

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, BUREAU OF SECURITIES
COMPLIANCE AND EXAMINATIONS

Docket No.: 210039 (SEC-OSC)

v.

GOLDATA COMPUTER SERVICES, INC.
d/b/a GOLDATA FINANCIAL
ELLIOT MITCHELL GOLDBERG
1931 FUNDING, LLC
567 FUNDING, LLC
442 FUNDING, LLC
803 FUNDING, LLC
LEGS 1, LLC

NOTICE OF RIGHT TO APPEAL

You have the right to appeal the attached Final Order issued by the Commonwealth of Pennsylvania, Banking and Securities Commission. ("Commission")

If you wish to appeal this Final Order, you may file a petition for review with the Commonwealth Court of Pennsylvania that complies with the format and timing requirements of Chapter 15 of the Pennsylvania Rules of Appellate Procedure. Pa.R.A.P. 1511-1561. Failure to file a petition for review within 30 days of the mailing date of this Order will result in this Final Order becoming final and unappealable. The telephone number for the Commonwealth Court is 717-255-1650.

All Commonwealth Court filings must be made in the Court's filing office in Harrisburg. Filing must be made in person, by mail as provided by general rules, or electronically via the PACFile appellate court electronic filing system. The address of the Court is as follows:

Pennsylvania Judicial Center
601 Commonwealth Ave.
Suite 2100
P.O. Box 69185
Harrisburg, PA 17106

A party may submit a request to the Commission for rehearing or reconsideration no later than fifteen (15) days after the decision mailing date in accordance with section 35.241 of the General Rules of Administrative Practice and Procedure. 1 Pa. Code § 35.241. However, submitting a reconsideration request does not extend the time limit for filing a petition for review with the Commonwealth Court.

You may wish to consult an attorney regarding your legal rights.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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DEPARTMENT OF BANKING AND
SECURITIES, BUREAU OF SECURITIES
COMPLIANCE AND EXAMINATIONS

Docket No.: 210039 (SEC-OSC)

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GOLDATA COMPUTER SERVICES, INC.
d/b/a GOLDATA FINANCIAL
ELLIOT MITCHELL GOLDBERG
1931 FUNDING, LLC
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442 FUNDING, LLC
803 FUNDING, LLC
LEGS 1, LLC

FINAL ORDER

AND NOW, the Pennsylvania Banking and Securities Commission ("Commission") issues this Final Order in the matter of Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities Compliance and Examinations v. Goldata Computer Services, Inc. d/b/a Goldata Financial, Elliot Mitchell Goldberg, 1931 Funding, LLC, 567 Funding, LLC, 442 Funding, LLC, 803 Funding, LLC and LEGS 1, LLC; Docket No. 210039 (SEC-OSC).

The Commission reviewed documents of record in this matter, including the proposed report and proposed order of Hearing Officer Monty Batson, which are attached, and which were served upon the parties by letter dated November 29, 2023, pursuant to 1 Pa. Code § 35.207. Respondents filed a brief on exceptions to the proposed report and proposed order. The Bureau of Securities Compliance and Examinations ("Bureau") filed a brief in opposition to the exceptions. The Commission reviewed the exceptions and took them into consideration herein.

In this Final Order, the Commission concludes that the assessment proposed in the hearing officer's proposed report and proposed order is supported by the evidence of record and the law.

Accordingly, the Commission hereby **ORDERS** the hearing officer's proposed report and proposed order to be adopted as written, with one point of clarification. On page 67 of the proposed report, the hearing officer includes the following facts in support of finding that the Bureau met its burden in proving all seventeen counts of violations charged of Section 305(a)(ix) and 10 Pa. Code§ 305.019(c)(3)(xi):

The evidence presented at the hearing establishes that as Respondent Goldberg received compensation for his management of Respondent 1931, Respondent 567, Respondent 442, Respondent 803, and Respondent LEGS, Respondent Golddata failed to act as a fiduciary and acted primarily for its own benefit by recommending the purchase of the 1931 Notes, the 567 Notes, the 442 Notes, the 803 Notes and the LEGS Units. (Hearing Officer's Proposed Report, p. 67)

The Commission has determined that this finding should have been made on page 66 in support of concluding that the Bureau met its burden in proving all seventeen counts of the violations of Section 305(a)(ix) and 10 Pa. Code§ 305.019(a). Moreover, the Commission finds that the hearing officer's findings of fact enumerated in paragraphs 131-132, 136-142 and 153 fully support the conclusion of law enumerated in paragraph 24 in proving this violation.

This Final Order is issued pursuant to the final adjudication authority granted to the Commission under Section 1122-A of the Department of Banking and Securities Code, 71 P.S. § 733-1122-A.

This Final Order shall be effective 30 days after the Commission mails it.



BY ORDER OF THE COMMISSION:

Redacted


James R. Blery

Chair

Pennsylvania Banking and Securities Commission

So ORDERED this 22nd day of February, 2024

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, BUREAU OF SECURITIES
COMPLIANCE AND EXAMINATIONS

Docket No.: 210039 (SEC-OSC)

v.

GOLDATA COMPUTER SERVICES, INC.
d/b/a GOLDATA FINANCIAL
ELLIOT MITCHELL GOLDBERG
1931 FUNDING, LLC
567 FUNDING, LLC
442 FUNDING, LLC
803 FUNDING, LLC
LEGS 1, LLC

CERTIFICATE OF SERVICE

On behalf of the agency, I certify that I have this day caused to be served a copy of the foregoing *Final Order* upon the following persons pursuant to 1 Pa. Code § 33.31:

BY CERTIFIED, EMAIL AND
FIRST-CLASS MAIL:

William W. Uchimoto, Esq.
William W. Uchimoto Law
613 Cascades Court
Berwyn, PA 19312
wwuchimoto@gmail.com
(Attorney for Respondents)

VIA HAND DELIVERY:

David Murren, Esquire
Seamus Dubbs, Esquire
Assistant Counsels
PA Department of Banking and Securities
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

Dated this 29th day of February 2024

Redacted

Linnea Freeberg, Docket Clerk
PA Banking and Securities Commission
17 N. Second Street, Suite 1300
Harrisburg, PA 17101
Telephone: (717) 787-5783



FILED
2023 NOV 29 PM 12:30
PA DEPARTMENT OF
BANKING AND SECURITIES

November 29, 2023

David Murren, Esquire
Seamus D. Dubbs, Esquire
Assistant Counsels
PA Department of Banking and Securities
17 North Second Street, Suite 1300
Harrisburg, PA 17101

William W. Uchimoto, Esquire
Attorney for Respondents
William W. Uchimoto Law
613 Cascades Court
Berwyn, PA 19312

Re: *Golddata Computer Services, Inc. d/b/a Golddata Financial, Elliot Mitchell
Goldberg, 1931 Funding, LLC, 567 Funding, LLC, 442 Funding, LLC, 803
Funding, LLC, LEGS 1, LLC
Docket No. 210039 (SEC-OSC)*

Dear Parties:

Please find enclosed a copy of the proposed report and proposed order prepared by the presiding officer in the above-captioned matter, Monty Batson. The Banking and Securities Commission ("Commission") is serving this document as required by the General Rules of Administrative Practice and Procedure at 1 Pa. Code § 35.207.

Pursuant to 1 Pa. Code § 35.211, you may appeal the proposed report to the Commission by filing a brief on exceptions within thirty (30) days from the date of this letter in care of Linnea Freeberg, Docket Clerk, 17 N. 2nd Street, 13th Floor, Harrisburg, PA 17101. Briefs opposing exceptions may be filed within 20 days after briefs on exceptions are due.

Any brief shall comply with the requirements of 1 Pa. Code § 35.212, except that the Commission requires the filing of an original and one (1) copy of each brief.

Pursuant to 1 Pa. Code § 35.226(a)(2), the Commission will review the proposed report and proposed order and issue a Final Order, whether or not exceptions are filed.

For the Commonwealth of Pennsylvania
Banking and Securities Commission,

Redacted ~

Michael J. Gennett, Esquire
Counsel to the Commission

Enclosure

FILED

BEFORE THE SECRETARY OF BANKING AND SECURITIES
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

2023 NOV 28 AM 9:21
PA DEPARTMENT OF
BANKING AND SECURITIES

Department of Banking and Securities, :
Bureau of Securities Compliance and :
Examinations :

Petitioner :

Docket No. SEC - 21-0039

vs. :

Goldata Computer Services, Inc. :
d/b/a Goldata Financial, :
Elliot Mitchell Goldberg, :
1931 Funding, LLC, :
567 Funding, LLC, :
442 Funding, LLC, :
803 Funding, LLC, :
LEGS 1, LLC :

Respondents :

PROPOSED REPORT

Monty Batson
Hearing Officer

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE
OFFICE OF HEARING EXAMINERS
P.O. Box 2649
Harrisburg, PA 17105-2649

HISTORY

This case comes before the Secretary of Banking and Securities ("Secretary") on a two hundred and six count Order to Show Cause ("OTSC") filed on June 14, 2021, by the Department of Banking and Securities, Bureau of Securities Compliance and Examinations ("Department") against Goldata Computer Services, Inc., dba Goldata Financial ("Respondent Goldata"), Elliot Mitchell Goldberg ("Respondent Goldberg"), 1931 Funding, LLC ("Respondent 1931"), 567 Funding, LLC ("Respondent 567"), 442 Funding, LLC ("Respondent 442"), 803 Funding, LLC ("Respondent 803") and LEGS 1, LLC ("Respondent LEGS") and requests that certain penalties and relief be granted pursuant to its authority under the Pennsylvania Securities Act of 1972 ("Act").

Generally, the OTSC charged Respondents with (1) engaging in dishonest, unethical, deceptive, fraudulent, and manipulative practices, (2) failing to disclose material facts, (3) making unlawful statements, (4) violating custody requirements regarding client funds, (5) violating securities registration requirements, (6) violating investment advisor requirements, (7) violating reporting requirements and supervising of agents, investment advisor representatives, and employees. All these charges are related to Respondents' sale of various financial instruments allegedly in violation of various sections of the Pennsylvania Securities Act of 1972 ("Act"), Act of December 5, 1972, P.L. 1280 No. 284, *as amended*, 70 P.S. §§ 1-101-1-705.

On September 15, 2021, Respondents, through their Counsel at the time, Merritt A. Cole, Esq., and Michael E. Markovitz, Esq., filed an Answer to the OTSC. On June 6, 2022, the Department served an Application for Subpoena to Produce Documentary Evidence on PNC Bank and all Respondents. On June 13, 2022, Respondents filed a Memorandum Contesting Application for Subpoena or in the Alternative Dismissal of the OTSC and the Department subsequently filed a Response. By Order dated July 1, 2022, the undersigned hearing officer denied Respondents' Motion and scheduled a pre-hearing conference, commencing on September 8, 2022, which was held as

scheduled. On September 1, 2022, Respondents and the Department filed Pre-Hearing Statements and Respondents filed a Memorandum of Law in Support of Respondents' Rule 1023.1 Motion to Dismiss the OTSC and Impose Sanctions on the Department and its attorneys. On September 7, 2022, Respondent filed Motion to Strike the Department's Expert Report and Testimony.

By Order dated September 19, 2022, the undersigned hearing officer denied Respondents' Motion to Dismiss the OTSC and Motion to Strike the Department's Expert Report and the testimony from the Department's expert and ordered the parties to confer and prepare a written joint stipulation of facts, which included facts admitted in Respondents' Answer to the OTSC and that the parties confer and prepare a written stipulation of the admissibility of identified exhibits that would be offered into evidence by September 30, 2022.

