

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99105 / December 7, 2023

Admin. Proc. File No. 3-21235

In the Matter of

CINDY VANDIVIER A/K/A “MADISON BROOKE OR
BROOKES”

ORDER TO SHOW CAUSE

On November 4, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Cindy Vandivier a/k/a “Madison Brooke or Brookes” (“Respondent”) pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On January 4, 2023, the Division of Enforcement filed an Updated Notice of Filing Proof of Service appending a process server’s declaration, which establishes that service of the OIP was made on Respondent on December 22, 2022, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.² On March 21, 2023, after Respondent failed to answer the OIP, the Division filed a motion for default and other relief against Respondent. The Division requests that the Commission find Respondent in default for not filing an answer and bar her from the securities industry and impose a penny stock bar based on the record and the allegations in the OIP.

As stated in the OIP, Respondent’s answer was required to be filed within 20 days of service of the OIP.³ And a response to the Division’s motion was due within five days after it was served.⁴ As of the date of this order, Respondent has not filed an answer or opposition to the Division’s motion. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Respondent is ORDERED to SHOW CAUSE by December 21, 2023, why she should not be deemed in default and why this proceeding should not be determined against her due to her failure to file an answer, respond to the Division’s motion, or otherwise defend this proceeding. Respondent’s submission shall address the reasons for her failure to timely file

¹ *Cindy Vandivier a/k/a “Madison Brooke or Brookes”*, Exchange Act Release No. 96245, 2022 WL 16710001 (Nov. 4, 2022).

² 17 C.F.R. § 201.141(a)(2)(i).

³ *Vandivier*, 2022 WL 16710001, at *2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.(a), .160(b), .220(b).

⁴ Rule of Practice 154(b), 17 C.F.R. § 201.154(b).

an answer or response to the Division's motion, include a proposed answer to be accepted in the event that the Commission does not enter a default against her, and address the substance of the Division's request for sanctions. If Respondent responds to this order to show cause, the Division may file a reply within 14 days after its service.

When a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding a public hearing.⁵ The OIP informed Respondent that a failure to file an answer could result in deeming her in default and determining the proceedings against her.⁶ The failure to timely oppose a dispositive motion is also a basis for a finding of default.⁷ Like failing to timely file an answer, failing to timely oppose a dispositive motion may result in the determination of particular claims, or the proceeding as a whole, adversely to the non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.⁸

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁹ We also remind the parties that any document filed with the Commission must be served upon all participants in the proceeding and be accompanied by a certificate of service.¹⁰

⁵ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁶ *Vandivier*, 2022 WL 16710001, at *2.

⁷ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); see, e.g., *Behnam Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

⁸ See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sep. 29, 2017); *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2-3 (Mar. 30, 2017), *abrogated in part on other grounds by Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 n.6 (Apr. 13, 2006).

⁹ *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.

¹⁰ See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (“Papers filed with the Commission ... shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.”).

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary