

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21235**

**In the Matter of**

**CINDY VANDIVIER**  
**a/k/a “MADISON BROOKE**  
**or BROOKES”,**

**Respondent.**

**DIVISION OF ENFORCEMENT’S MOTION FOR DEFAULT**  
**ORDER AND OTHER RELIEF**

**I. Introduction**

The Division of Enforcement (the “Division”), pursuant to Rules 155(a) and 220(f) of the Commission’s Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), moves for entry of an Order finding Respondent Cindy Vandivier a/k/a “Madison Brooke or Brookes” (“Respondent” or “Vandivier”) in default and determining this proceeding against her upon consideration of the record. The Division sets forth the grounds below.

**II. History of the Case**

The Commission issued the Order Instituting Proceedings (“OIP”) against Respondent on November 4, 2022 pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”). In summary, the OIP alleges that Vandivier acted as a broker but was not registered with the Commission in any capacity. OIP, ¶ 1. The OIP alleges that between June 2017 and June 2018, Vandivier worked for Bhagavad Management, Inc. (“Bhagavad Management”), and in that capacity, she solicited investors and received commissions for selling Stocket stock. These facts led to Vandivier’s guilty plea in the criminal case against her. Vandivier pled guilty to one count of

conspiracy to commit mail and wire fraud in violation of 18 U.S.C. §1349. *United States v. Cindy Vandivier*, Case No. 0:21-cr-60101-SMITH/VALLE (S.D. Fla).

On January 4, 2023, the Division filed an Updated Notice of Proof of Service and Executed Affidavit of Service (“Updated Notice of Service”) confirming that Vandivier had been served with the OIP. Specifically, upon learning that Vandivier had moved to Texas and was living with her daughter, the Division arranged for a process server who personally served Vandivier’s daughter and co-resident on December 22, 2022.<sup>1</sup> Vandivier emailed the undersigned counsel on January 13, 2023, acknowledging that she was served with the OIP on December 22, 2022.<sup>2</sup> As of this date, Vandivier has not filed an answer or any other response to the OIP.

### **III. Memorandum of Law**

#### **A. Vandivier’s Criminal Case**

On March 25, 2021, a federal grand jury in the Southern District of Florida returned an indictment against Vandivier, charging her with, among other things, conspiracy to commit mail and wire fraud in violation of 18 U.S.C. §1349.<sup>3</sup> On July 20, 2022, Vandivier entered into a plea agreement resolving the criminal case against her.<sup>4</sup> Vandivier pled guilty to one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. §1349. Vandivier was sentenced to 24 months of imprisonment.<sup>5</sup>

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<sup>1</sup> The Division also stated in its Updated Notice of Service that undersigned counsel sent Vandivier copies of her notice of appearance and that Notice Documents Are Available for Inspection and Copying by mailing to the Texas address via UPS.

<sup>2</sup> Exh. 1 (1/13/2023 Email from C. Vandivier to T. Verges).

<sup>3</sup> Exh. 2(Indictment, DE 1, *United States v. Cindy Vandivier*, Case No. 0:21-cr-60101-SMITH/VALLE (S.D. Fla)). The Indictment also charged Vandivier and other defendants/co-conspirators with mail fraud in violation of 18 U.S.C. §1341 and 1342, wire fraud in violation of 18 U.S.C. §1343, money laundering and conspiracy to commit money laundering in violation of 18 U.S.C. §1956(a) and 1956(h), and engaging in monetary transactions using proceeds of a crime in violation of 18 U.S.C. §1957(a). *Id.*

<sup>4</sup> Exh. 3 (Composite Exhibit: Plea Agreement, Factual Proffer Statement).

<sup>5</sup> Exh. 4 (Judgment in a Criminal Case *United States v. Cindy Vandivier*, Case No. 0:21-cr-60101).

**B. Facts**

Based on Vandivier's default, the allegations of the OIP "may be deemed to be true." 17 C.F.R. § 201.155(a). Moreover, Vandivier's guilty plea binds her to the facts she admitted. *See Gary L. McDuff*, Exch. Act Rel. No. 74803, at 5 & n.18, 2015 WL 1873119, at n.18 (Apr. 23, 2015); *Don Warner Reinhard*, Exch. Act Rel. No. 63720, at 11-12, 2011 WL 121451, at \*7 (Jan. 14, 2011) (respondent who pleaded guilty "cannot now dispute the accuracy of the findings set out in the Factual Basis for Plea Agreement"); *Gary M. Kornman*, Exch. Act Rel. No. 59403, at 12, 2009 WL 367635, at \*8 (Feb. 13, 2009) (criminal conviction based on guilty plea precludes litigation of issues in Commission proceedings), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010).