By Notice of Hearing, dated September 20, 2022, the hearing, was scheduled for December 12th-13th and if necessary, December 15th, 2022.¹ The hearing was held, by videoconference, as scheduled. David Murren, Esq. and Seamus Dubbs, Esq. represented the Department at the hearing and William Uchimoto, Esq., represented the Respondents. The Department and Respondents presented their cases through documentary evidence and witness testimony.

At the close of the hearing, the parties opted to forgo closing arguments and opted instead to file post-hearing briefs, which were timely received by the docket clerk. The Notes of Testimony ("N.T.") were filed on January 30, 2023. On July 21, 2023, the Department filed a Petition to Reopen the Record for the purpose of taking additional evidence regarding whether the Department was required to prove scienter in connection with a violation of Section 401(b) of the Act. In that petition, the Department asked the undersigned hearing officer to take judicial notice that on July 19, 2023, the Pennsylvania Supreme Court issued its decision in *Mimi Investors, LLC*

¹ The hearing was concluded without the need of convening on December 15, 2022.

v. Paul K. Tufano, David Crocker, Dennis Cronin, and Neil Matheson, No. 57 MAP 2022. The decision held that proof of scienter is not required when alleging a violation of Section 401(b) of the 1972 Act. This holding of law is the first time that the Pennsylvania Supreme Court has addressed the issue of proof of scienter under Section 401(b) of the 1972 Act. This matter is now ripe for disposition.

FINDINGS OF FACTS

Stipulated Facts:²

1. At all times relevant and material, Respondent Goldata (CRD #134566), was a Pennsylvania corporation with an address at Redacted

Redacted (DoBS Exhibit 108, ¶13).

2. At all times relevant and material, Respondent Goldberg (CRD #4923485) was an individual with an address at Redacted

At all times material, Respondent Goldberg was the president and owner of Respondent Goldata. (*Id.* ¶14).

3. At all times relevant and material, Respondent 1931 was a Pennsylvania limited liability company with an address at Redacted

(*Id.* ¶15).

4. At all times material, Respondent Goldberg was the manager of Respondent 1931. (*Id.*)

5. At all times relevant and material, Respondent 567 was a Pennsylvania limited liability company with an address at Redacted

(*Id.* ¶16).

6. At all times material, Respondent Goldberg was the manager of Respondent 567. (*Id.*)

7. At all times relevant and material, Respondent 442 was a Pennsylvania limited liability company with an address at Redacted

(*Id.* ¶17).

² The parties stipulated to several findings of facts and to the authenticity and admissibility of several exhibits. (See DoBS Exhibit 108).

8. At all times material, Respondent Goldberg was the manager of Respondent 442 (*Id.*).

9. At all times relevant and material, Respondent 803 was a Pennsylvania limited liability company with an address at Redacted (*Id.* ¶18).

10. At all times material, Respondent Goldberg was the manager of Respondent 803. (*Id.*)

11. At all times relevant and material, Respondent LEGS was a Texas limited liability company with an address at Redacted (*Id.* ¶19).

12. At all times material, Respondent Goldata was the manager of Respondent LEGS. (*Id.*)

13. From in or about June 2005 to June 30, 2022, Respondent Goldata has been registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301, as an investment advisor. (*Id.* ¶20).

14. From in or about June 2005 to June 30, 2022, Respondent Goldberg has been registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301, as an investment advisor representative of Respondent Goldata. (*Id.* ¶21).

15. At all times relevant and material, 1 Global Capital, LLC, aka 1st Global Capital, LLC, aka 1st Global Capital Financial Services (“Global”) was a Florida limited liability company, with an address at 1250 East Hallandale Beach Blvd., Suite 409, Hallandale Beach, FL 33009. (*Id.* ¶22).

16. At all times relevant and material, Global was engaged in the business of providing funding known as a Merchant Cash Advance Transaction (“MCAT”) as an alternate form of financing to traditional banking and banking institutions. (*Id.* ¶23).

17. At all times material, Global offered for sale Memoranda of Indebtedness (“Global Notes”) to individuals. (*Id.* ¶24).

18. From in or about March 2017 through November 2017, Respondent Goldberg participated in effecting the offer and sale of at least 14 Global Notes to at least 14 Pennsylvania residents (“PA Residents”) for an aggregate amount of at least \$646,000. (*Id.* ¶25).

19. For Respondent Goldberg’s participation in the sale of Global Notes, Respondent Goldberg received \$9,293 in compensation from American Alternative Investments, LLC (“AAI”), which acted as the marketing agent for Global. (*Id.* ¶26).

20. Global is the “issuer” of the Global Notes within the meaning of Section 102(l) of the Pennsylvania Securities Act of 1972 (“Act”), 70 P.S. § 1-102(l). (*Id.* ¶27).

21. On July 27, 2018, Global filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Florida. (*Id.* ¶28).

22. To date, Global has been unable to fulfill its financial obligations to some or all the PA Residents who purchased Global Notes, and Global has consequently defaulted on payments to some or all of the PA Residents. (*Id.* ¶29).

23. To date, the bankruptcy trustee has returned to the PA Residents at least 44% of the principal they invested into Global. (*Id.* ¶30).

24. Robert Harmelin (“Harmelin”) was an accredited investor when he purchased a Global Note. (*Id.* ¶31).

25. Harmelin has received all payments due on his Global Note from Global. (*Id.* ¶32).

26. From in or about March 2018 until June 14, 2021, Respondent 1931 offered for sale 1931 notes (“1931 Notes”) to individuals (“1931 Purchasers”). (*Id.* ¶33).

27. The Private Placement Memorandum (“PPM”) for Respondent 1931 states that “proceeds from the sale of the [1931] Notes” were “used for providing funds to MCA [“Merchant Cash Advance”] funding firms.” (*Id.* ¶34).

28. From in or about March 2018 until June 14, 2021, Respondent 1931 offered and sold 1931 Notes memorialized in two-hundred-forty-seven (247) PPMs to 67 individuals within the United States for an aggregate amount of \$16,097,218. The PPMs state the price per note is \$10,000. As of June 14, 2021, \$6,796,398 in principal and interest (P&I) has been returned to those individuals. (*Id.* ¶35).

29. From in or about March 2018 until June 14, 2021, Respondent 1931 offered and sold at least seven-hundred sixteen (716) 1931 Notes to at least 28 PA Residents for an aggregate amount of at least \$7,166,000. (*Id.* ¶36).

30. From on or about March 2018 until June 14, 2021, Respondent 1931 offered and sold approximately three-hundred sixty-nine (369) 1931 Notes to at least 7 individuals that were clients of Respondent Goldata’s stock portfolio advisory services at the time of their purchase (“Respondent Goldata Clients”), for an aggregate amount of \$3,699,000. (*Id.* ¶37).

31. At least one (1) 1931 Purchaser was aged 60 or more at the time the 1931 Purchaser purchased the 1931 Notes. (*Id.* ¶38).

32. The term of the 1931 Notes was from one month to 5 years. (*Id.* ¶39).

33. The rate of return for the 1931 Notes ranged from 6% to 20%. (*Id.* ¶40).

34. The 1931 Notes described above are “securities” within the meaning of Section 102(t) of the 1972 Act, 70 P.S. §1-102(t). (*Id.* ¶41).

35. Respondent 1931 is the “issuer” of the 1931 Notes within the meaning of Section 102(l) of the 1972 Act, 70 P.S. § 1-102(l). (*Id.* ¶42).

36. On or about April 12, 2018, Respondent 1931 filed a Notice of Exempt Offering of Securities pursuant to Rule 506(c) of Regulation D. (*Id.* ¶43).

37. The 1931 Notes were not registered under Section 201 of the 1972 Act, 70 P.S. § 1-201. (*Id.* ¶44).

38. Harmelin was an accredited investor when he purchased the 1931 Notes. (*Id.* ¶45).

39. Harmelin has received all payments of principal and interest due on his 1931 Notes. (*Id.* ¶46).

40. From in or about July 2019 until July 2020, Respondent 567 offered for sale notes (“567 Notes”) to individuals (“567 Purchasers”). (*Id.* ¶47).

41. The PPM for Respondent 567 states that Respondent 567 “was formed for the purpose of providing funds to MCA funding firms...that provide Merchant Cash Advances (MCA) to Merchants that they identify, underwrite and service.” (*Id.* ¶48).

42. From in or about July 2019 until July 2020, Respondent 567 offered and sold 567 Notes memorialized in thirty-one (31) PPMs to sixteen (16) 567 Purchasers within the United States for an aggregate amount of \$1,329,600. The PPMs state the price per note is \$10,000. As of June 14, 2021, \$191,760 in P&I has been returned to those individuals. (*Id.* ¶49).

43. From in or about September 2019 until July 2020, Respondent 567 offered and sold at least fifty (50) 567 Notes to at least 7 PA Residents for an aggregate amount of at least \$500,000. (*Id.* ¶50).

44. From in or about September 2019 until July 2020, Respondent 567 offered and sold at least six (6) 567 Notes to at least two individuals that were Respondent Goldata Clients at the time of their purchase, for an aggregate amount of at least \$64,000. (*Id.* ¶51).

45. At least one (1) 567 Purchaser was aged 60 or more at the time the 567 Purchaser purchased the 567 Notes. (*Id.* ¶52).

46. The term of the 567 Notes was from one month to 5 years. (*Id.* ¶53).

47. The rate of return for the 567 Notes ranged from 6% to 16%. (*Id.* ¶54).

48. The 567 Notes are “securities” as that term is defined in Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t). (*Id.* ¶55).

49. Respondent 567 is the “issuer” of the 567 Notes within the meaning of Section 102(l) of the 1972 Act, 70 P.S. § 1-102(l). (*Id.* ¶56).

50. On or about August 21, 2019, Respondent 567 filed a Notice of Exempt Offering of Securities pursuant to Rule 506(b) of Regulation D. (*Id.* ¶57).

51. The 567 Notes were not registered under Section 201 of the 1972 Act, 70 P.S. § 1-201. (*Id.* ¶58).

52. From in or about June 2018 until July 2019, Respondent 442 offered for sale notes (“442 Notes”) to individuals (“442 Purchasers”). (*Id.* ¶59).

53. The PPM for Respondent 442 states that Respondent 442 “was formed for the purpose of providing funds to MCA funding firms...that provide Merchant Cash Advances (MCA) to Merchants that they identify, underwrite and service.” (*Id.* ¶60).

54. From in or about June 2018 until June 2019, Respondent 442 offered and sold 442 Notes memorialized in thirty-six (36) PPMs to twenty-seven (27) 442 Purchasers within the United States for an aggregate amount of \$1,152,500. The PPMs state the price per note is \$10,000. As of June 14, 2021, all P&I has been returned to those individuals. (*Id.* ¶61).

55. From in or about July 2018 until June 2019, Respondent 442 offered and sold at least thirty-seven (37) 442 Notes to at least 8 PA Residents for an aggregate amount of at least \$370,000. (*Id.* ¶62).

56. From in or about July 2018 until June 2019, Respondent 442 offered and sold at least seven (7) 442 Notes to at least 5 individuals that were Respondent Goldata Clients at the time of their purchase, for an aggregate amount of \$77,500. (*Id.* ¶63).

