

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceedings Rulings
Release No. 6493 / March 12, 2019

Administrative Proceeding
File No. 3-17907

In the Matter of
Anthony C. Zufelt

**Order Directing
Submission of Evidence**

The Division of Enforcement submitted its motion for summary disposition and sanctions against Respondent Anthony C. Zufelt on February 7, 2019. To date, Zufelt has not submitted a response. Attached to the Division's motion are the complaint, the district court's order granting partial summary judgment, and the district court's final judgment from the underlying civil action, *SEC v. Zufelt*, No. 2:10-cv-574 (D. Utah). The Division's motion also relies heavily on evidence it submitted to the district court but has not made part of the record in this proceeding. *See* Mot. at 4-8 (citing, among other documents, its Statement of Elements and Undisputed Facts, ECF No. 199, and Motion for Default Judgment, ECF No. 227, and those filings' exhibits).

Rule 323 of the Commission's Rules of Practice allows me to take official notice of "any material fact which might be judicially noticed by a district court." 17 C.F.R. § 201.323. Rule 201 of the Federal Rules of Evidence allows district courts to "judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Subsection 2 of that rule would allow me to take official notice that, for example, the Division filed a motion for default judgment on April 15, 2016. But I cannot take official notice of the substantive contents of that motion or any exhibits attached to it as establishing undisputed facts in this proceeding.

Therefore, to the extent the Division requests that I consider any evidence filed in the district court that has not been filed in this proceeding, I

ORDER the Division to file such evidence by March 18, 2019, and to serve its filing on Zufelt. Zufelt will have until April 1 to file an opposition addressing this evidence.

It would be helpful if, in addition to filing any new evidence with the Office of the Secretary, the Division would email courtesy copies to alj@sec.gov in PDF text-searchable format.

Brenda P. Murray
Chief Administrative Law Judge