STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: LESLIE I. GOLEMBO	)	FILE NO. 0200614

NOTICE OF HEARING

TO RESPONDENT: Leslie I. Golembo
(CRD #: 224721)
2500 North Lakeview
Apartment 3202
Chicago, Illinois 60614

You are hereby notified that, pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") and 14 Ill. Adm. Code 130, Subpart K (the "Rules"), a public hearing will be held at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, on the 12th day of March 2003, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, before Soula J. Spyropoulos Esq., or another duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order should be entered revoking Leslie I. Golembo 's (the "Respondent") registration as a salesperson in the State of Illinois and/or granting such other relief as may be authorized under the Act including but not limited to imposition of a monetary fine in the maximum amount pursuant to Section 11.E(4) of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

1. That at all relevant times the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act until November 26, 2002.

2. That on June 17, 2002 the United States Securities and Exchange Commission (SEC) entered an Order Instituting Proceedings, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order (Order) in Administrative Proceeding File No. 3-10802 against the Respondent which imposed the following sanctions:

a. Cease and Desist from committing or causing any violation and any future violation of Sections 206(1) and 206(2) of the Advisors Act;

b. Pay a civil money penalty in the amount of $50,000;

c. Barred from association with any investment adviser, with a right to reapply for association after three years;

d. Barred from association with any broker or dealer, with a right to reapply for association after one year; and

e. Prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter.

3. That the Order found:

a. Performance Analytics, Inc. (Performance) has been a registered investment adviser since 1988 (File No. 80131349). It has its principal place of business in Chicago, Illinois. Performance, among other things, advises pension funds in selecting and retaining money managers, and also provides peer evaluative services to investment advisers.

b. The Respondent, age 57, of the Chicago, Illinois, formerly served as the secretary and treasurer of Performance. During the relevant time period, the Respondent also served as secretary and treasurer for Performance's affiliated broker-dealer.

c. This proceeding is based on Performance's and The Respondent's material misrepresentations and omissions to one of its clients, a union pension fund ("Client"). In or about 1994, a registered representative of East West Institutional Services, Inc. ("East West") entered into an illegal kickback agreement with two trustees of the Client ("the two trustee") whereby the two trustees caused the Client to hire investment advisers who were willing to direct brokerage trades to East West, and East West then paid kickbacks of commissions to the two trustees. In 1995, the Client hired Performance as a consultant to provide advice concerning the retention of new investment advisers. In fact, Performance, through The Respondent, obtained the consultant position by agreeing to recommend to the Client only those investment advisers that were willing to direct brokerage to East West. Also in 1995, The Respondent, on behalf of Performance, recommended to the Client at least one investment adviser, Duff & Phelps Investment Management Co., Inc. ("Duff"), that he knew or was reckless

in not knowing was willing to direct brokerage to East West. In 1996, Performance entered into a soft-dollar arrangement with Duffy whereby it received $100,000 annually in brokerage commission business directed for the benefit of Performance's affiliated broker-dealer, in exchange for a continuing recommendation of Duff to the Client. Performance and The Respondent failed to disclose to the disinterested representatives of the Client their arrangement to recommend only those advisers that agreed to direct brokerage to East West. They further failed to disclose to the disinterested representatives of the Client their soft dollar arrangement with Duff pursuant to which they continued to recommend Duff's advisory services to the Client in exchange for Duffs direction of $100,000 per year in brokerage commission business to Performance's affiliated broker-dealer.

d. As a result of the above, Performance willfully violated Sections 206(1) and 206(2) of the Advisers Act, and The Respondent willfully aided and abetted and caused Performance's violations of Sections 206(1) and 206(2) of the Advisers Act.

e. The Client Hired Performance

In or about 1994, East West entered into an illegal kickback scheme with two trustees of the Client that allowed East West and the two trustees to profit from securities transactions executed by the Client's investment advisers. Pursuant to the scheme, the Client opened accounts with investment advisers that agreed to direct trades for the benefit of East West. East West would take a percentage of commissions on transactions, launder that money through foreign bank accounts, and give a portion of it to the two trustees.