57. At least one (1) 442 Purchaser was aged 60 or more at the time the 442 Purchaser purchased the 442 Notes. (*Id.* ¶64).

58. The term of the 442 Notes was from 6 months to 2 years. (*Id.* ¶65).

59. The rate of return for the 442 Notes ranged from 6% to 16%. (*Id.* ¶66).

60. The 442 Notes described above are “securities” within the meaning of Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t). (*Id.* ¶67).

61. Respondent 442 is the “issuer” of the 442 Notes within the meaning of Section 102(l) of the 1972 Act, 70 P.S. § 1-102(l). (*Id.* ¶68).

62. On or about June 3, 2019, Respondent 442 filed a Notice of Exempt Offering of Securities pursuant to Rule 506(b) of Regulation D. (*Id.* ¶69).

63. The 442 Notes were not registered under Section 201 of the 1972 Act, 70 P.S. § 1-201. (*Id.* ¶70).

64. From in or about July 2020 until June 14, 2021, Respondent 803 offered for sale 803 notes (“803 Notes”) to individuals (“803 Purchasers”). (*Id.* ¶71).

65. The PPM for Respondent 803 states that Respondent 803 “was formed for the purpose of providing funds to MCA funding firms...that provide Merchant Cash Advances (MCA) to Merchants that they identify, underwrite and service.” (*Id.* ¶72).

66. From in or about July 2020 until June 14, 2021, Respondent 803 offered and sold 803 Notes memorialized in forty-one (41) PPMs to twenty-five (25) 803 Purchasers within the United States for an aggregate amount of \$1096,875. The PPMs state the price per note is \$10,000. (*Id.* ¶73).

67. From in or about July 2020 until June 14, 2021, Respondent 803 offered and sold at least three (3) 803 Notes to at least 2 PA Residents, who were also Respondent Goldata Clients at the time of their purchase, for an aggregate amount of at least \$30,000. (*Id.* ¶74).

68. At least one (1) 803 Purchaser was aged 60 or more at the time the 803 Purchaser purchased the 803 Notes. (*Id.* ¶75).

69. The term of the 803 Notes was from one month to 5 years. (*Id.* ¶76).

70. The rate of return for the 803 Notes ranged from 6% to 20%. (*Id.* ¶77).

71. The 803 Notes described above are “securities” within the meaning of Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t). (*Id.* ¶78).

72. Respondent 803 is the “issuer” of the 803 Notes within the meaning of Section 102(l) of the 1972 Act, 70 P.S. § 1-102(l). (*Id.* ¶79).

73. On or about August 25, 2020, Respondent 803 filed a Notice of Exempt Offering of Securities pursuant to Rule 506(b) of Regulation D. (*Id.* ¶80).

74. The 803 Notes were not registered under Section 201 of the 1972 Act, 70 P.S. § 1-201. (*Id.* ¶81).

75. From in or about November 2016 until December 2016, Respondent LEGS offered for sale limited liability company units in Respondent LEGS (“LEGS Units”) to individuals (“LEGS Purchaser”). (*Id.* ¶82).

76. The PPM for Respondent LEGS states that proceeds from the sale of the LEGS Units would be used to purchase interests in investment funds that would acquire life settlements. (*Id.* ¶83).

77. From in or about November 2016 until December 2016, Respondent LEGS offered and sold the LEGS Units to at least 2 PA Residents for an aggregate amount of \$200,000. (*Id.* ¶84).

78. In or about December 2016, Respondent LEGS offered and sold the LEGS Units to at least 1 individual that was a Respondent Goldata Client at time of their purchase, for an aggregate amount of \$50,000. (*Id.* ¶85).

79. At least one (1) LEGS Purchaser was aged 60 or more at the time the LEGS Purchaser purchased the LEGS Units. (*Id.* ¶86).

80. The LEGS Units described above are “securities” within the meaning of Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t). (*Id.* ¶87).

81. Respondent LEGS is the “issuer” of the LEGS Units within the meaning of Section 102(l) of the 1972 Act, 70 P.S. § 1-102(l). (*Id.* ¶88).

82. On or about November 22, 2016, Respondent LEGS filed a Notice of Exempt Offering of Securities pursuant to Rule 506(b) of Regulation D. (*Id.* ¶89).

83. Respondent Golddata’s fiscal year ends on June 30. (*Id.* ¶90).

84. Respondent 1931, Respondent 567, Respondent 442, Respondent 803, and Respondent LEGS have separate operating agreements and bank accounts. (*Id.* ¶91).

85. Respondent Goldberg is the sole member of Respondent 1931, Respondent 567, Respondent 442, Respondent 803, and Respondent LEGS. (*Id.* ¶92).

86. No note holders were a member of Respondent 1931, Respondent 567, Respondent 442, Respondent 803, and Respondent LEGS. (*Id.* ¶93).

87. Each note holder received a private placement memorandum (“PPM”) and signed a subscription agreement with the LLC that issued the note to the note holder. (*Id.* ¶94).

88. Each LLC PPM contained a Disclaimer disclosing: “The Subscriber understands that Elliot Goldberg is a Registered Investment Advisor and may have advised them about investment opportunities in the past, but that this offering is made by an entity that Elliot Goldberg controls. Because of this, the Subscriber should not rely on the advice

of Elliot Goldberg or any of his affiliate organizations to determine the suitability of the investment for them. Subscriber should seek out independent counsel for determining whether or not to subscribe to the offering.” (*Id.* ¶95).

89. Each LLC PPM contained a further disclosure statement: “This booklet contains documents that must be read, executed and returned if you wish to invest in [name of LLC], a Pennsylvania limited liability company (the “Company”). You should consult with an attorney, accountant, investment advisor or other advisor regarding an investment in the Company and its suitability for you.” (*Id.* ¶96).

90. Each LLC PPM contained a further disclosure statement: “Offering Memorandum Advice. You have either consulted your own investment adviser, attorney or accountant about the investment and proposed purchase of a Note and its suitability to you, or chosen not to do so, despite the recommendation of that course of action by the Manager. Any special acknowledgement set forth below with respect to any statement contained in the Offering Memorandum shall not be deemed to limit the generality of this representation and warranty.” (*Id.* ¶97).

91. Each LLC subscription agreement contained a provision stating: “Suitability. You have evaluated the risks involved in investing in the Promissory Notes and have determined that the Promissory Notes are a suitable investment for you. Specifically, the aggregate amount of the investments you have in, and your commitments to all similar investments that are illiquid is reasonable in relation to your net worth, both before and after the subscription for and purchase of the Promissory Notes pursuant to this Agreement.” (*Id.* ¶98).

ADDITIONAL FINDINGS OF FACTS

92. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Pennsylvania Securities Act of 1972 ("Act").

93. The Bureau of Securities Compliance and Examinations ("Bureau") is primarily responsible for administering and enforcing the Act for the Department.

94. The Bureau operates from the Department's main office located at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

95. As the president of Respondent Goldata, Respondent Goldberg controlled Respondent Goldata. (N.T. Day 1, P.109-110).

96. As the president of Respondent Goldata, Respondent Goldberg acted as an affiliate of Respondent Goldata within the meaning of Section 102(b) of the Act. (N.T. Day 1, P.109-110)

97. Global Notes are securities within the meaning of Section 102(t) of the Act.

98. Jeffrey Soderstedt, the Director of Corporation Finance for the Department, certified that the Department does not have any records (that the department maintains for securities, registrations, and exemptions) in possession regarding registrations or exemptions for Global Notes. (DoBS Exhibit 104; N.T. 64-65)

99. Nathan Houtz is a securities compliance examiner with the Department. (N.T. 39)

100. Mr. Houtz has held that position for about four and a half years. (N.T. 39)

101. Mr. Houtz has conducted approximately twenty-five investigations involving the sale of securities by unregistered persons or entities and fraud cases and about ten to twelve of those cases involved merchant cash advances. (N.T. 40-41)

102. Mr. Houtz also conducted about five to seven investigations involving merchant case advances that involved I Global Capital and Global Notes. (N.T. 41)

103. Mr. Houtz was assigned to investigate this matter in the summer of 2022. (N.T. 41)

104. In performing his investigation, he obtained numerous documents supplied by Respondents in response to a Request for Information. (N.T. 42-43)

105. More specifically, as part of the Department's RFI dated November 22, 2019, Respondent 1931 submitted two unaudited balance sheets dated December 31, 2019, and November 30, 2019. (N.T. 51-51)

106. A search by Mr. Houtz for a CRD in the FINRA database did not identify that Respondent Goldberg was ever registered as an agent of Global. (N.T. 47)

107. As manager of Respondent 1931, Respondent Goldberg controlled Respondent 1931 Funding. (N.T. 109-110)

108. As manager of Respondent 567, Respondent Goldberg controlled Respondent 567 Funding. (N.T. 109-110)

109. As manager of Respondent 442, Respondent Goldberg controlled Respondent 442 Funding. (N.T. 109-110)

110. As manager of Respondent 803 Respondent Goldberg controlled Respondent 803 Funding. (N.T. 109-110)

111. As manager of Respondent LEGS, Respondent Goldberg controlled Respondent LEGS Funding. (N.T. 109-110)

112. As part of the Department's RFI dated November 22, 2019, Respondent 1931 submitted two unaudited balance sheets dated December 31, 2019, and November 30, 2019. (N.T. 51-52)

113. Respondent Goldata provided investment advisory services, including offering Global Notes for a fee to Goldata Clients. (N.T. 284-85)

114. Respondent Goldata employed TD Ameritrade as a third-party custodian. (N.T. 284-85)

115. The term of the Global Notes was nine (9) months, and the indebtedness would automatically rollover into a new indebtedness after nine months, unless the Global Investor provided written notice of termination at least 30 days before the maturity date of the Global Note. (DoBS-3, Bates 15-23, 45-53, 62-71, 78-87, 117-25, 152-61, 178-86, 196-205, 217-25, 237-45, 261-69, 303-04, 323-31, 344-52)

116. Global assigned interest rates at its discretion based on its regularly collected amounts received from the merchant cash advance transactions. (DoBS-3, Bates 17)

117. Respondent Goldberg met with Global's chief financial officer, head of marketing, head of underwriting, and head of collections prior to offering the Global Notes to Global Investors. (N.T. 276, 278)

118. Respondent Goldberg also spoke with Global's corporate counsel regarding the Global Notes. (N.T. 279-81)

119. Respondent Goldberg contacted potential investors and provided those potential investors with information regarding opportunities to invest in the Global Notes. (N.T. 111, 276)

120. Respondent Goldberg would also respond to questions from potential investors about the investment opportunity in the Global Notes. (N.T. 111-12, 354)

121. Respondent Goldberg provided both marketing brochures and offering materials regarding the Global Notes to Global Investors. (DoBS-11; N.T. 111, 275-76)

122. The Global marketing brochures and offering materials did not disclose the financial condition of Global. (DoBS-11)

123. The Global marketing brochures and offering materials did not fully disclose the financial risk of investing in the Global Notes. (DoBS-11)

124. The Global marketing brochures and offering materials did not disclose the identity of Global's corporate officers or leadership. (DoBS-11)

125. Respondent Goldberg would assist the Global Investors in filling out the paperwork to purchase Global Notes. (N.T. 276, 354)

126. Respondent Goldberg received subscription agreements and other paperwork from Global Investors, and he would forward that documentation to American Alternative Investments, LLC ("AAI") to complete the purchase of the Global Notes. (N.T. 112, 354)

127. Respondent Goldberg completed and signed Global Note subscription forms as the "Marketing Partner/Fund Manager." (DoBS-3, Bates 8, 37, 56, 73, 104, 127, 169, 190, 207, 227, 249, 280, 312, 333; N.T. 46).

