STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

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

ORDER OF REVOCATION

TO RESPONDENT:

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

C/o Peter B. Shaeffer
Attorney at Law
30 N. LaSalle Street
Suite 2140
Chicago, Illinois 60602

WHEREAS, the above-captioned matter came on to be heard on June 11, 2003, pursuant to the Notice of Hearing dated January 30, 2003, FILED BY Petitioner Secretary of State, and the record of the matter under the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") has been reviewed by the Secretary of State or his duly authorized representative.

WHEREAS, the rulings of the Hearing Officer on the admission of evidence and all motions are deemed to be proper and are hereby concurred with by the Secretary of State.

WHEREAS, the proposed Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Soula J. Spyropoulos, Esq. in the above-captioned matter have been read and examined.

WHEREAS, the proposed Findings of Fact of the Hearing Officer are correct and are hereby adopted as the Findings of Fact of the Secretary of State:

1. Section 130.1102 of Subpart K of the Rules and Regulations under the Illinois Securities Law of 1953 [the "Rules and Regulations"] states that each respondent

shall be given a Notice of Hearing at least 45 days prior to the first date set for any hearing under the Act. Proper notice is given by depositing a Notice of Hearing with the United States Postal Service, either by certified or registered mail, return requested, or by the personal service of the Notice of Hearing, to the last known address of the Respondent.

The filing of an application for registration under Section 8 of the Act, or the offer, sale, or delivery of securities in the State of Illinois, whether effected by mail or otherwise, by any person shall be equivalent to and shall constitute an appointment of the Secretary of State by the person and the issuer of the securities to be the true and lawful attorney for the person upon whom may be served all lawful process in any action or proceeding against the person, arising out of the offer or sale of the securities. [815 ILCS 5/10(B)(1)] Section 130.1001 of Subpart J of the Rules and Regulations under the Illinois Securities Law of 1953 [the "Rules and Regulations"] provides, in part, that any notice to be served upon the Secretary of State under the Act shall be made by delivering personally to the Securities Director, or any employee of the Department designated by the Securities Director to accept such service on behalf of the Secretary of State, or by sending by registered mail or certified mail, return receipt requested, a copy of the notice to the Department. Service of any notice hereunder shall be made with the Springfield or Chicago office of the Department during regular business hours. Notice of the service of process upon the Secretary of State and a copy of the process shall, within 10 days after service is made or effected, be sent by registered or certified mail, return receipt requested, by the Department to the respondent at the last known address of the respondent. [815 ILCS 5/10(B)(2)] The Secretary of State shall keep a record of all such processes that shall show the date of service.

2. As per Group Exhibits 1, 2, and 3, on January 30, 2003, the Notice was given Respondent to Respondent's last known address by the Department's deposit of the same with the United States Postal Service via certified mail, return receipt requested. The mailing, however, was returned to the Department as unclaimed by Respondent. The Department then proceeded to obtain service upon the Secretary of State to properly serve Respondent with the Notice. Hence, on March 4, 2003, the Secretary of State was personally delivered the Notice by the Department. Further, the Department still pursuing service upon Respondent personally, on March 10, 2003, a return receipt acknowledging the service of the Notice upon Respondent via the certified mailing thereof was executed. Therefore, Respondent was served with the Notice. However, as the hearing thereon was then scheduled to occur on March 12, 2003, the first date set for hearing, a date occurring not more than 45 days after the giving of the Notice thereof to Respondent, the Notice that the Department had served upon Respondent was not then properly given or served.

On March 12, 2003, on the Department's Motion to continue hearing on the file to May 7, 2003 from March 12, 2003, the Hearing Officer executed the Order of Continuance, which Order, dated March 12, 2003 [the "March 12th Order"], continued hearing on this file to May 7, 2003 from March 12, 2003. On the same date, and on March 14, 2003, the March 12th Order providing notice of the new first date set for hearing was given Respondent to Respondent's last known address by the Department's deposit of the same with the United States Postal service via certified mail, return receipt requested. Hence, notice of the continuance was given on March 12, 2003 and on March 14, 2003, either of which dates is a date more than 45 days before the hearing date of May 7, 2003. Also, notably, on March 13, 2003, and on March 28, 2003, return receipts as to the respective services of the Order of March 12th were executed, the former of which dates is a date occurring more than 45 days before the hearing date of May 7, 2003.

The Department proceeded to serve upon the Secretary of State the Order of March 12th. Hence, the Department, on March 19, 2003, personally delivered to the Secretary of State the Order of March 12th. The Secretary of State then sent to Respondent at Respondent's last known address, via registered mail, return receipt requested, notice of the service there upon of the Order of March 12th, along with a copy of the Order. Therefore, as the hearing on this file was scheduled to occur on May 7, 2003, a date more than 45 days after any of the dates of March 12, 2003, March 14, 2003, or March 19, 2003, on which dates Respondent was given notice of the scheduled hearing date, Respondent was properly served with notice of the newly scheduled hearing date.

The Hearing Officer having been out of town on May 7, 2003, the hearing on this file was rescheduled, as per the Order of Continuance, dated May 15, 2003 [the "Order of May 15th"], continuing hearing on this file May 7, 2003 to June 11, 2003. The Order of May 15th was given Respondent to Respondent's last known address by the Department's deposit of the same with the United State Postal Service via certified mail, return receipt requested. Notably, return receipts there with were executed on May 28, 2003 and on May 29, 2003. The Department also personally delivered to the Secretary of State, on May 20, 2003, the Order of May 15th. The Secretary of State then, on the same date, gave to Respondent at Respondent's last known address, via registered mail, return receipt requested, notice of the service of the Order there upon, along with a copy of the Order.

