SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934

Release No. 100788 / August 21, 2024

Admin. Proc. File No. 3-21235

In the Matter of

CINDY VANDIVIER A/K/A "MADISON BROOKE OR BROOKES"

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

**Conviction**

Respondent was convicted of conspiracy to commit wire and mail fraud. *Held*, it is in the public interest to bar respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

APPEARANCES:

*Teresa J. Verges* for the Division of Enforcement.

On November 4, 2022, we instituted an administrative proceeding against Cindy Vandivier a/k/a/ "Madison Brooke or Brookes" ("Vandivier") pursuant to Section 15(b) of the Securities Exchange Act of 1934.[1] We now find Vandivier to be in default, deem the allegations against her to be true, and bar her from associating in the securities industry in any capacity and from participating in an offering of penny stock.

## I. Background

### A. The Commission instituted this proceeding against Vandivier.

The order instituting proceedings ("OIP") alleged that Vandivier pleaded guilty in 2022 to one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349. Specifically, the OIP alleged that, from June 2017 to June 2018, Vandivier conspired with others to defraud investors who purchased securities of Stocket, Inc. ("Stocket"). After the Commission issued the OIP, Vandivier was sentenced to 24 months in prison.[2]

Vandivier admitted in her factual proffer that she worked for Bhagavad Management, Inc. ("Bhagavad Management"), which Stocket hired to promote the purchase of Stocket securities. Vandivier admitted that she was the office manager responsible for sending brochures and information packets to potential investors and answering follow-up questions from investors after they purchased shares of Stocket. She also admitted to personally making false representations to Stocket investors regarding the use of their money. Vandivier and others working at Bhagavad Management received commissions equal to approximately 25 to 35 percent of the total investment in Stocket and did not disclose those commissions to Stocket investors. Vandivier also admitted to not disclosing to prospective investors that she was subject to a civil enforcement action and restitution order for investment fraud.

The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed Vandivier to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[3] The OIP informed Vandivier that if she failed to answer, she may be deemed in default,

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

2 We take official notice of the final judgment in Vandivier's criminal proceeding in federal district court, which was issued on January 27, 2023. Judgment in a Criminal Case, ECF No. 412, *United States v. Vandivier*, No. 0:21-cr-60101 (S.D. Fla. Jan. 27, 2023); *see* 17 C.F.R. § 201.323 (providing that official notice may be taken "of any material fact which might be judicially noticed by a district court of the United States"); *Am. Inv. Serv., Inc.*, Exchange Act Release No. 43991, 2001 WL 167861, at *1 n.1 (Feb. 21, 2021) (recognizing Commission's authority to take official notice of federal district court orders).

3 17 C.F.R. § 201.220(b).

the allegations in the OIP may be deemed to be true as provided in the Rules of Practice, and the proceeding could be determined against her upon consideration of the OIP.[4]

### B. Vandivier failed to answer the OIP, respond to an order to show cause why she should not be found in default, or respond to a motion for a default and sanctions.

Vandivier was properly served with the OIP on December 22, 2022, pursuant to Rule of Practice 141(a)(2)(i),[5] but did not respond. On December 7, 2023, more than 20 days after service, the Commission ordered Vandivier to show cause by December 21, 2023, why it should not find her in default due to her failure to file an answer or otherwise defend this proceeding.[6] The show cause order warned Vandivier that, if the Commission found her to be default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against her upon consideration of the record.

Before the Commission issued the order to show cause, the Division filed a motion requesting that the Commission find Vandivier in default and bar her from associating in the securities industry and from participating in an offering of penny stock. In support of its motion, the Division filed copies of documents from Vandivier's criminal proceeding, including the indictment, plea agreement, factual proffer statement, and judgment. Vandivier did not respond to the Division's motion.

## II. Analysis

### A. We deem Vandivier to be in default and deem the OIP's allegations to be true.

Rule of Practice 155(a) provides that if a party fails to "answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding," we may deem the party in default and "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."[7] Because Vandivier has failed to answer or respond to the show cause order or to the Division's motion, we find it appropriate to deem her to be in default and to deem the allegations

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4 *See* Rule of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

5 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "leaving a copy [of the order] at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein").