128. Respondent Goldberg continued to correspond with the Global Investors about their investment after they purchased the Global Notes. (N.T. 113-114)

129. Respondent Goldberg was not registered pursuant to Section 301 of the 1972 Act as an agent of either Global or AAI. (N.T. 47)

130. Respondent 1931, Respondent 567, Respondent 442, Respondent 803 and Respondent LEGS ("Goldberg LLCs") were formed for the purpose of aggregating funds from multiple investors in order to provide investment funds to MCA Funding Firms that, in turn, provided MCAs to merchants ("Merchants"). (DoBS-27; DoBS-32; DoBS-35; DoBS-54; DoBS-90; DoBS-91; DoBS-92; DoBS-93)

131. Respondent Goldberg testified that he began soliciting Goldberg LLC Investors for the Goldberg LLCs in order to be able to increase the Goldberg LLCs ability to provide investment funds to the MCA Funding Firms. (N.T. 357)

132. Respondent Goldberg testified that, if the investments in the MCA Funding Firms were successful, the Goldberg LLCs would be able to repay their investors; but if the investments were unsuccessful, the investors would share in the loss. (N.T. 357-358)

133. The Goldberg LLCs entered into master participation agreements ("MPAs") with the MCA Funding Firms to fund the MCAs provided by the MCA Funding Firms to Merchants. (DoBS-103)

134. The MPAs entitle the Goldberg LLCs to receive a percentage of the MCA Funding Firms' daily repayments on the MCAs. (DoBS-103)

135. The Goldberg LLC PPMs did not disclose the identities and operating histories of the MCA Funding Firms to potential Goldberg LLC Investors. (DoBS-90, Bates 2190-95; DoBS-91, Bates 7811-17; DoBS-92, Bates 10442-48; DoBS-93, Bates 11482-88; N.T. 65-73, 120, 296- 97)

136. As the sole member and manager of the Goldberg LLCs, Respondent Goldberg was entitled to and received compensation for participating in the funding of MCAs by the MCA Funding Firms. (DoBS-93, Bates 11494; DoBS-91, Bates 7823; DoBS-90, Bates 2198; DoBS-92, Bates 10454; DoBS-43, Bates 1297; N.T. 123, 126-27, 139-41, 144-48, 355-56)

137. Respondent Goldberg's management fee as the sole member of the Goldberg LLCs was, "[t]en percent (10%) of all funds received from the MCA Firms whom the Company advances investment capital." (DoBS-93, Bates 11494; DoBS-91, Bates 7823; DoBS-90, Bates 2198; DoBS-92, Bates 10454; DoBS-43, Bates 1297; N.T. 123, 126-27, 139-41, 144-48, 355-56)

138. Respondent Goldberg provided spreadsheets to the Bureau which detailed the compensation to which Respondent Goldberg was entitled from the Goldberg LLCs as a result of the offer and sale of Goldberg LLC Notes to Goldata Clients. (DoBS-95; N.T. 52-56, 129-32, 134, 139-41; DoBS-20; N.T. 76-78; DoBS-57; DoBS-59)

139. As the managing member of 1931 Funding, Respondent Goldberg was entitled to at least \$1,377,822 in compensation through management fees. (Ans. to OSC ¶ 43)

140. As the managing member of 567 Funding, Respondent Goldberg was entitled to at least \$19,158 in compensation through management fees. (Ans. to OSC ¶ 57)

141. As the managing member of 442 Funding, Respondent Goldberg was entitled to at least \$502,884 in compensation through management fees. (Ans. to OSC ¶ 72)

142. As the managing member of 803 Funding, Respondent Goldberg was entitled to at least \$241,983 in compensation through management fees. (Ans. to OSC ¶ 85)

143. Respondent Goldberg signed each 1931 Note on behalf of 1931 Funding. (DoBS-93)

144. Respondent Goldberg signed each 442 Note on behalf of 442 Funding. (DoBS-90)

145. Respondent Goldberg signed each 803 Note on behalf of 803 Funding. (DoBS-92)

146. Respondent Goldberg offered the Goldberg LLC Notes for sale to Golddata Clients. (N.T. 114, 362)

147. At least one Golddata Client directly transferred funds from a Golddata investment advisory account to purchase at least one 1931 Note. (DoBS-18; DoBS-20; DoBS-93, Bates 21924-62; DoBS-99, Bates 23324-26)

148. Respondent Goldberg maintained a publicly accessible LinkedIn webpage that listed Goldberg as the Manager of 1931 Funding, 442 Funding, and 567 Funding. (DoBS-81, N.T. 59)

149. Respondent Goldberg's LinkedIn webpage was active during the time of the offer and sale of the Goldberg LLC Notes. (N.T. 117)

150. Respondent Goldberg's LinkedIn webpage also stated that 1931 Funding, 442 Funding, 567 Funding, and 803 Funding "offer attractive returns of 6% to 20% annually to investors by participating in cash advances to small businesses." (Ans. to OSC ¶ 21)

151. Respondent Goldberg created and maintained a publicly accessible YouTube channel that included videos explaining and advertising investments in the Goldberg LLCs. (DoBS-100; N.T. 61, 117-18)

152. The YouTube videos that Respondent Goldberg created detailed the various types of alternative investments offered by Respondent Goldberg through the Goldberg LLCs, including MCA funding and the purchase of life settlements. (DoBS-101, N.T. 62-63)

153. In offering the Goldberg LLC Notes for sale, Respondent Goldberg engaged in direct marketing to potential investors and Goldata Clients. (N.T. 114)

154. Respondent Goldberg considered the LinkedIn and YouTube webpages to be a part of his marketing methods. (N.T. 118)

155. Quest Education referred investors to Respondent Goldberg for the purchase of the Goldberg LLC Notes. (N.T. 118-19)

156. When evaluating and verifying the accredited investor status of purchasers of the Goldberg LLC Notes, Respondent Goldberg relied upon either affirmations from investors as to their accredited investor status or investor questionnaires

that were included in the Goldberg LLC PPMs. (N.T. 56-58; DoBS-14; DoBS-15; DoBS-26)

157. With respect to the 1931 Notes, Respondent Goldberg testified that he would verify the 1931 Investor's accredited investor status either through an investor's net worth or income. (N.T. 116-17, 332-33)

158. Respondent Goldberg failed to provide any documentation that he verified the 1931 Investor's accredited investor status through an investor's net worth or income. (N.T. 116-17)

159. Respondent Goldberg included various balance sheets, financial statements, and financial metrics for the Goldberg LLCs in the Goldberg LLC PPMs. (N.T. 120)

160. Respondent Goldberg testified that he did not inform investors who purchased the Goldberg LLC Notes that the financial statements he had captioned as balance sheets in the Goldberg LLC PPMs were not actual balance sheets. (N.T. 120-22)

161. After discovering the balance sheets were improperly labeled as a balance sheet, Respondent never informed Investors of the error. (N.T. 122)

162. In connection with the offer and sale of the Goldberg LLC Notes, Respondent Goldberg disclosed balance sheets and other financial statements to investors, which financial documents purported to accurately describe the financial condition of the Goldberg LLCs. (DoBS-33; DoBS-35, Bates 1190; DoBS-36; DoBS-39, Bates 1230-33; DoBS-40; DoBS-93, Bates 11529, 11657, 11785, 11913, 12041, 12169, 12297, 12425, 12799, 13417, 13909, 14037, 14891, 15139, 15765, 16145, 16399, 16527, 17917, 18045,

18173, 18301, 18429, 18683, 19063, 19191, 19510, 19638, 20006, 20862, 20990, 21118, 21246, 21374, 21502, 21756, 21884, 22171, 22307, 22435, 22801, 22929)

163. Some of the balance sheets disclosed to 1931 Purchasers in connection with the offer and sale of the 1931 Notes showed that 1931 Funding was insolvent as of December 31, 2018. (DoBS-93, Bates 12673, 13165, 13291, 13665, 14639, 14765, 15267, 15393, 15519, 15893, 16019, 16273, 16665, 16782, 16908, 17034, 17160, 17286, 17412, 17538, 17664, 17790, 18557, 18811, 18937, 20610, 20736, 21630; DoBS-106, Bates 24452; DoBS-40)

164. Respondent Goldberg would provide monthly updates of financial statements for the Goldberg LLCs to the Goldberg LLC Investors. (N.T. 342-43, 345-46, 360-62; Exhibits R-1, R-2, R-3)

165. 1931 Funding maintained general ledgers to track its financial status, and these general ledgers did not always match the balance sheets and financial statements that were disclosed to Goldberg LLC Investors in connection with the offer and sale of the Goldberg LLC Notes. (DoBS-50; DoBS-93, Bates 11529, 11657, 11785, 11913, 12041, 12169, 12297, 12425, 12799, 13417, 13909, 14037, 14891, 15139, 15765, 16145, 16399, 16527, 17917, 18045, 18173, 18301, 18429, 18683, 19063, 19191, 19510, 19638, 20006, 20862, 20990, 21118, 21246, 21374, 21502, 21756, 21884, 22171, 22307, 22435, 22801, 22929; N.T. 186-88)

166. Chris Yother, Certified Public Accountant a Securities Accountant 3 employed by the Department ("Mr. Yother") confirmed that the Goldberg LLC general ledgers did not always match the balance sheets and financial statements that were provided to the Goldberg LLC Investors. (N.T. 113, 186-88)

167. Respondent Goldberg testified that he did not always withdraw the full compensation that he was entitled from each Goldberg LLC, per the terms of the Goldberg's LLC Notes' PPM. (N.T. 127)

168. Respondent Goldberg testified that, if he withdrew the total compensation to which he was entitled from the Goldberg LLCs, then the Goldberg LLCs would have operated at a loss. (N.T. 125-27, 355-56)

169. Respondent Goldberg was under no legal obligation to inject additional capital into the Goldberg LLCs to sustain them financially. (N.T. 358-59)

170. Harmelin was a Goldata Client with respect to Goldata's investment advisory services. (N.T. 94)

171. When Harmelin was an active Goldata Client, Respondent Goldberg presented Harmelin with an opportunity to invest in 1931 Funding. (N.T. 95)

172. Harmelin was a Goldata Client when he invested in a 1931 Note. (N.T. 96)

173. Following the investment in a 1931 Note, Respondent Goldberg would discuss with Hannelin both the 1931 investment and the investments made as a Goldata Client at the same meeting, (N.T. 96-97)

174. Respondent Goldata did not file an audited balance sheet with the Department as of the end of its fiscal year for fiscal years 2016, 2017, 2018, 2019, and 2020. (N.T. 136; Ans. to OSC ¶ 107)

175. Respondent Goldata did not promptly notify the Department on Form ADV that Goldata had custody or possession of funds or securities in which any Goldata Client had a beneficial interest. (N.T. 135; Ans. to OSC ¶ 109)

176. Respondent Goldata failed to have its client funds or securities of which Respondent Goldata had custody verified by a certified public accountant. (N.T. 135-36; Ans. to OSC ¶ 111)

177. Respondent Goldata's net worth for the period from July 1, 2017 to June 30, 2018 was below \$35,000. (N.T. 79; Ans. to OSC ¶ 113)

178. Goldata did not have an independent Certified Public Accountant conduct audits of the funds in the various entities. (N.T. 136).

