Initial Decision Release No. 1239
Administrative Proceeding
File No. 3-17907

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

In the Matter of

Anthony C. Zufelt

Initial Decision
March 1, 2018

Appearances: John J. Bowers and Christian D.H. Schultz for the Division of Enforcement, Securities and Exchange Commission

Anthony C. Zufelt, *pro se*

Before: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for summary disposition. Respondent Anthony C. Zufelt is barred from associating with a broker or dealer, or from participating in an offering of any penny stock.

Procedural Background

The Securities and Exchange Commission initiated this proceeding in April 2017, when it issued an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934.[1] This is a follow-on proceeding based on an injunction entered in 2016 by the United States District Court for the District of Utah. The Division alleges that Zufelt acted as an unregistered broker or dealer and was enjoined from violating Sections 5(a) and (c) and 17(a) of the Securities Act of 1933, Exchange Act Sections 10(b) and 15(a), and Exchange Act Rule 10b-5.[2] The Division further alleges

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1 OIP at 1; *see* 15 U.S.C. § 78*o*(b).

2 OIP at 1–2.

that on summary judgment, the court found that Zufelt violated Section 5(a) and (c) of the Securities Act by offering and selling unregistered securities and Section 15(a)(1) of the Exchange Act by acting as an unregistered broker-dealer.[3] The court also entered a default judgment on claims Zufelt violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5.[4]

The Division additionally alleges what it claimed in its complaint filed in district court. It asserts that its complaint alleged that from June 2005 through December 2007, acting through Zufelt Business Services, Inc., (Zufelt, Inc.) and Silver Leaf Investment, Inc., Zufelt orchestrated two Ponzi schemes.[5] And by making false and misleading statements and omissions, Zufelt induced 46 investors to invest.[6] According to the OIP, these investors lost approximately $2.4 million.[7]

Zufelt was served with the OIP in April 2017.[8] Because Zufelt is representing himself, I granted him an extension to answer the OIP.[9] On May 22, 2017, Zufelt sent my office an e-mail forwarding a document titled "SEC response." This response is Division Exhibit D, attached to its motion for summary disposition. I construe it as Zufelt's answer, and I decline to find him in default. In his response, Zufelt asserted that the public would not

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3 *Id.* at 1–2.

4 *Id.* at 2.

5 *Id.*

6 *Id.*

7 *Id.* Because paragraph II.B.3 of the OIP begins with the phrase "[t]he Commission's complaint alleged that," the only thing that paragraph does is establish what the Commission previously alleged. Because Zufelt did not deny this allegation *in the OIP*, I deem it true. *See* 17 C.F.R. § 201.220(c) ("Any allegation not denied shall be deemed admitted."). But this merely means that I deem true that the Commission's complaint made the referenced allegations. The allegations themselves, by contrast, are not deemed true because the OIP does not say they are the Division's present allegations.

8 *See Anthony C. Zufelt*, Admin. Proc. Rulings Release No. 4785, 2017 SEC LEXIS 1312, at *1 (ALJ May 3, 2017).

9 *Id.*

benefit if he were barred from the securities industry and that he has "suffered" enough business and reputational losses already.[10] Zufelt denied that he operated a Ponzi scheme but admitted that unregistered "securities [were] sold between 2005 and 2007 . . . and mistakes were made within . . . Zufelt Inc. and [Silver Leaf] Investments."[11] He also denied that he intended to defraud or mislead investors.[12]

Following a Commission imposed stay in this proceeding that lasted until November 30, 2017, the Division filed a timely dispositive motion supported by five exhibits (cited as "Div. Ex. _"). Zufelt did not submit an opposition to the Division's motion or any other filing.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Rule 323, 17 C.F.R. § 201.323.[13] In making the findings below, I have applied preponderance of the evidence as the standard of proof.[14]

In June 2010, the Commission filed a civil complaint in the District of Utah against Zufelt, Zufelt, Inc., and Silver Leaf, among other defendants.[15] The Commission alleged that Zufelt violated Securities Act Section 5(a) and (c) by selling securities for which no registration statement was filed or in effect.[16] The Commission also alleged that Zufelt violated Exchange Act Section 15(a) by acting as a broker or dealer without having registered as

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10 Answer at 1; *see id*. at 2 ("Mr. Zufelt has never [intentionally] caused ANY person to lose money. The representation that he ran a 'ponzi scheme' and ripped off investors is a lie.").