In late 1994, one of the two trustees arranged for the Client to hire a consultant to add an appearance of legitimacy to the Client's selections of advisers and thereby conceal from the other Client trustees the kickback scheme with East West. The trustee learned that Performance, through The Respondent, would assist with the scheme by recommending to the Client cooperative investment advisers that the trustee had pre-selected.

f. "Soft dollar" practices generally describe arrangements whereby an adviser uses commission dollars generated by its advisory clients' securities trades to pay for research, brokerage, or other products, services or expanses. See SS Guarded Technology Corp., Advisers Act Rel. No. 1575, 62 SEC Docket 1560, 1561 (August 7, 1996). Section 28(e) of the Securities Exchange Act of 1934 provides a safe harbor from claims of breach of fiduciary duty for money managers who use the commission dollars of their advisory clients to acquire investment research and brokerage

services, provided that all of the conditions of the section are met. 1986 Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 23170 (April 23, 1986), 1986 SE Lexis 1689. The "safe harbor" provided by Section 28(e) does not excuse an adviser from its disclosure obligations; it merely excuses an adviser from obtaining the lowest available commission rate. The money manager has the burden of proving that it made a good faith determination that the value of the research and brokerage services is reasonable in relation to the amount of commissions paid. Id.

g. Accordingly, the trustee recommended, and the Client hired, Performance as a consultant. I marketing Performance's services to the Client, The Respondent misrepresented to the disinterested representative of the Client that Performance would provide impartial recommendations concerning the selection of money managers. On multiple occasions after the Client hired Performance, The Respondent represented that he based his recommendations on adviser performance and management, and he did not disclose to the disinterested representatives of the Client that he based his advice on whether an adviser would agree to direct brokerage to East West. The Respondent recommended a particular investment adviser, Duff, knowing that Duff was willing to direct brokerage to East West. The Respondent never disclosed to the disinterested representatives of the Client all the material reasons for his recommendation of Duff.

h. Performance Entered into an Arrangement with Duff

In or about the end of March 1996, after determining that it would not be able to guarantee the direction of a specific dollar amount of commission business for the benefit of East West and concluding that it would not be able to meet East West's demands for more commissions, Duff began to significantly reduce the amount of brokerage commissions it directed for the benefit of East West. During this same time period, Duff entered into a soft dollar agreement with Performance, through The Respondent, to encourage Performance's continued support of Duff's engagement by the Client. Duff agreed to direct $100,000of brokerage commission business annually for the benefit of Performance's affiliated broker-dealer. In return, Performance agreed to continue to recommend that the Client retain Duff as a money manager. Duff directed at least $102, 750 for the benefit of Performance's affiliated broker-dealer between July 1996 and July 1997.

After entering into the soft dollar agreement with Duff and during the time when it was receiving brokerage commission business from Duff, Performance, through The Respondent, continued to recommend Duff to the Client. Performance never disclosed to the disinterested

representatives of the Client that it had a conflict of interest because it recommended an investment adviser that paid it fees.

4. That the order made the following Conclusions of Law:

   a. Performance Willfully Violated Sections 206(1) and 206(2) of the Advisers Act Sections 206(1) and 206(2) of the Advisers Act make it unlawful for any investment adviser, directly or indirectly, to employ any device, scheme or artifice to defraud, or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Scienter is an element of a Section 206(1) violation, but not a Section 206(2) violation. Steadman v. SEC, 603F.2d 1126, 1134 (5th Cir. 1979); Oakwood Counselors, Inc. and Paul J. Sherman, Advisers Act Rel. No. 1614 (February 10, 1997), 1997 SEC LEXIS 304 at *12; SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191-92 (1963).