179. Goldata did not maintain written procedures related to the offer and sale of alternative or non-conventional securities, including pooled investment vehicles, to Goldata Clients. (DoBS-5, Bates 357; DoBS-6, Bates 360; N.T. 80-82, 136)

180. Mr. Yother is a Securities Accountant 3 employed by the Department (N.T. 113)

181. Mr. Yother has had this position since 2015. (N.T. 163)

182. Mr. Yother duties include reviewing annual balance sheets from various investment advisory firms and performing solvency reviews (N.T. 163.).

183. Mr. Yother was qualified as an expert in accounting at the Hearing. (N.T. 166-67)

184. Mr. Yother conducted solvency evaluations of 442 Funding, 567 Funding, and 1931 Funding and authored an expert report ("Expert Report") on August 18, 2022. (N.T. 167-68; DoBS-106, Bates 24445-63)

185. Mr. Yother reviewed the general ledgers, financial statements, and bank statements of the Goldberg LLCs. (N.T. 177-78; DoBS-48; DoBS-49; DoBS-50)

186. Mr. Yother also reviewed balance sheets that appeared in the Goldberg LLCs' PPMs and brochures. (N.T. 177-78; DoBS-93, Bates 11529; DoBS-39, Bates 1230-33)

187. In conducting net worth calculations of 1931 Funding, 442 Funding, and 567 Funding, Mr. Yother applied the definition of "net worth" as found in 10 Pa. Code § 102.02. (N.T. 179; DoBS-106, Bates 24450-51)

188. In conducting the solvency evaluations, Mr. Yother applied the definition of "insolvent" or "insolvency" as found in 10 Pa. Code § 102.021. (N.T. 173; DoBS-106, Bates 24447-48)

189. Part one of the definition of "insolvent" or "insolvency" is: "The inability to pay debts as they fall due in the person's usual course of business." Part two of the definition of "insolvent" or "insolvency" is: "Liabilities in excess of the fair value of the person's assets." 10 Pa. Code § 102.021. (DoBS-106, Bates 24457)

190. Mr. Yother testified regarding his knowledge of and experience with accounting principles generally accepted in the United States of America. ("US GAAP"). (N.T. 168-71)

191. Mr. Yother testified regarding the differences between the accrual basis of accounting and the cash basis of accounting. (N.T. 171-73)

192. Mr. Yother also reviewed and considered the Respondents' "Significant Accounting Policies Used by LLCs." (N.T. 174-76; DoBS-79)

193. The Goldberg LLCs prepared their financial statements employing the cash basis of accounting. (N.T. 175-76; DoBS-79)

194. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, 1931 Funding did not meet part one of the definition of insolvency as of July 31, 2020, and was thus solvent as of July 31, 2020. (N.T. 176-77; DoBS-1 06, Bates 24450)

195. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, 1931 Funding met part two of the definition of insolvency as of December 31, 2018, and was thus insolvent as of that date. (N.T. 180-82; DoBS-106, Bates 24452; DoBS-40, Bates 1237-41)

196. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, he could not perform a U.S. GAAP-compliant solvency evaluation to determine if 1931 Funding met part two of the definition of insolvency as of July 31, 2019 because he did not have confidence in the numbers provided to him specifically what their source was and how they were arrived at. (N.T. 182-88; DoBS-106, Bates 24452- 53; DoBS-50; DoBS-93, Bates 11529-30).

197. In his review of the general ledger and balance sheet as of July 31, 2019, Mr. Yother noted that the assets on the balance sheet (DoBS-93, Bates 11529) were reported as \$5,256,082; whereas the assets on the general ledger (DoBS-50, Cells D347, D357) were reported as \$4,036,622.28. (N.T. 186-88)

198. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, he could not perform a US GAAP-compliant solvency evaluation to determine if 1931 Funding met part two of the definition of insolvency as of November 30, 2019. (N.T. 188-92; DoBS-106, Bates 24453; DoBS-50; DoBS-40, Bates 1242-43)

199. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, he could not perform a US GAAP-compliant solvency evaluation or a determination of net worth to evaluate if 1931 Funding met part two of the definition of insolvency as of December 31, 2019. (N.T. 192-96; DoBS-106, Bates 24453-54; DoBS-50).

200. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, he could not perform a US GAAP-compliant solvency evaluation or a determination of net worth to evaluate if 1931 Funding met part two of the definition of insolvency as of July 31, 2020. (N.T. 196-201; DoBS-106, Bates 24454-55; DoBS-50 (N.T. 195-196).

201. Mr. Yother noted multiple anomalies with respect to the data reported on the general ledgers and financial statements for 1931 Funding. (N.T. 201-3; DoBS-106, Bates 24455)

202. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, 567 Funding did not meet part one of the definition of insolvency as of July 31, 2020 and was thus solvent as of July 31, 2020. (N.T. 176-77; DoBS-106, Bates 24450)

203. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, he could not make a determination of net worth to evaluate if 567 Funding met part two of the definition of insolvency as of December 31, 2019. (N.T. 216-18; DoBS-106, Bates 24457-58; DoBS-49)

204. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, 567 Funding met part two of the definition of insolvency as of July

31, 2020 and was thus insolvent as of that date. (N.T. 218-20; DoBS-106, Bates 24458-59; DoBS-49)

205. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, 442 Funding did not meet part one of the definition of insolvency as of July 31, 2020 and was thus solvent as of July 31, 2020. (N.T. 176-77; DoBS-106, Bates 24450)

206. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, he could not make a determination of net worth to evaluate if 442 Funding met part two of the definition of insolvency as of October 31, 2018. (N.T. 203-5; DoBS-106, Bates 24455; DoBS-48; DoBS-33, Bates 1153-54)

207. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, 442 Funding did not meet part two of the definition of insolvency as of December 31, 2018, and was thus solvent as of that date. (N.T. 205-9; Do BS-I 06, Bates 24456; DoBS-48)

208. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, he could not perform a US GAAP-compliant solvency evaluation to determine if 442 Funding met part two of the definition of insolvency as of November 30, 2019. (N.T. 209-12; DoBS-106, Bates 24456; DoBS-48; DoBS-33, Bates 1155-56)

209. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, he could not perform a US GAAP-compliant solvency evaluation or a determination of net worth to evaluate if 442 Funding met part two of the definition of insolvency as of December 31, 2019. (DoBS-106, Bates 24456-57)

210. In Mr. Yother's expert opinion, to a reasonable degree of professional certainty, 442 Funding met part two of the definition of insolvency as of July 31, 2020 and was thus insolvent as of that date. (N.T. 212-15; DoBS-106, Bates 24457; DoBS-48)

211. Respondents received all filings and notices, attended the administrative hearing, were represented by counsel, who cross-examined the Department's witnesses and presented witnesses (including Respondent) to testify and be cross examined by the Department. Case File; (N.T. Day 1, Day 2, pgs. 1-368)

Stipulated Exhibits:

212. The parties stipulate to the admissibility and authenticity of Department of Banking and Securities Exhibit ("DoBS") – 1, DoBS February 20, 2019, Request for Information ("RFI") letter, and the documents submitted by the Respondents in response to DoBS-1, including:³

a. DoBS – 2, Goldberg's Response Letter to the February 20, 2019, RFI Letter;

b. DoBS – 3, 1 Global Participant Documents; and

c. DoBS – 4, List of Goldberg's Compensation for the 1 Global Sales.

213. The admissibility and authenticity of DoBS – 5, DoBS September 26, 2019, RFI letter, and the documents submitted by the Respondents in response to DoBS – 5; including:

a. DoBS – 6, Goldberg Response Letter to September 26, 2019 RFI Letter;

b. DoBS – 7, Spreadsheet labeled - General ledger-EG-personal x8312 and x3845-2018;

c. DoBS – 8, Spreadsheet - List of all individuals that were Goldata Clients at the time that they purchased non-conventional securities;

d. DoBS – 9, Client Documents for individuals that were Goldata Clients at the time that they purchased non-conventional securities;

e. DoBS – 10, Spreadsheet listing the positions in non-conventional securities of all individuals that were Goldata Clients at the time of the purchase of the non-conventional securities;

³ See DoBS Exhibit 108.

- f. DoBS – 11, Goldberg’s marketing documents for non-conventional securities;
 - g. DoBS – 12, 2017 Tax Return; and
 - h. DoBS – 13, 2018 Tax Return.
214. The admissibility and authenticity of DoBS – 14, DoBS November 22, 2019, RFI letter, and the documents submitted by the Respondents in response to DoBS – 14, including:
- a. DoBS – 15, Goldberg Response to November 22, 2019 RFI Letter;
 - b. DoBS – 16, Spreadsheet containing communication between Goldberg and the individuals that were Golddata Clients at the time they purchased the Global Notes;
 - c. DoBS – 17, Emails – Related to 1 Global Compensation;
 - d. DoBS – 18, Spreadsheet containing list of Golddata Clients;
 - e. DoBS – 19, Spreadsheet containing communications to the individuals that were Golddata Clients at the time they received such communications in relation to 1 Global, PRMH or SEA investment opportunity;
 - f. DoBS – 22, Spreadsheet containing Goldberg's response to A1C of November 22, 2019, RFI Letter;
 - g. DoBS – 23, Spreadsheet containing Goldberg's response to A1D&E of November 22, 2019, RFI Letter;
 - h. DoBS – 24, Spreadsheet containing Goldberg's response to A2A of November 22, 2019, RFI Letter;
 - i. DoBS – 25, Spreadsheet containing Goldberg's response to A2C of November 22, 2019, RFI Letter;
 - j. DoBS – 26, Spreadsheet containing Goldberg's response to A2E of November 22, 2019, RFI Letter;
 - k. DoBS – 27, Spreadsheet containing Goldberg's response to A1A of November 22, 2019, RFI Letter;
 - l. DoBS – 28, Spreadsheet containing Goldberg's response to A1B of November 22, 2019, RFI Letter;
 - m. DoBS – 29, Spreadsheet containing Goldberg's response to B1D of November 22, 2019, RFI Letter;
 - n. DoBS – 30, 567 Funding Certificate of Organization;
 - o. DoBS – 31, 442 Funding Certificate of Organization;
 - p. DoBS – 32, 442 Funding Brochure;
 - q. DoBS – 34, 442 Funding - TD Bank Statements;
 - r. DoBS – 35, 567 Funding Brochure;
 - s. DoBS – 37, 567 Funding - TD Bank Statements;
 - t. DoBS – 38, 1931 Funding Certificate of Organization;
 - u. DoBS – 39, 1931 Funding Brochure; and
 - v. DoBS – 41, 1931 Funding TD Bank Statements.
215. The admissibility and authenticity of DoBS – 42, DoBS July 14, 2020, Subpoena, and the documents submitted by the Respondents in response to DoBS – 42, including:

- a. DoBS – 43, Goldberg's Response Letter to July 14, 2020 Subpoena;
 - b. DoBS – 44, Goldata Client Agreements;
 - c. DoBS – 45, Goldata Client Account Statements;
 - d. DoBS – 46, Spreadsheet labeled as main database provided in response to July 14, 2020, Subpoena;
 - e. DoBS – 47, 1931 Funding Operating Agreement;
 - f. DoBS – 48, 442 Funding General Ledgers;
 - g. DoBS – 49, 567 Funding General Ledgers;
 - h. DoBS – 50, 1931 Funding General Ledgers;
 - i. DoBS – 95, Spreadsheet of individuals that were Goldata Clients at the time of the purchase of a note from one of the Respondent LLCs with compensation; and
 - j. DoBS – 96, 2019 Tax Return.
216. The admissibility and authenticity of DoBS – 51, DoBS August 17,