11 *Id*.

12 *Id.*

13 I take notice official notice of contents of the docket in *SEC v. Zufelt*, No. 2:10-cv-0574 (D. Utah), which is the litigation on which this administrative proceeding is based.

14 *See Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2006).

15 Div. Ex. A.

16 *Id*. at 24–25; *see* 15 U.S.C. § 77e(a), (c).

such with the Commission.[17] Finally, the Commission alleged that Zufelt violated Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5, and aided and abetted violations of Section 10(b) and Rule 10b-5 (the antifraud allegations).[18]

As to the Section 5 allegations, the Commission alleged that in 2005 and 2006, Zufelt raised over $2.9 million from 36 investors in Zufelt, Inc.[19] The Commission also alleged that in 2006, Zufelt raised $770,000 from 11 investors in Silver Leaf.[20] Allegedly, neither offering was registered with the Commission.[21]

In January 2016, the district court granted summary judgment on the undisputed allegations that Zufelt violated Securities Act Section 5(a) and (c) by selling securities for which no registration statement was filed or in effect, and Exchange Act Section 15(a) by acting as a broker or dealer without having registered as such with the Commission.[22] The district court granted partial summary judgment "[f]or the reasons stated in [the Commission's] Memorandum in Support of [its] Motion for Partial Summary Judgment."[23]

In February 2016, the district court entered a default against Zufelt on the antifraud allegations.[24] The court entered the default "as a sanction for [Zufelt's] repeated refusal to meaningfully participate in litigation."[25] On October 6, 2016, the district court entered final judgment, in which it permanently enjoined Zufelt from violating Securities Act Sections 5(a) and (c) and 17(a), Exchange Act Sections 10(b) and 15(a), and Exchange Act Rule

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17 Div. Ex. A at 25; *see* 15 U.S.C. § 78*o*(a).

18 Div. Ex. A at 22–24; *see* 15 U.S.C. §§ 77q(a), 78j(b); 17 C.F.R. § 240.10b-5.

19 Div. Ex. A at 10.

20 *Id*. at 17.

21 *Id*. at 16–17.

22 Div. Ex. B at 2.

23 *Id*.

24 Div. Ex. C at 2.

25 *Id*.

10b-5.[26] The court further enjoined him from acting as an officer or director of a registered securities issuer and found him jointly and severally liable for disgorgement in excess of $2.4 million plus interest in excess of $900,000.[27] Finally, the court ordered Zufelt to pay a civil monetary penalty of $520,000.[28]

Conclusions of Law

Under the Exchange Act, the Commission may bar Zufelt from acting as a broker or dealer or from participating in a penny-stock offering if, as is relevant here, (1) he was associated with or seeking to become associated with a broker or dealer at the time of the misconduct at issue; (2) he was enjoined "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security"; and (3) imposing a bar is in the public interest.[29]

Taking these three factors in turn, the OIP alleged that from 2005 through 2007, Zufelt acted as an unregistered broker or dealer.[30] As a result of Zufelt's failure to deny this allegation, I deem it admitted.[31] "A person who acts as an unregistered broker-dealer is 'associated' with a broker dealer for the purposes of Section 15(b)."[32] Because Zufelt was associated with a broker or dealer at the time of his misconduct—indeed, his association was integral to his misconduct—the first factor is established.[33]

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[26] *Id*. at 1, 3–6.

[27] *Id*. at 6.

[28] *Id*. at 6–7.

[29] 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii). Although Zufelt is potentially subject to a broader array of bars, the Division seeks only the bars described above. *See* Mot. at 1, 8.

[30] OIP at 1.

[31] *See* 17 C.F.R. § 201.220(c); *see also* Div. Ex. B at 2 (holding that Zufelt acted as an unregistered broker-dealer).

[32] *Gary L. Mcduff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *1 n.2 (Apr. 23, 2015).

[33] *See id*.

As to the second factor, the district court permanently enjoined Zufelt from selling unregistered securities.[34] The terms of this injunction meet the requirement that Zufelt has been enjoined from "engaging in . . . *any* conduct . . . in connection with the . . . sale of *any* security."[35]

To determine whether to impose a bar, I must consider the public-interest factors discussed in *Steadman v. SEC*.[36] The public interest factors include:

> the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[37]

The Commission also considers the deterrent effect of administrative sanctions.[38] The public interest inquiry is "flexible, and no one factor is dispositive."[39] Before imposing a bar, an administrative law judge must

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[34] Div. Ex. C at 4–5.

