materially misleading public reports.

33. Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and, 13a-11 thereunder require issuers of securities registered under Exchange Act Section 12 to file with the Commission annual reports on Form 10-K and current reports on Form 8-K that are accurate and contain all material information necessary to make the required statements made in the reports not misleading. As described above, EZCORP's Form 8-K and Form 10-K contained misleading statements concerning the fairness opinion. A reasonable investor would have considered such information important in making an investment decision about EZCORP. Kuchenrither caused violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and, 13a-11 thereunder.

34. Exchange Act Rule 13a-14 provides that each Form 10-K filed with the Commission must contain a certification signed by the issuer's principal financial officer, as

provided in Regulation S-K, Item 601(b)(31)(i), stating, “Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.” By signing this certification in the Form 10-K, Kuchenrither 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, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Securities Act Section 17(a)(3) and Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-14 thereunder.

B. Respondent shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission, to be paid on the following dates:

- (1) \$12,500 within 14 days of this Order;
- (2) \$12,500 within 180 days of this Order;
- (3) \$12,500 within 270 days of this Order; and
- (4) \$12,500 within 360 days of this 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 Mark E. Kuchenrither 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 Eric R. Werner, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Unit 18, Fort Worth, Texas 76102.

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

Brent J. Fields  
Secretary