3. Section 11.F(1) of the Act provides that the Secretary of State shall not undertake any action or impose a fine against a registered salesperson of securities within the State of Illinois for a violation of the Act without first providing the salesperson an opportunity for hearing upon less than 10 days' notice given by personal service or registered mail or certified mail, return receipt requested, to the person concerned.

Group Exhibit 3 shows that on May 15, 2003, and on May 20, 2003, Respondent was given notice of the hearing date of June 11, 2003 via his receipt of the Order of May 15th, which Order rescheduled the hearing date. More than 10 days' notice of the hearing date was given Respondent. Hence, the notice of the hearing date of June 11, 2003 was properly given Respondent. Therefore, as the Department gave proper notice of the hearing to Respondent, the Department has personal jurisdiction over Respondent.

4. Hearing on this file occurred on June 11, 2003 at 10:00 A.M. The Department, the Hearing Officer, and Respondent, personally and without counsel, were present.

5. The Department offered exhibits, identified above, each of which was received and admitted into evidence, a proper record of all proceedings having been made and preserved as required.

At the time of the hearing, Respondent had not filed and Answer. At the hearing, Respondent discussed matters presented to mitigate against the allegations of the Notice.

6. No outstanding petitions, motions, or objections exist as to this file.

7. At all material and relevant times until November 28, 2002, Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.

8. On June 17, 2002, without admitting or denying the Securities and Exchange Commission's alleged findings per their Order, Respondent consented to the entry thereof, the Order stating, in part:

    1. The United States Securities and Exchange Commission (the "SEC," or the "Commission") 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.

2. 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 mangers, and also provides peer evaluative services to investment advisers.

b. The Respondent, age 57, of 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 Duff 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 Duff's 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 expenses. 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 $100,000 of 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.

3. 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.

WHEREAS, the proposed Conclusions of Law made by the Hearing Officer are correct and are hereby adopted as the Conclusions of Law of the Secretary of State:

1. The Secretary of State has jurisdiction over the subject matter hereof pursuant to the Act.

2. Section 8.E(1)(k) of the Act provides, *inter alia,* that the registration of salespeople registered within the State of Illinois may be revoked if the Secretary of State finds that such have had entered against them after notice and an opportunity for hearing by the S.E.C. any orders arising from any fraudulent or deceptive acts or practices in violation of any statutes, rules, or regulations administered or promulgated by the Commission.

   Section 8.E(3) of the Act provides, *inter alia,* that withdrawal of an application for registration or withdrawal from registration as a salesperson becomes effective thirty (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 two (2) years after withdrawal became effective and enter a revocation or a suspension order as of the last date on which registration was effective.

3. Until November 26, 2002, Respondent had been a registered salesperson of securities in the State of Illinois. Before such date, on June 17, 2002, Respondent had had entered against him, after due notice and opportunity for hearing from the Commission, the Order of the Commission, which Order states that, based on Respondent's having failed to disclose to the subject client's disinterested representatives the facts behind (and true reasons for) Respondent's recommendations concerning the selection and retention of money managers and the conflict of interest as disclosed by Respondent's arrangement with investment adviser Duff, Respondent's actions were in contravention of, or violative of, Sections 206(1) and (2) of the Advisers Act, which Sections are rules administered or promulgated by the Commission. Respondent's actions clearly arose from fraudulent or deceptive acts or practices in violation of statutes, rules, or regulations administered or promulgated by the Commission, a self-regulatory organization registered under the Federal 1934 Act. Hence, Respondent's registration as a salesperson is subject to revocation under and by virtue of Section 8. E(1)(k) of the Act.

   Further, because Respondent withdrew his registration, or his application for registration, as a salesperson of securities in the State of Illinois on November 26, 2002, a date less than two (2) years before the date on which the Department instituted revocation proceedings against Respondent, which date is January 30, 2003, the Secretary of State may enter a revocation or suspension order as of the last date on which Respondent's registration was effective--November 26, 2002.

4. Under and by virtue of the foregoing, Respondent's registration as a salesperson of securities in the State of Illinois is subject to revocation pursuant to Sections 8.E(1)(k) and 8.E(3) of the Act.

WHEREAS, the Hearing Officer recommended that the Secretary of State should revoke the Respondent's registration as a salesperson in the State of Illinois, and the Secretary of State adopts in it's entirety the Recommendation made by the Hearing Officer.

NOW THEREFORE, IT SHALL BE AND IS HEREBY ORDERED:

1. That Leslie I. Golembo's registration as a salesperson in the State of Illinois is revoked as of November 26, 2002 pursuant to the authority provided under Sections 8.E(1)(k) and 8E(3) of the Act.

2. That this matter is concluded without further proceedings.

Dated: This 14th day of July, 2004.

JESSE WHITE
Secretary of State
State of Illinois

This is a final order subject to administrative review pursuant to the Administrative Review Law [735 ILCS 5/3-101 et seg.] and the Rules and Regulations of the Act (14 Ill. Admin. Code, Ch. 1 Sec. 130.1123). Any action for judicial review must be commenced within thirty-five (35) days from the date a copy of this Order is served upon the party seeking review.