The OIP and the facts admitted as part of Vandivier's guilty plea establish the following:

Between June 2017 and June 2018, Vandivier worked for Bhagavad Management, a company owned by Vandivier's husband, which was hired by Stocket to promote the purchase of Stocket stock. OIP ¶¶ 1, 3; Proffer Statement (Exh. 3), at ¶¶ 2-3. Vandivier was the office manager responsible for sending brochures and information packets to prospective Stocket investors, answering telephones when potential investors called, answering follow-up questions from potential investors, and directing investors where to send their payments for the purchase of Stocket stock. OIP ¶ 3; Proffer Statement (Exh. 3), at ¶¶ 4-5.

Vandivier admitted as part of her guilty plea that she received commissions for selling Stocket stock. Proffer Statement (Exh. 3), at ¶ 7, *see also* OIP ¶ 3. In fact, Bhagavad Management received approximately 25 to 30 percent of the total investment in Stocket. *Id.* However, Vandivier did not disclose to prospective investors the exorbitant commissions she received. Proffer Statement (Exh. 3), at ¶ 7, OIP ¶ 3.

Although Vandivier solicited prospective investors for Stocket and received transaction based compensation, she was not registered with the Commission in any capacity. OIP ¶ 1.

**C. Entry of Default is Appropriate**

Under Rule 155(a) of the Commission’s Rules of Practice, a party who fails to file a timely answer “may be deemed to be in default” and the Commission “may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true . . . .” 17 C.F.R. § 201.155(a). Here, Vandivier has not filed an answer, and therefore the proceeding should be determined against her based on the record.

The facts established by Vandivier’s default and her guilty plea show that the Division is entitled to the relief it seeks under Exchange Act Section 15(b)(6)(A), which provides in relevant part:

With respect to any person . . . at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

\* \* \* \*

(ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph . . . .

Each of the requirements of these provisions—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Respondent was associated with a broker-

dealer or acting as an unregistered broker by selling securities while not registered or associated with a registered broker-dealer—are satisfied here.

**1) *The Division Timely Filed this Action***

The Division must commence a proceeding under Section 15(b)(6)(A)(ii) within “10 years” of the criminal conviction. *See Joseph Contorinis*, Exch. Act Release No. 72031, at 4-6, 2014 WL 1665995, at 3 (Apr. 25, 2014) (10-year limitations period governs Section 15(b)(6)(A)(ii) proceeding; limitations period runs from date of conviction, not underlying conduct). Here, Vandivier pled guilty and submitted a factual proffer admitting the relevant facts alleged above on July 20, 2022 and the OIP was issued in November 2022. Therefore, this matter was timely filed.

**2) *Vandivier Was Convicted of a Qualifying Offense***

Under the Exchange Act, the Commission may sanction Vandivier for an offense that “involves” wire fraud. *See* Exchange Act Section 15(b)(4)(B)(iv). Here, Vandivier was convicted of one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. §1349, and the underlying conduct involved the violation of 18 U.S.C. §§1341 and 1342 (mail fraud) and §1343 (wire fraud). Therefore, this condition is satisfied.

**3) *Vandivier Acted as an Unregistered Broker at the Time of the Misconduct***

Exchange Act Section 15(b)(6) requires that Vandivier have been associated with or acting as a broker at the time of the misconduct. The broker in question need not have been a registered broker. *Tzemach David Netzer Korem*, Exch. Act Rel. No. 70044, at 12 and n.68, 2013 WL 3864511 (July 26, 2013).

Exchange Act Section 3(a)(4) defines “broker” as “any person engaged in the business of effecting transactions in securities for the account of others.” A person engages in the business of effecting securities by “participate [ing] in purchasing and selling securities involving more than a

few isolated transactions; there is no requirement that such activity be a person's principal business or the principal source of income." *Anthony Fields*, Securities Act Rel. No. 9727, at 30, 2015 WL 728005 (Feb. 20, 2015) (quotations and alternations omitted). Indications of broker activity "include holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers, and receiving transaction-based compensation." *Id.*; *James S. Tagliarferri*, Securities Act Rel. No. 10308, at 6-7, 2017 WL 632134 (respondent acted as a broker by actively finding investors, being closely involved in negotiations, and receiving transaction based compensation).

