

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

Administrative Proceedings Rulings
Release No. 6622 / July 10, 2019

Administrative Proceeding
File No. 3-16386

In the Matter of

**Traci J. Anderson, CPA,
Timothy W. Carnahan, and
CYIOS Corporation**

**Order Taking Official Notice
Pursuant to 17 C.F.R. § 201.323**

The Division of Enforcement has moved that I take official notice under Commission Rule of Practice 323¹ of four categories of information related to Respondent CYIOS Corporation. Those four categories are:

1. when and whether CYIOS's public filings were made;
2. the content of CYIOS's public filings;
3. the fact that CYIOS had a class of securities registered under Exchange Act Section 12 until it filed a form 15-12G on May 30, 2014, terminating the registration of its stock; and
4. CYIOS's stock trading activity.²

Respondents Timothy W. Carnahan and CYIOS have not responded to this motion.

Rule 323 permits official notice of "any matter in the public official records of the Commission."³ Accordingly, I take official notice of CYIOS's

¹ 17 C.F.R. § 201.323.

² Mot. at 1-2.

³ 17 C.F.R. § 201.323.

public filings and their content, which are represented by above-listed categories one, two, and three.

Rule 323 also permits official notice of “any material fact which might be judicially noticed by a district court of the United States.”⁴ Federal Rule of Evidence 201 permits 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.”⁵ Judicial notice of historical stock prices under Rule of Evidence 201(b) is well established.⁶ The Division, however, is not asking me to take official notice of a specific stock’s price during a specified time but rather of “stock trading activity.” Because no time periods are described and no definition of “stock trading activity” is provided, it is unclear what material facts are to be noticed. Further, the Division’s motion indicates that the Division will seek to enter relevant stock trading activity into evidence.⁷ Accordingly, it is more appropriate to deal with this material at the hearing, when the Division offers it into evidence.

I GRANT, in part, the Division’s motion and take official notice under Rule 323 of CYIOS’s public filings and their content.

I DENY, without prejudice to renewal at the hearing, that portion of the Division’s motion that requests I take official notice of CYIOS’s stock trading activity.

James E. Grimes
Administrative Law Judge

⁴ *Id.*

⁵ Fed. R. Evid. 201(b).

⁶ *See, e.g., Catogas v. Cyberonics, Inc.*, 292 F. App’x 311, 316 (5th Cir. 2008) (per curiam) (“We can, of course, take judicial notice of stock prices.”); *Lanfear v. Home Depot, Inc.*, 679 F.3d 1267, 1282 n.17 (11th Cir. 2012).

⁷ Mot. at 2 n.1. The Division’s exhibit list indicates on page 2 that it intends to offer a declaration and a “Historical Quote Page for CYIOS, Public trading activity for seven years” as Exhibit 26.