6 *Cindy Vandivier a/k/a "Madison Brooke or Brookes"*, Exchange Act Release No. 99105, 2023 WL 8527147 (Dec. 7, 2023).

7 17 C.F.R. § 201.155(a); *see also* Rule of Practice 220(f), 17 C.F.R. § 201.220(f) (providing that "[i]f a respondent fails to file an answer required by this section within the time provided, such respondent may be deemed in default pursuant to" Rule of Practice 155(a)).

of the OIP to be true. We base the findings that follow on the record, including the OIP and the evidentiary materials that the Division submitted with its motion for default and sanctions.

**B. We find that barring Vandivier from the securities industry and from participating in penny stock offerings is in the public interest.**

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from associating in the securities industry and from participating in any offering of a penny stock if it finds, on the record after notice and opportunity for hearing, that: (1) within ten years of the commencement of the proceeding, the person was convicted of a felony involving the purchase or sale of a security, or a conspiracy to commit such an offense, or arising out of the conduct of the business of a broker or dealer; (2) the person was associated with a broker or dealer at the time of the misconduct; and (3) such a sanction is in the public interest.[8]

The record establishes the first two of these elements. Within ten years of the commencement of this proceeding Vandivier was convicted of offenses involving the purchase or sale of a security.[9] Specifically, Vandiveir's 2022 conviction was based, in part, on her assisting in and facilitating selling shares in Stocket between June 2017 and June 2018. Relatedly, Vandivier's conviction also arose from her conduct as an unregistered broker. And because Vandivier acted as an unregistered broker at the time of her misconduct, she was a person associated with a broker.[10]

Thus, we need determine only if any remedial action is in the public interest. In doing so, we consider 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

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[8] 15 U.S.C. § 78o(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78o(b)(4)); *see also id.* § 78o(b)(4)(B)(i) (discussing offenses involving the purchase or sale of a security)).

[9] *See* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "convicted" to include a "plea of guilty"); *Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *8 (Mar. 7, 2014) (("[W]e agree with the Division that there is no reason for ascribing a different meaning to the word 'convicted' in the Exchange Act to the meaning given to that term in the Advisers Act.") (internal quotations and citation omitted)), *pet. granted in part on other grounds*, 845 F.3d 1217 (D.C. Cir. 2017); *Alexander Smith*, Exchange Act Release No. 3785, 1946 WL 24891, at *6 (Feb. 5, 1946) ("[I]t is clear that when there has been a verdict or plea of guilt or a plea of *nolo contendere* accepted by the court, there is the 'conviction' contemplated by [Exchange Act Section 15(b)] as the starting point for an inquiry into the fitness of the person involved to engage in the securities business.").

[10] *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at *3 (Jan. 23, 2017) (explaining that an individual who acts as an unregistered broker meets the definition of a "person associated with a broker" in Exchange Act Section 3(a)(18)).

future violations, the respondent's recognition of the wrongful nature of her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[11] Our public interest inquiry is flexible, and no one factor is dispositive.[12] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[13]

We have weighed all of these factors and conclude that an industry bar and a bar from participating in an offering of penny stock are warranted to protect the investing public. Vandivier's misconduct was egregious and recurrent. Over the course of a year,[14] while acting as an unregistered broker, Vandivier conspired to defraud investors by not disclosing material information about their investment, i.e., that she and others associated with Bhagavad Management received a 25 to 35 percent commission of the total investment in Stocket.[15] The commissions Bhagavad Management received for selling Stocket shares totaled $887,657. Vandivier further failed to disclose to prospective investors that she was subject to a civil enforcement action and restitution order for investment fraud; indeed, she used an alias in communicating with investors to conceal the civil enforcement action.

Vandivier also acted with a high degree of scienter.[16] The criminal charge to which Vandivier pleaded guilty required her to have joined the conspiracy to commit wire and mail

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11 *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

12 *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

13 *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

14 *See, e.g., John Sherman Jumper*, Exchange Act Release No. 96407, 2022 WL 17346044, at *3 (Nov. 30, 2022) (finding conduct recurrent where respondent misappropriated funds on three occasions over eleven months); *Brett Hamburger*, Exchange Act Release No. 93844, 2021 WL 6062981, at *1, 4 (Dec. 21, 2021) (finding conduct recurrent where, over a period of 20 months, responded facilitated sales of unregistered securities via a "phone room").