2020, RFI letter, and the documents submitted by the Respondents in response to DoBS – 51, including:

- a. DoBS – 52, Goldberg Response Letter to August 17, 2020, RFI Letter;
- b. DoBS – 53, 803 Funding Formation Documents;
- c. DoBS – 54, 803 Funding Brochure;
- d. DoBS – 55, Word Document containing communication with 803 Funding Purchasers;
- e. DoBS – 56, 803 Funding - Documentation of Payments from Purchasers;
- f. DoBS – 57, Spreadsheet Documenting the purchases of 803 Notes by individuals that were Goldata Clients at the time of the purchase;
- g. DoBS – 58, 803 Funding Account Statements for individuals that were Goldata Clients at the time of the purchase of the 803 Notes;
- h. DoBS – 59, Spreadsheet documenting compensation received from 803 Funding;
- i. DoBS – 60, 803 Funding - TD Bank Statement;
- j. DoBS – 61, Goldberg Responses regarding 803 Funding for items A2A of August 17, 2020, RFI Letter;
- k. DoBS – 62, LEGS 1 Formation Documents;
- l. DoBS – 63, LEGS 1 Marketing Documents;
- m. DoBS – 64, LEGS 1 Provident Trust Information;
- n. DoBS – 65, LEGS 1 Solicitation Emails;
- o. DoBS – 66, LEGS 1 Fund Assets;
- p. DoBS – 67, LEGS 1 Documentation of Funds Received;
- q. DoBS – 68, LEGS 1 Documentation of Payments to Purchasers;
- r. DoBS – 69, Spreadsheet documenting the purchase of LEGS Units by individuals that were Goldata Clients at the time of the purchase;

- s. DoBS – 70, LEGS 1 Account Statements for individuals that were Goldata Clients at the time of the purchase of the LEGS Units;
- t. DoBS – 71, Provident Trust Direction of Fee Escrow Forms; and
- u. DoBS – 72, Goldberg Responses regarding LEGS 1 for items A2A of August 17, 2020, RFI Letter.

217. The admissibility and authenticity of DoBS – 74, Goldberg Response to November 16, 2020, RFI email.

218. The admissibility and authenticity of DoBS – 98, DoBS August 5, 2022, subpoenas, and the documents submitted by the Respondents in response to DoBS – 98, including:

- a. DoBS – 75, 442 Funding Note Details;
- b. DoBS – 76, 567 Funding Note Details;
- c. DoBS – 77, 803 Funding Note Details;
- d. DoBS – 78, 1931 Funding Note Details;
- e. DoBS – 79, Accounting Policies Statement; and
- f. DoBS – 80, Goldata Notes.

219. The admissibility and authenticity of documents submitted by PNC Bank pursuant to the August 5, 2022, subpoena including:

- a. DoBS – 82, PNC Records - Account 8605394256;
- b. DoBS – 83, PNC Records - Account 8604177313;
- c. DoBS – 84, PNC Records - Account 8406497949;
- d. DoBS – 85, PNC Records - Account 8405234039;
- e. DoBS – 86, PNC Records - Account 8405233845;
- f. DoBS – 87, PNC Records - Account 8405233706;
- g. DoBS – 88, PNC Records – Account 8401368312; and
- h. DoBS – 89, PNC Response Certification and Inventory.

220. The admissibility and authenticity of the Private Placement Memorandum (“PPM”) documents submitted by Respondents pursuant to RFIs and subpoenas issued by the Bureau including:

- a. DoBS – 90, 442 Funding PPMs;
- b. DoBS – 91, 567 Funding PPMs;
- c. DoBS – 92, 803 Funding PPMs;
- d. DoBS – 93, 1931 Funding PPMs; and
- e. DoBS – 94, LEGS 1 Investor Agreements and Full PPM.

221. The admissibility and authenticity of the bank records with notations submitted by Respondents pursuant to RFIs and subpoenas issued by the Bureau including:

- a. DoBS – 99, PNC Bank Records with Goldberg’s notations; and
- b. DoBS – 107, TD Bank Records with Goldberg’s notations.

222. The admissibility and authenticity of the Merchant Cash Advance ("MCA") participation agreements contained in DoBS – 103. MCA participation agreements, that Respondents submitted pursuant to RFIs and subpoenas issued by the Bureau.

223. The admissibility and the authenticity of the certification by Jeffrey Soderstedt, Director of the Department's Corporation Finance Office contained in DoBS – 104.

224. 1931 Funding, LLC Metrics. Respondents' Exhibit R-1.

225. 803 Funding, LLC Metrics. Respondents' Exhibit R-2.

226. 567 Funding, LLC Metrics. Respondents' Exhibit R-3.

CONCLUSIONS OF LAW

1. The Department has jurisdiction in this matter pursuant to the Pennsylvania Securities Act of 1972 ("Act"). (70 P.S. §§ 1-601, 1-702).
2. Respondents received notice of the charges and this proceeding and were afforded an opportunity to be heard in accordance with Section 504 of the Administrative Agency Law, 2 Pa .C.S. § 504.
3. The definitions of Affiliate,⁴ Agent,⁵ Issuer⁶, and Securities⁷ within the meaning of Section 102 of the Act are applicable to this adjudication.
4. Goldberg was an agent of Global within the meaning of Section 102 of the Act.
5. Global Notes are securities within the meaning of Section 102 of the Act.
6. The definition of Pooled Investment Vehicle within the meaning of the Department's regulations is applicable to this adjudication.⁸

⁴ An "affiliate" of, or a person "affiliated" with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified. (70 P.S. § 1-102(b)).

⁵ "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include: (i) an individual who represents an issuer in effecting transactions in securities exempted by section 202, 1 transactions exempted by section 203² or transactions in a covered security described in sections 18(b)(3) and (4)(D) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r) if no compensation is paid or given directly or indirectly for soliciting any person in this State in connection with any of the foregoing transactions; (ii) an individual who represents a broker-dealer in effecting transactions in this State, which transactions are limited to those described in section 15(i)(3) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o(i)(3)); and (iii) an individual who has no place of business in this State if he effects transactions in this State exclusively with broker-dealers. Except where representing an issuer in effecting transactions in securities registered under section 205 or 206,³ a bona fide officer, director, or partner or employe of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition and receives compensation directly or indirectly related to purchases or sales of securities. (70 P.S. § 1-102(c)).

⁶ "Issuer" means any person who issues or proposes to issue any security, and any promoter who acts for an issuer proposed to be formed. (70 P.S. § 1-102(l)).

⁷ "Security" means any note. (70 P.S. § 1-102(t)).

⁸ Pooled investment vehicle -

(i) A limited partnership, limited liability company or an entity with a similar legal status and performing similar functions.

(ii) The term does not include an investment company that has filed a registration statement under the Investment Company Act of 1940. (10 Pa. Code § 102.021).

7. As manager of Respondent 1931, Respondent Goldberg controlled Respondent 1931 Funding.

8. As manager of Respondent 567, Respondent Goldberg controlled Respondent 567 Funding.

9. As manager of Respondent 442, Respondent Goldberg controlled Respondent 442 Funding.

10. As manager of Respondent 803 Respondent Goldberg controlled Respondent 803 Funding.

11. As manager of Respondent LEGS, Respondent Goldberg controlled Respondent LEGS Funding.

12. The LEGS Units described above are "securities" within the meaning of Section 102(i) of the 1972 Act, 70 P.S. § 1-102(t).

13. The Department has met its burden of proving Respondent Goldberg violated Section 201 of the Act.

14. The Department has met its burden of proving Respondent Goldberg violated Section 301(a) of the Act.

15. The Department has met its burden of proving Respondent Goldberg violated Section 401(b) of the Act.

16. Proof of scienter is not required when alleging a violation of Section 401(b) of the 1972 Act. *Mimi Investors, LLC v. Paul K. Tufano, David Crocker, Dennis Cronin, and Neil Matheson*, 297 A.3d 1272 (2023).

17. The Department has met its burden of proving Respondent Goldberg violated Section 401(c) of the Act.

18. The Department has met its burden of proving Respondent Goldata did not comply with the requirements of Regulation 404.014, 10 Pa. Code § 404.014.

19. The Department has met its burden of proving Respondent Goldata violated Section 404 of the Act and 10 Pa. Code § 404.014(a)(1).

20. The Department has met its burden of proving Respondent Goldata violated Section 404 of the Act and 10 Pa. Code § 404.014(a)(5).

21. The Department has met its burden of proving Respondent Goldata violated Section 305(a)(v) of the Act and 10 Pa. Code § 305.011(a) and (c).

22. The Department has met its burden of proving Respondent Goldberg and Respondent Goldata violated Section 305(a)(v) of the 1972 Act and 10 Pa. Code § 303.042(a)(3)(ii)(A)-(B).

23. The Department has met its burden of proving Respondent Goldberg and Respondent Goldata violated Section 305(a)(v) of the 1972 Act and 10 Pa. Code § 304.022(a)(1).

24. The Department has met its burden of proving Respondent Goldberg and Respondent Goldata violated Section 305(a)(ix) of the 1972 Act and 10 Pa. Code § 305.019(a).

25. The Department has met its burden of proving Respondent Goldberg and Respondent Goldata violated Section 305(a)(ix) of the 1972 Act and 10 Pa. Code § 305.019(c)(3)(xi).

26. The Department has met its burden of proving Respondent Goldberg and Respondent Goldata violated Section 305(a)(ix) of the 1972 Act and 10 Pa. Code § 305.019(c)(3)(xv).

DISCUSSION

Burden of Proof and Credibility

This administrative action concerns a two hundred and six count Order to Show Cause. The degree of proof required to establish a case before an administrative tribunal in an administrative action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrating a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Commonwealth, therefore, has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602.

In an administrative proceeding, the fact finder determines questions of the credibility of witnesses and of the weight of the evidence. *See, e.g., Nepa v. Department of Public Welfare*, 551 A.2d 354 (Pa. Cmwlth. 1988) (determination of credibility of witnesses in health care providers' appeal is the province of the fact finder).

Analysis of Violations

There are two hundred and six counts in the Order to Show Cause of which one hundred and thirty-four counts are brought against Respondent Goldberg, fifteen counts are brought against Respondent Golddata and the remaining fifty-seven counts are collectively brought against Respondent Goldberg and Respondent Golddata.

SECTION 201: REGISTRATION REQUIREMENT

Respondent Goldberg is charged with fifty-nine counts under Section 201 of the Act which provides for:

It is unlawful for any person to offer or sell any security in this State unless the security is registered under this act, the security or transaction is exempted under section 202 or 203 hereof or the security is a federally covered security.

70 P.S. §1-201.

The following definitions from the Act are pertinent to a charge under Section 201:

(b) An "affiliate" of, or a person "affiliated" with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

* * *

(c) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

* * *

(l) "Issuer" means any person who issues or proposes to issue any security, ... Members of unincorporated associations, which members have limited liability, and any trustee or member of a trust, committee or other legal entity shall not be deemed to be an "issuer" for the purposes of this act.