[35] 15 U.S.C. § 78*o*(b)(4)(C) (emphasis added).

[36] 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Toby G. Scammell*, Investment Advisers Act of 1940 Release No. 3961, 2014 WL 5493265, at *5 (Oct. 29, 2014).

[37] *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016).

[38] *Peter Siris*, Advisers Act Release No. 3736, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Although relevant, general deterrence is not determinative in assessing whether the public interest weighs in favor of imposing a bar. *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007).

[39] *Mohammed Riad*, Advisers Act Release No. 4420A, 2016 WL 3627183, at *44 (July 7, 2016), *petition filed*, No. 16-1275 (D.C. Cir. Aug. 4, 2016).

specifically determine why the Commission's interests in protecting the investing public would be served by imposing an industry bar.[40]

Based on his default, the district court enjoined Zufelt from violating the antifraud provisions in the Securities Act and the Exchange Act. An injunction entered by default, however, does not have preclusive effect as to any fact alleged in a complaint.[41] And while the Commission can rely on a district court's substantive findings entered in conjunction with a default order,[42] no such findings are part of the record in this case with respect to the antifraud claims. Additionally, the Division has supplied no evidence concerning the antifraud allegations and instead focuses on the Section 5 and Section 15 allegations on which the district court granted summary judgment.[43] The determination of whether the public interest will support imposing a bar will thus turn solely on the Section 5 and Section 15 violations.

The circumstances in this case are similar to those in *Allen M. Perres*.[44] In *Perres*, Southern Cross Resources Group, Inc., raised over $5 million from about 100 investors over a 29-month period, of which Perres was responsible for $2 million from at least ten investors.[45] The Southern Cross offering was not registered with the Commission and Perres was neither registered with the Commission nor associated with any registered broker-dealer.[46]

After finding that Perres, like Zufelt, violated Securities Act Section 5(a) and (c) and Exchange Act Section 15(a), the Commission explained that his

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40 *Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *1 (Nov. 18, 2014); *see Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

41 *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at *4 (Feb. 4, 2010).

42 *McDuff*, 2015 WL 1873119, at *2.

43 Mot. at 6–7.

44 Securities Act Release No. 10287, 2017 WL 280080 (Jan. 23, 2017), *petition denied*, 695 F. App'x 980 (7th Cir. 2017).

45 *Id.* at *1–2.

46 *Id.*

conduct was egregious because Section 5 and Section 15 are fundamental to the Commission's effort to protect investors.[47] The requirements in Section 5 "are a keystone" on which "the entire system of securities regulation" is built.[48] They "ensure that 'prospective investors' have 'a source of reliable information on the basis of which they can reach informed judgments whether or not to buy securities.'"[49] And the requirements in Section 15(a) are central to the Commission's effort to regulate "those who may engage in the securities business."[50]

Such is the case here, albeit Zufelt's conduct was somewhat worse in that it involved two separate issuers, 47 investors, and about $2.4 million in investments.[51] And Zufelt's misconduct harmed the market as a whole.[52] This harm and Zufelt's disregard of basic requirements shows that he is ill-suited to remain in the securities industry and that barring him would serve the

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47 *Id.* at *3.

48 *Id.*

49 *Joseph J. Fox*, Securities Act Release No. 10328, 2017 WL 1103693, at *3 (Mar. 24, 2017) (quoting *Ira Haupt & Co.*, Exchange Act Release No. 3845, 1946 WL 24150, at *9 (Aug. 20, 1946)).

50 *Perres*, 2017 WL 280080, at *3.

51 The allegations in the Commission's complaint on which the district court granted summary judgment—the Section 5 and Section 15 claims—and the antifraud allegations are coextensive insofar as the victims of the antifraud violations are the same investors who invested in the unregistered offerings of Zufelt, Inc., and Silver Leaf. The $2.4 million Zufelt was ordered to disgorge thus represents the amount Zufelt profited as a result of his Section 5 and Section 15 violations.

52 *See Gordon Brent Pierce*, Exchange Act Release No. 71664, 2014 WL 896757, at *23 (Mar. 7, 2014) (noting that Pierce sold unregistered shares "causing harm to investors and the marketplace by depriving investors of the full disclosure that would have allowed them to make informed investment decisions"), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015).