15 *See Hamburger*, 2021 WL 6062981, at *4 (finding respondent acted egregiously and fraudulently by failing to disclose "exorbitant commission payments for call centers" to investors); *cf. United States v. Wolfson*, 642 F.3d 293, 296 (2d Cir. 2011) (observing that "a properly instructed jury may find that stock brokers have a duty to disclose material commissions to their customers, and can convict brokers who breach that duty of violating the general antifraud provisions of the securities laws") (internal quotation omitted); *United States v. Szur*, 289 F.3d 200 (2d Cir. 2002) ("[W]e easily conclude that the payment of forty-five-or fifty-percent commissions . . . is clearly significant and must be disclosed accurately.") (internal quotation omitted).

16 *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm).

fraud with the specific intent to defraud.[17] And Vandivier admitted in her proffer statement that she "conspired with [others] to defraud a number of investors."

Because Vandivier failed to answer the OIP or respond to the show cause order or to the Division's motion, she has made no assurances in this proceeding that he will not commit future violations. And although her guilty plea indicates that Vandivier might have some appreciation for the wrongfulness of her conduct, it does not outweigh the evidence that Vandivier poses a risk to the investing public.[18] It also appears that Vandivier's occupation presents opportunities for future violations because she acted as an unregistered broker at the time of her misconduct, she offers no assurances of her future plans, and, absent a bar, she would have the opportunity to participate in the securities industry and commit further violations.[19]

The Commission may impose bars to protect the investing public from a respondent's future actions by restricting access to areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm. Here, the record establishes that Vandivier is unfit to participate in the securities industry and that her participation in it in any capacity would pose a risk to investors.[20] Vandivier conspired with others to defraud investors and sought to enrich herself by acting as an unregistered broker. Given that Vandivier has defaulted in this proceeding, she has not opposed the imposition of any

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[17] *See United States v. Greenlaw*, 84 F.4th 325, 339 (5th Cir. 2023) (discussing that, for conviction of conspiracy to commit wire fraud, "each conspiracy count requires that the act be complete with a specific intent to defraud") (internal quotation omitted); *United States v. Ross*, 131 F.3d 970, 981 (11th Cir. 1997) (observing that, for conspiracy to commit mail or wire fraud, "the government's burden is to demonstrate beyond a reasonable doubt that the defendants agreed to engage in a scheme to defraud in which they contemplated that the mails or wire service would likely be used") (internal quotation and alterations omitted).

[18] *See Lawrence Allen DeShetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *3 (Nov. 21, 2019) ("Although his guilty plea indicates that DeShetler might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that DeShetler poses a risk to the investing public."); *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding the "egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility"); *Korem*, 2013 WL 3864511, at *6 (finding that although respondent acknowledged his wrongdoing by pleading guilty in the underlying criminal case, "the degree of scienter involved in the misconduct at issue . . . cause[s] us concern ").

[19] *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (expressing concern that respondent's occupation would present opportunities for future violations where he did not indicate that he planned to leave the securities industry).

[20] *Tagliaferri*, 2017 WL 632134, at *6 (finding that the misconduct underlying the respondent's conviction demonstrated that respondent was unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors).

associational bar or a bar from participating in an offering of penny stock. Because Vandivier poses a continuing threat to investors, we conclude that it is in the public interest to bar her from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.[21]

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners CRENSHAW, UYEDA and LIZÁRRAGA; Commissioner PEIRCE concurring in part and dissenting with respect to the imposition of a bar from participating in an offering of penny stock).

Vanessa A. Countryman
Secretary

[21] *Id.* (imposing associational and penny stock bars where necessary to protect the public).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 100788 / August 21, 2024

Admin. Proc. File No. 3-21235

In the Matter of

CINDY VANDIVIER A/K/A "MADISON BROOKE OR BROOKES"

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Cindy Vandivier a/k/a "Madison Brooke or Brookes" is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and it is further

ORDERED that Cindy Vandivier a/k/a "Madison Brooke or Brookes" is barred from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Vanessa A. Countryman
Secretary