Here, the facts that are alleged in the OIP, which may be deemed true under rule 155(a), 17 C.F.R. § 201.155(a), establish that Vandivier acted as a broker while offering and selling Stocket stock, and received transaction based compensation. OIP ¶ 3. As part of her guilty plea, Vandivier admitted that she conspired with others to solicit investors to purchase Stocket stock, and that she personally spoke with prospective investors, followed up with investors, and provided them with payment instructions to purchase Stocket stock. Factual Proffer (Exh. 3) ¶¶ 3-5. She further admitted that she received exorbitant commissions in connection with her sales of Stocket. *Id.* ¶ 7. Thus, the jurisdictional requirement for remedial relief, that Vandivier acted as a broker while committing her misconduct, has been met.

#### **4) *An Industry Bar is an Appropriate Sanction***

In determining whether an industry bar is in the "public interest," the Commission considers

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.

*Lawrence Deshetler*, Advisers Act Rel. No. 5411, at 4, 2019 WL 6221492, at \*2 (Nov. 21, 2019). “Absent extraordinary mitigating circumstances, an individual who has been convicted cannot be permitted to remain in the securities industry.” *Frederick W. Wall*, Exch. Act Rel. No. 52467, at 8, 2005 WL 2291407, at \*4 (Sept. 19, 2005) (quotation omitted); *accord Shreyans Desai*, Exch. Act Rel. No. 80129, at 6, 2017 WL 782152, at \*4 (Mar. 1, 2017).

Here, these factors weigh in favor of an industry bar. As to the first, second and third factors, Vandivier’s actions were egregious, recurrent, and involved a high degree of scienter: she has admitted to conspiring with others “to defraud a number of investors in [Stocket],” speaking to investors under an alias of “Madison Brooke” or “Madison Brookes” on the telephone, in emails and on business cards, in order to conceal a prior civil enforcement action against her for fraud, and failing to disclose (among other things) that Bhagavad Management was earning 25 to 30 percent commissions in connection with its sales of Stocket to investors. Factual Proffer (Exh. 3) ¶¶ 2, 6, 7. Her conviction for conspiracy to commit wire fraud requires proof that the defendant joined the conspiracy with the specific intent to defraud. *Herbert Steven Fouke*, Rel. No. 660, 2014 WL 4258244, \* (Aug. 29, 2014) (citing *United States v. Vilar*, 729 F.3d 62, 88-89 (2d Cir. 2013); *United States v. Brooks*, 681 F.3d 678, 700 (5<sup>th</sup> Cir. 2012); *United States v. Garza*, 429 F.3d 165, 168-69 (5<sup>th</sup> Cir. 2005).

With respect to the fourth and fifth factors, notwithstanding her guilty plea, Vandivier has not participated in this matter, thus providing no assurances that she will avoid future violations of the law. *Kimm Hannan*, Advisers Act Rel. No. 5906, at 4, 2021 WL 5161855, \*3 (Nov. 5, 2021) (“Because Hannan failed to answer the OIP or respond to the order to show cause or to the Division’s motion, he has made no assurances to us that he will not commit future violations or that he recognizes the wrongful nature of his conduct.”); *Oscar Ferrer Rivera*, Advisers Act Rel.

No. 5759, at 6, 2021 WL 2593642, \*4 (June 24, 2021) (“Although his guilty plea indicates that Ferrer might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that he poses a risk to the investing public.”). While “[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar . . . the existence of a violation raises an inference that it will be repeated.” *Tzemach David Netzer Korem*, Exchange Act Rel. No. 70044, at 10 n.50, 2013 WL 3864511, at n.50 (July 26, 2013) (quotation and alternations omitted). Vandivier has offered no evidence to rebut that inference.

Sixth, although Vandivier will soon be serving a 24 month prison sentence commencing March 28, 2023 (when she must surrender federal prison authorities),<sup>6</sup> she will be released in 2025, and unless she is barred from the securities industry she will have the chance to again harm investors. *Hannan*, Advisers Act Rel. No. 5906, at 4, 2021 WL 5161855, \*3 (“Although Hannan is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.”).

#### IV. Conclusion

For the reasons discussed above, the Division asks the Commission to sanction Vandivier by barring her from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and by imposing a penny stock bar.

Respectfully submitted,



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<sup>6</sup> Judgment (Exh.4), p. 2.



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**CERTIFICATE OF SERVICE**

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that on March 21, 2023, the foregoing document was filed using the eFAP system and that a true and correct copy of the Division's Notice of Filing Proof of Service has been served by overnight UPS, on this 21<sup>st</sup> day of March 2023, on the following person entitled to notice:

**Overnight UPS**  
Cindy Vandivier



Teresa J. Verges  
Regional Trial Counsel