* * *

(r)(i) "Sale" or "sell" includes every sale, disposition or exchange, and every contract of sale of, or contract to sell, a security or interest in a security for value or any issuance of securities pursuant to any merger, consolidation, sale of assets or other corporate reorganization, involving the exchange of securities, in whole or in part, for the securities of any other person.

* * *

(r)(ii) "Offer" or "offer to sell" includes every direct or indirect attempt or offer to sell or dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

* * *

(t) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; share of beneficial interest in a business trust; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; limited partnership interest; fractional undivided interest in oil, gas or other mineral rights; put, call, straddle, option or privilege on a security, certificate of deposit of a security or group or index of securities, including any interest in the securities or based upon the value of the securities, or any put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency; membership interest in a limited liability company of any class or series, including any fractional or other interest in such interest, unless excluded by clause (v); or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidenced by written document.

* * *

70 P.S. § 1-102.

Global Notes

In the OTSC, the Department alleged that Respondent Goldberg offered and sold unregistered securities in the form of Global Notes and that the Global Notes were not exempt from registration. To meet its burden, the Department offered into evidence joint stipulated facts and exhibits that show that Global was engaged in the business of providing funding known as a Merchant Cash Advance Transaction ("MCAT") as an alternate form of financing to traditional banking and banking institutions. Global offered for sale Memoranda of Indebtedness ("Global Notes") to individuals. From in or about March 2017 through November 2017, Respondent Goldberg participated in effecting the offer and sale of at least 14 Global Notes to at least 14 Pennsylvania residents ("PA Residents") for an aggregate amount of at least \$646,000. For Respondent Goldberg's participation in the sale of Global Notes, Respondent Goldberg received \$9,293 in compensation from American Alternative Investments, LLC ("AAI"), which acted as the marketing agent for Global. The Department also presented a certification from Jeffrey

Soderstedt, the Director of Corporation Finance for the Department, which certified that the Department does not have any records (that the department maintains for securities, registrations, and exemptions) in its possession regarding registrations or exemptions for Global Notes. Finally, the Department presented the testimony of Nathan Houtz, a securities compliance examiner for the Department. Mr. Houtz testified that during his investigation he was unable to find any evidence that Respondent Goldberg was ever registered as an agent of Global.

Respondent Goldberg argues that he did not believe the Global Notes were properly classified as securities because the upper management of Global and Andrew Dale Ledbetter, Esquire, Global's legal counsel represented to Respondent and others that the Global Notes were not securities and Respondent relied on that representation. Unfortunately, Respondent Goldberg's argument is unavailing.

The Global Notes are a written promise from Global to repay the Global Investor their original purchase price of the Global Note. As a result, the Global Notes are clearly securities as defined by the Act. Additionally, the facts of this case support a finding that Respondent Goldberg acted as an agent of Global when he participated on behalf of the issuer of the Global Notes in effecting or attempting to affect the offer and sale of at least 14 Global Notes to at least 14 Pennsylvania residents ("PA Residents") for an aggregate amount of at least \$646,000. Other facts that support a finding that Respondent Goldberg was an agent of Global are Respondent Goldberg's admissions that he contacted potential Global investors, fielded and answered questions about the Global Notes from potential investors, and assisted potential Global Note investors in filling out and signing subscription paperwork as a marketing agent and he would forward that documentation to American Alternative Investments, LLC ("AAI") to complete the purchase of the Global Notes. Respondent Goldberg's detrimental reliance on faulty legal advice

from Global and its legal counsel does not absolve Respondent Goldberg. Additionally, no evidence presented in this case establishes that the Global Notes were exempted from registration under Section 202 or 203 of the Act or that the Global Notes were federally covered securities.⁹ As a result, the Department has met its burden of proving by a preponderance of the evidence that Respondent Goldberg violated Section 201 of the Act by selling or offering to sell the unregistered and nonexempted Global Notes to at least 14 Pennsylvania residents.

Goldberg LLC Notes

The Department also alleged in the OTSC that Respondents violated Section 201 of the Act, as it relates to the sale of the 1931 Notes, 567 Notes, 442 Notes, and the 803 Notes (“Goldberg LLC Notes”). In the OTSC, the Department alleged that Respondents offered and sold unregistered securities in the form of the Goldberg LLC Notes and that the Goldberg LLC Notes were not exempt from registration under the Act. Unlike with the Global Notes, Respondents do not dispute that the Goldberg LLC Notes are securities under the Act.¹⁰ Instead, Respondents argue that the 567 Notes, the 442 Notes, and the 803 Notes were exempt from registration pursuant to Regulation D, under Rule 506(b)¹¹ of the 1933 Act, and that the 1931

⁹Pursuant to 70 P.S. § 1-612(a), in an administrative proceeding under the Act, a person claiming status as a federally covered security or adviser or an exemption, exception or exclusion from a definition has the burden of proving the availability of the status, exemption, exception, or exclusion.

¹⁰ Additionally, Respondents do not dispute that the Goldberg LLCs are the Issuers of the Goldberg LLC Notes pursuant to the Act or that Respondent Goldberg was an Affiliate of each of the Goldberg LLCs pursuant to the Act.

¹¹ § 230.506 Exemptions for limited offers and sales without regard to dollar amount of offering.

(b) Conditions to be met in offerings subject to limitation on manner of offering

(1) General conditions. To qualify for an exemption under this section, offers and sales must satisfy all the terms and conditions of §§ 230.501 and 230.502.

(2) Specific conditions

(i) Limitation on number of purchasers. There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer in offerings under this section in any 90-calendar-day period. Note 1 to paragraph (b)(2)(i): See § 230.501(e) for the calculation of the number of purchasers and § 230.502(a) for what may or may not constitute an offering under paragraph (b) of this section.

(ii) Nature of purchasers. Each purchaser who is not an accredited investor either alone or with his purchaser

Notes were exempt from registration pursuant to Regulation D, under Rule 506(c)¹² of the 1933 Act.

representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.

* * *

(17 C.F.R. § 230.506(b)).

¹² (c) Conditions to be met in offerings not subject to limitation on manner of offering—

(1) General conditions. To qualify for exemption under this section, sales must satisfy all the terms and conditions of §§230.501 and 230.502(a) and (d).

(2) Specific conditions—

(i) Nature of purchasers. All purchasers of securities sold in any offering under paragraph (c) of this section are accredited investors.

(ii) Verification of accredited investor status. The issuer shall take reasonable steps to verify that purchasers of securities sold in any offering under paragraph (c) of this section are accredited investors. The issuer shall be deemed to take reasonable steps to verify if the issuer uses, at its option, one of the following non-exclusive and non-mandatory methods of verifying that a natural person who purchases securities in such offering is an accredited investor; provided, however, that the issuer does not have knowledge that such person is not an accredited investor: (A) In regard to whether the purchaser is an accredited investor on the basis of income, reviewing any Internal Revenue Service form that reports the purchaser's income for the two most recent years (including, but not limited to, Form W-2, Form 1099, Schedule K-1 to Form 1065, and Form 1040) and obtaining a written representation from the purchaser that he or she has a reasonable expectation of reaching the income level necessary to qualify as an accredited investor during the current year;

(B) In regard to whether the purchaser is an accredited investor on the basis of net worth, reviewing one or more of the following types of documentation dated within the prior three months and obtaining a written representation from the purchaser that all liabilities necessary to make a determination of net worth have been disclosed:

(1) With respect to assets: Bank statements, brokerage statements and other statements of securities holdings, certificates of deposit, tax assessments, and appraisal reports issued by independent third parties; and

(2) With respect to liabilities: A consumer report from at least one of the nationwide consumer reporting agencies;

(C) Obtaining a written confirmation from one of the following persons or entities that such person or entity has taken reasonable steps to verify that the purchaser is an accredited investor within the prior three months and has determined that such purchaser is an accredited investor:

(1) A registered broker-dealer;

(2) An investment adviser registered with the Securities and Exchange Commission;

(3) A licensed attorney who is in good standing under the laws of the jurisdictions in which he or she is admitted to practice law; or

(4) A certified public accountant who is duly registered and in good standing under the laws of the place of his or her residence or principal office;

(D) In regard to any person who purchased securities in an issuer's Rule 506(b) offering as an accredited investor prior to September 23, 2013 and continues to hold such securities, for the same issuer's Rule 506(c) offering, obtaining a certification by such person at the time of sale that he or she qualifies as an accredited investor; or

(E) In regard to any person that the issuer previously took reasonable steps to verify as an accredited investor in accordance with this paragraph (c)(2)(ii), so long as the issuer is not aware of information to the contrary, obtaining a written representation from such person at the time of sale that he or she qualifies as an accredited investor. A written representation under this method of verification will satisfy the issuer's obligation to verify the person's accredited investor status for a period of five years from the date the person was previously verified as an accredited investor. Instructions to paragraph (c)(2)(ii):

1. The issuer is not required to use any of these methods in verifying the accredited investor status of natural persons who are purchasers. These methods are examples of the types of non-exclusive and non-mandatory methods that

In Respondents' post-hearing brief, Respondents point out that the parties stipulated that all LLCs made timely Regulation D filings and state notice filings to comply with being exempt as "federally covered securities. Respondents argue that they "fastidiously adhered to Rule 506(b) for 442, 567 and 803 offerings and Rule 506(c) for the 1931 offering." (Respondent's post-hearing brief at pg. 5). The Department in its post-hearing brief argues, notwithstanding Respondents timely Regulation D filings and state notice filings to comply with being exempt as "federally covered securities, Respondents cannot avail themselves of the exemption from registration pursuant to Regulation D, under Rule 506(b) of the 1933 Act for the 442 Notes, the 567 Notes, and the 803 Notes because Respondents did not comply with all of the conditions enunciated in 17 C.F.R. § 230.506. Likewise, the Department argues that Respondents cannot avail themselves of the exemption from registration pursuant to Regulation D, under Rule 506(c) of the 1933 Act for the 1931 Notes because Respondents failed to comply with the verification of accredited investor status for the purchasers of the 1931 Notes. (Department's reply brief, pg. 3).

According to 17 C.F.R. § 230.506(b)(1):

(b) Conditions to be met in offerings subject to limitation on manner of offering

(1) General conditions. To qualify for an exemption under this section, offers and sales must satisfy all the terms and conditions of §§ 230.501 and 230.502.

satisfy the verification requirement in § 230.506(c)(2)(ii).

2. In the case of a person who qualifies as an accredited investor based on joint income with that person's spouse, the issuer would be deemed to satisfy the verification requirement in § 230.506(c)(2)(ii)(A) by reviewing copies of Internal Revenue Service forms that report income for the two most recent years in regard to, and obtaining written representations from, both the person and the spouse.

3. In the case of a person who qualifies as an accredited investor based on joint net worth with that person's spouse, the issuer would be deemed to satisfy the verification requirement in § 230.506(c)(2)(ii)(B) by reviewing such documentation in regard to, and obtaining written representations from, both the person and the spouse.

(17 C.F.R. § 230.506(c)).

According to 17 C.F.R. § 230.502:

(c) Limitation on manner of offering. Except as provided in § 230.504(b)(1) or § 230.506(c), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(1) Any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio...

The Department argues the 567 Notes, the 442 Notes, and the 803 Notes were not exempt from registration because Respondents engaged in a marketing scheme that involved general solicitation of the 567 Notes, 442 Notes, and the 803 Notes, which targeted both accredited and non-accredited investors. (Department's post-hearing brief, pgs. 8-9). Respondents, for their part, argue that they refrained from general solicitation for the 442 Notes, the 567 Notes, and the 803 Notes because the marketing videos on Goldberg's publicly accessible YouTube channel promoted the 1931 Notes, which targeted accredited investors only. (*See* Resp. Br. at 9).