Commission's interest in protecting the investing public. Zufelt's conduct was thus egregious.[53]

Zufelt's conduct was recurrent. It extended over two years and involved 46 investors.

Zufelt was at least reckless. As a person who held himself out as a securities professional, he was bound "to be knowledgeable about, and to comply with, the regulatory requirements to which [he was] subject."[54] Zufelt's "[f]ailure to meet this requirement" amounts to "an 'extreme departure from the standards of ordinary care'" sufficient to "establish[] recklessness."[55]

Zufelt has neither made assurances against future violations nor shown that he recognizes the wrongful nature of his conduct. He barely participated in the Commission's action in district court and failed to oppose the Division's motion in this proceeding. In his answer, he merely acknowledged "that the securities sold between 2005 and 2007 were not properly registered and mistakes were made within" his companies. At best, Zufelt's use of the passive voice represents a half-hearted recognition that someone, not necessarily Zufelt, did something wrong. His statement does not show that he recognizes the wrongfulness of his actions.

Given the fact of Zufelt's violations and his failure to make any assurances against future violations or show that he recognizes the

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[53] *Perres*, 2017 WL 280080, at *3; *see Pierce*, 2014 WL 896757, at *23; *cf. Fox*, 2017 WL 1103693, at *3 (finding egregious a respondent's violation of Section 5 involving $8.5 million and over 200 investors).

[54] *Abraham & Sons Capital, Inc.*, Exchange Act Release No. 44624, 2001 WL 865448, at *8 (July 31, 2001); *see David Adam Elgart*, Exchange Act Release No. 81779, 2017 WL 4335050, at *5 (Sept. 29, 2017) ("Participants in the securities industry must take responsibility for compliance and cannot be excused for lack of knowledge, understanding or appreciation of these requirements."), *petition filed*, No. 17-15283 (11th Cir. Nov. 29, 2017).

[55] *Abraham & Sons*, 2001 WL 865448, at *8 (quoting *Steadman*, 967 F.2d at 641–42).

wrongfulness of his conduct, I determine that if Zufelt remains in the securities industry, he is likely to engage in future misconduct.[56]

Finally, imposing a bar will serve the Commission's interest in deterring others from engaging in similar misconduct.

In sum, Zufelt engaged in repeated, serious misconduct that harmed that market as a whole.[57] His conduct was at least reckless and he has done little or nothing to inspire confidence that he understands the wrongfulness of his actions or that he will likely not engage in additional misconduct. In light of these factors, I find that it is in the public interest to bar Zufelt from acting as a broker or dealer, or from participating in a penny-stock offering.[58]

Order

The Division of Enforcement's motion for summary disposition is GRANTED.

Under Section 15(b) of the Securities Exchange Act of 1934, Anthony C. Zufelt is BARRED from associating with a broker or dealer or from participating in an offering of any penny stock.

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[56] See *Tzemach David Netzer Korem*, 2013 WL 3864511, at *6 n.50 (July 26, 2013) ("[T]he existence of a violation raises an inference that it will be repeated." (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004))); *cf. John A. Carley*, Exchange Act Release No. 57246, 2008 WL 268598, at *22 (Jan. 31, 2008) (determining whether to impose a cease-and-desist order and holding that "[o]ur finding that a violation is egregious 'raises an inference that it will'" recur (quoting *Geiger v. SEC*, 363 F.3d at 489)), *remanded on other grounds sub nom. Zacharias v. SEC*, 569 F.3d 458 (D.C. Cir. 2009).

[57] *See Pierce*, 2014 WL 896757, at *23.

[58] In both *Perres* and *Fox*, which involved similar violations, the Commission barred the respondents but allowed them to reapply after five years. *Perres*, 2017 WL 280080, at *6; *Fox*, 2017 WL 1103693, at *7. Unlike Zufelt, however, Perres and Fox both settled with the Commission on the issue of liability. *Perres*, 2017 WL 280080, at *6; *Fox*, 2017 WL 1103693, at *2. They also had not been enjoined from violating the antifraud provisions. Zufelt's lack of cooperation, combined with his additional antifraud injunction, weighs against offering him the right to reapply after five years.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360.[59] Under that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule 111.[60] If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The initial decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the initial decision as to a party. If any of these events occurs, the initial decision shall not become final as to that party.

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James E. Grimes
Administrative Law Judge

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[59] *See* 17 C.F.R. § 201.360.

[60] *See* 17 C.F.R. § 201.111.