   The Supreme Court has interpreted Section 206 to impose a fiduciary duty on investment advisers, requiring an affirmative obligation of utmost good faith, and full and fair disclose of all material facts to an investment adviser's clients. Capital Gains Research, 375 U.S. at 194. This fiduciary duty requires investment advisers to act for the benefit of their clients, Oakwood, 1997 SEC LEXIS 304 at, *12 (citing Transamerica Mortgage Advisers, Inc., 444 U.S. 11, 17 (1979)), and precludes them from using their clients' assets to benefit themselves. Kingsley Jennison, McNully & Morse, Inc., Initial Decision Rel. No. 24 (November 14, 1991), 1991 SEC LEXIS 2587 at *9.

   As a fiduciary, an investment adviser as a duty to disclose to clients "all material information which is intended 'to eliminate, or at least expose,' all potential or actual conflicts of interest 'which might incline an investment adviser consciously or unconsciously – to render advice which is not disinterested.'" 1986 Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 23170 (April 23, 1986), 1986 SEC LEXIS 1689 (quoting Capital Gains Research, 375 U.S. at 191-92). See Kingsle 1991 SEC LEXIS 2587 at *38. A fact is material if there is a substantial likelihood that a reasonable investor would consider it important. Basic, Inc. v. Levinson, 485 U.S. 224, 231-32 (1988); TSC Industries, Inc., et.al. v. Northway Inc., 426 U.S. 4-38, 449 (1976); SEC v. Blavin 557 F. Supp. 1304, 1313-15 (E.D. Mich. 1983), Aff d. 760 F.2d 706 (6th Cir. 1985) (per Curiam) (materiality standard applied to Section 206 of Advisers Act). The standard of materiality is whether a reasonable client or prospective client would have considered the information important in deciding whether to invest with the adviser. See SEC v. Steadman, 967 F. 2d 636, 643 (D.C.

Cir. 1992). Information regarding an investment adviser's directed brokerage arrangements is material and must be disclosed to clients. Sheer Asset Management, Inc. and Arthur Sheer, Advisers Act Rel. No. 1459 (January 3, 1995), 1995 SEC LEXIS 10.

The Client hired Performance, an investment adviser, to act as a consultant in evaluating and selecting money managers. As a fiduciary to its client; Performance had a duty to disclose to its client all material information concerning potential or actual conflicts of interest, including information regarding its directed brokerage arrangements, which might have inclined Performance consciously or unconsciously to render advice which was not disinterested. Performance willfully violated Sections 206(1) and 206(2) of the Advisers Act by failing to disclose to the disinterested representatives of the Client: (1) its arrangement with a trustee of the Client to recommend advisers that had agreed to direct brokerage commission business for the benefit of East West; and (2) its soft dollar arrangement with Duff to continue to recommend Duff's advisory services in exchange for the direction of $100,000 per year in commissions to Performance's affiliated broker-dealer. Because he was a high-ranking officer of Performance, The Respondent's conduct and knowledge can be imputed to Performance to establish its violations. SEC v. Manor Nursing Centers, Inc., 45 8 F.2d 1082, 1082, 1096 n. 16 (2d Cir. 1972).

b. The Respondent willfully aided and abetted and caused performance's Violations of sections 206(1) and 206(2) of the Advisers Act

Section 203(f) of the Advisers Act authorizes the Commission to censure, suspend or bar any associated person of an investment adviser who has willfully aided, abetted, counseled, commanded, induced or procured a violation of the Advisers Act, and Section 203(I)(1)(B) gives the Commission the authority to impose a civil penalty on any such adviser or associated person.

The elements for aiding and abetting a violation of the federal securities laws include: (1) a primary violation; (2) awareness of knowledge by the aider or abettor that he was participating in an improper activity; and (3) the aider or abettor knowingly and substantially assisted the conduct that constitutes the violation. Investors Research v. SEC, 628 F.2d 168, 178 (D.C. Cir.), cert. denie 449 U.S. 919 (1980); Monsen v. Consolidated Dressed Beef Co., 579 F.2d 793, 799 (3d Cir.), cert. denie 439 U.S. 930 (1979) (citing Gould v. American-Hawaiian Steamship Co., 535 F. 2d 761, 779 (3d Cir. 1976)).

In order to demonstrate aiding and abetting liability, there must be proof offered to "establish conscious involvement in impropriety..." Mons, 579

F.2d at 799 (citing Gould, 535 F. 2d at 780). This involvement may be demonstrated "by proof that the alleged aider-abettor 'had general awareness that his role was part of an overall activity that is improper.'" Monsen, 579 F.2d at 799 (citing SEC v. Coffey 493 F.2d 1304, 13:16 (6th Cir. 1974)). Recklessness satisfies the scienter element of aiding and abetting. Rolf v. Blyth,. Easton Dillion & Co., Inc., 570 F.2d 38, 44-46 (2d Cir. 1978).

The substantial assistance element is satisfied where the respondent's actions are a "proximate" or "substantial casual factor" in bringing about the primary violation. See Russo Securities Inc. and Ferdinand Russo, Exchange Act Rel. No. 39181 (October 1, 1997), 1997 SEC LEXIS 2075, *17-18 ("proximate Cause"); Rolf, 570 F.2d at 48 ("substantial casual factor"). The Commission need not show that the assistance rendered by the aider and abettor was "the sole cause or the principal cause; it need only be one of the causes." Carole L. Hmmes, Initial Decision Rel. No. 78 (November 24, 1995), 1995 SEC LEXIS 3134 at *80.

As discussed above, Performance willfully committed primary violations of Sections 206(1) and 206(2) of the Advisers Act. The Respondent willfully aided and abetted and caused Performance's violations because he knowingly and substantially assisted the conduct that constituted the violation and he knew or was reckless in not knowing that he was participating in an improper activity. The Respondent, who was Performance's representative to the Client, substantially assisted Performance's violations because he: (1) entered into the arrangement with one of the Client's trustee to recommend only advisers who had agreed to direct brokerage to East West; and (2) entered into a soft dollar arrangement with Duff to continue to recommend Duff's advisory services to the Client in exchange for Duff's direction of brokerage commission business to Performance's affiliated broker-dealer. The Respondent knew or was reckless in not knowing that the undisclosed arrangements violated Sections 206(1) and 206(2) of the Advisers Act. He further knew or was reckless in not knowing that Performance failed to disclose to the disinterested representatives of the Client the true reasons for Performance's recommendations concerning the selection and retention of money managers and the arrangement with Duff.

5. That Section 8.E(1)(k) of the Act provides, inter alia, that the registration of a salesperson may be revoked if the Secretary of State finds such salesperson has any order entered against him after notice and opportunity for a hearing by the United States Securities and Exchange Commission arising from any fraudulent or deceptive act or a practice in violation of any statute, rule, or regulation administered or promulgated by the agency.

6. That the Respondent had notice and opportunity to contest the issues in controversy, but chose to resolve the matter with the SEC.

7. That Section 8.E(3) of the Act provides, inter alia, withdrawal of an application for registration or withdrawal from registration as a salesperson, becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the Secretary of State may determine. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Secretary of State may nevertheless institute a revocation or suspension proceeding within 2 years after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

8. That by virtue of the foregoing, the Respondent's registration as a salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E(1)(k) of the Act.

You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 ILL. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above within thirty (30) days of the receipt of this notice. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of Hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default, unless any Respondent has due notice moved for and obtained a continuance.

A copy of the Rules, promulgated under the Act and pertaining to hearings held by the Office of the Secretary of State, Securities Department, is included with this Notice.

Delivery of notice to the designated representative of any Respondent constitutes service upon such Respondent.

Dated: This 30th day of January, 2003.

JESSE WHITE
Secretary of State
State of Illinois

Attorney for the Secretary of State:
Daniel A. Tunick
Office of the Secretary of State
Illinois Securities Department
69 West Washington Street, Suite 1220
Chicago, Illinois 60602
Telephone: (312) 793-4433

Hearing Officer:
Soula J. Spyropoulos
6348 N. Cicero Ave
Chicago, Illinois 60646
Telephone: (773) 282-3400