As established by the findings of facts, Respondent Goldberg maintained a publicly accessible LinkedIn webpage that listed Goldberg as the Manager of 1931 Funding, 442 Funding, and 567 Funding. Respondent Goldberg's LinkedIn webpage was active during the time of the offer and sale of the Goldberg LLC Notes. Also, Respondent Goldberg's LinkedIn webpage stated that 1931 Funding, 442 Funding, 567 Funding, and 803 Funding "offer attractive returns of 6% to 20% annually to investors by participating in cash advances to small businesses."

Official notice is taken of the fact that solicitations that condition the market for an offering of securities are viewed as a general solicitation to market the securities.¹³ Because

¹³See U.S. Securities Exchange Commission at <https://www.sec.gov/education/capitalraising/building-blocks/general-solicitation>.

Goldberg engaged in general solicitation of the 567 Notes, the 442 Notes, and the 803 Notes through: (1) Respondent Goldberg's LinkedIn webpage, (2) Respondent Goldberg's YouTube channel, and (3) referrals from Quest Education, Respondents may not successfully rely upon the exemption from registration under Rule 506(b) of Regulation D. Accordingly, the offer and sale of the 567 Notes, the 442 Notes, and the 803 Notes violated Section 201 of the Act.

The Department argues the 1931 Notes were not exempt from registration under Rule 506(c) of Regulation D of the 1933 Act. Specifically, the Department alleges that Respondents failed to demonstrate that reasonable steps were taken to verify each purchaser's accredited investor status. Respondents argue that they verified the accreditation status for the 1931 Funding investors by asking questions of them in the private placement memorandums. Respondent Goldberg also testified that all 1931 Funding investors provided proof of their accreditation status. For example, they either provided proof that they qualified for \$1 million of net worth besides their primary residence by stipulating to that fact and providing a cover of a bank statement. Or, if they qualified by income, which was \$200,000.00 personally or \$300,000.00 joint, Respondent Goldberg claimed he asked for two years' worth of tax returns plus a signoff that they expect to have that sort of income in the current year. And some of them were able to qualify by getting their attorney or accountant to sign off if they did not want to disclose their net worth.

Respondent was asked where he documented the check that he claims he did, and Respondent Goldberg claimed that he has it in his files. Unfortunately, Respondent Goldberg's self-serving statements without more are not credible. Respondent Goldberg was not able to show proof thorough documentation. As a result, the only credible evidence that Respondent Goldberg checked the accredited investor status of the 1931 Fund purchasers was to take their

word for it and nothing more. This can hardly be considered taking reasonable steps to verify the accredited investor status of each 1931 Investor. As a result, the Respondents have failed to demonstrate that the 1931 LLC Notes were exempt from registration under Rule 506(c). The Department has met its burden of proving by a preponderance of the evidence that Respondents offered for sale the 1931 Notes in the Commonwealth of Pennsylvania while they were unregistered and did not fall under an exemption.

SECTION 301: REGISTRATION REQUIREMENT

Respondent Goldberg is charged with fourteen counts under Section 301 of the Act which provides for:

Unless exempted under section 302 hereof: (a) It is unlawful for any person to transact business in this State as a broker-dealer or agent unless he is registered under this act.

70 P.S. § 1-301.

Respondents assert that Respondent Goldberg did not violate § 301(a) because Goldberg was an agent of AAI and not a direct agent of Global. (*See* Resp. Br. pg. 54). This argument is without merit. In the instant case, Respondent Goldberg was a subagent of Global because "AAI contracted marketing agents" like Respondent Goldberg "to assist Global" in marketing and selling the Global Notes. (Resp. Br. at 54) (emphasis added). (*See* Restatement 2d of Agency § 5; "A subagent is a person appointed by an agent empowered to do so, to perform functions undertaken by the agent for the principal, but for whose conduct the agent agrees with the principal to be primarily responsible."). (*see also AmerisourceBergen Drug Corp. v. Primrose Pharmacy, LLC*, No. 16-6106, 2021 U.S. Dist. LEXIS 229178, at *18 n.9 (E.D. Pa. Nov. 30, 2021)). ("Pennsylvania courts generally follow the Second Restatement of Agency.") (citing *Basile v. H & R Block, Inc.*, 761 A.2d 1115, 1120 (Pa. 2000)).

As a subagent of Global, Goldberg was a "direct representative" of Global:

When a general agent in the due prosecution of the business of his principal, employs another in a branch of the business, the acts of the sub-agent have the same effect as if done by the general agent. In such case the sub-agent becomes the agent and direct representative of the principal.

Swan v. Watertown Fire Ins. Co., 96 Pa. 37, 41-42 (1880) (emphasis added). (See Restatement 2d of Agency § 142 comment b); ("So far as the contractual relations between the principal and third persons are concerned, a subservient or other subagent has the same power as an agent."). Thus, because Goldberg represented Global in marketing and selling the Global Notes, Goldberg was an "agent" of Global within the meaning of § 102(c) of the Act. Accordingly, Respondent Goldberg violated § 301(a) by transacting business in Pennsylvania without registering as an agent of Global.

SECTION 401(b): SALES AND PURCHASES

Respondent Goldberg is charged with sixty-one counts under Section 401(b) of the 1972 Act which states:

It is unlawful for any person, in connection with the offer, sale or purchase of any security in this State, directly or indirectly:
(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

70 P.S. §1-401(b).

Respondents argue that the Department has failed to prove scienter to meet its burden of proof under sections 401(b) and (c) of the Act. Respondent's scienter argument is without merit. Judicial Notice is taken of the fact that on July 19, 2023, the Pennsylvania Supreme Court issued its decision in *Mimi Investors, LLC v. Paul K. Tufano, David*

Crocker, Dennis Cronin, and Neil Matheson, 297 A.3d 1272 (Pa. 2023). In *Mimi*, the Pennsylvania Supreme Court noted:

A violation of that subsection [70 P.S. § 1-401(b)] occurs when there is a misrepresentation of a material fact in connection with a securities transaction. The misrepresentation may be overt, such as when a person makes an untrue statement about a material fact. The offense may also occur by act of omission. Omitting a material fact in a statement connected to a securities transaction constitutes a violation of Section 1-401(b) when the omission renders the statement misleading. Critically, there are no terms in Section 1-401(b) related to scienter, and there are no general provisions of the PSA that otherwise supply a scienter element.

Id. at 1285. The Pennsylvania Supreme Court ultimately held in *Mimi* that proof of scienter is not required when alleging a violation of Section 1-401(b) of the Act. *Id.* at 1287. This holding constitutes a material change of law, as it is the first time that the Pennsylvania Supreme Court has addressed the issue of proof of scienter under Section 1-401(b) of the Act.

It should be noted that the United States Supreme Court provided the following test to determine if a fact is “material”:

An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. ... It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available.

TSC Industries, Inc., et al. v. Northway, Inc., 426 U.S. 438, 449 (1976) (emphasis added).

Global Notes

In the Global brochure Respondent Goldberg provided to the Global investors, under the heading “Our Company” it states the following: “Our highly motivated management team has over

80 years of combined skills in business operations, consumer and commercial lending, internet/telemarketing and sales. (Exhibit DoBS 11). The Department argues that the Global Note brochure and offering materials did not disclose the financial condition of Global. The Global Note brochure does not disclose the serious financial risks to investors who purchase the Global Notes. Finally, the Department posits that the Global Note brochure does not disclose or provide any information regarding Global's corporate officers or leadership. According to the Department, the financial condition of Global, its corporate officers and leadership, and the financial risk of the Global Notes are material facts; and omitting to state these facts significantly alters the total mix of information that was made available to purchasers of the Global Notes. Because Respondent Goldberg omitted to provide these material facts, which were notably absent from the Global brochure and offering materials, Respondent Goldberg omitted to state material facts necessary to make the Global brochure and offering materials not misleading to investors. As such, Respondent Goldberg's conduct in connection with the offer and sale of the Global Notes violated Section 401(b) of the Act.

Respondents argue that the Department has failed to meet its burden of proof under Section 401(b) by proving all five elements of fraud, which are (1) misstatements or omissions of material facts; (2) with scienter; (3) in connection with a purchase or sale of securities; (4) upon which the Global Note investors relied upon such material misstatement or omissions; and (5) the Global Note investors suffered damages as a result. Respondents' argument has no merit. As previously discussed, scienter is not required to be proved under Section 401(b). Additionally, a review of the plain language of the text of Section 401(b) of the Act does not require proof of reliance on the omissions of material facts or proof of damages on the part of the Global Note investors. "[A]lthough a court

must 'listen attentively to what a statute says [;] [o]ne must also listen attentively to what it does not say.' " *Kmonk-Sullivan v. State Farm Mut. Auto Ins. Co.*, 788 A.2d 955, 962 (Pa. 2001) (citation omitted).

In construing a statute, courts must ascertain and give effect to legislative intention as expressed in language of statute, and **cannot**, under their powers of construction, **supply omissions in a statute**, especially where it appears that matter may have been intentionally omitted. See *Kusza v. Maximonis*, 70 A.2d 329 (Pa. 1950); see also *Girgis v. Bd. Of Physical Therapy*, 859 A.2d 852, 854 (Pa. Cmwlth. 2004) (A court "may not insert a word the legislature failed to supply into a statute."). Respondents are asking the undersigned hearing examiner to read words into Section 401(b) that do not currently exist. The undersigned hearing examiner declines to do so. Also, Respondents in their post-hearing brief do not dispute that the facts omitted by Respondent Goldberg would have been material to the reasonable Global Note investor and necessary to make other statements made about the Global Notes not misleading. The facts omitted by Respondent Goldberg are deemed to be facts a reasonable Global Note investor would have deemed important when deciding whether to purchase the securities being offered for sale. As a result, the Department has met its burden of proving that Respondent Goldberg, in connection with the offer, sale or purchase of the Global securities in this State, directly or indirectly omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they are made, not misleading.

Goldberg LLC Notes

The Department next argues that Respondents violated Section 401(b) as it relates to the Goldberg LLC Notes because Respondents failed to disclose adequate information

about the MCA Funding Firms in which the Golberg LLCs were investing. (DoBS initial brief, pgs. 56-57). According to the Department, a reasonable investor would want to know additional details about the identity of the MCA Funding Firms to ensure that the Goldberg LLCs were not investing in bankrupt MCA funding firms.

Conversely, Respondents argue that they need not disclose the identities and operating histories of the MCA Funding Firms because they would be trade secrets akin to Coke not required to disclose its coca cola formula to KO (Coke Stock's ticker symbol) investors. Respondents opine as the Note holders were sophisticated and/or Accredited Investors, they had the opportunity to ask this and any other question of Respondent Goldberg, the manager of each LLC, and if they did not, they must have deemed such question not material. Had this been included in the PPM, competitors could have contacted these funders and offered better terms than the LLCs' then current terms. According to Respondents, this could have adversely affected the LLCs' ability to generate the profitability necessary to fulfill principal and interest payment obligations due Note holders. (Respondent's brief at pgs. 19-20).

Respondents' argument is without merit. Upon a review of the text of Section 401(b), there is nothing in the text that would give discretion to Respondents to determine what information to disclose to the Goldberg LLC Note purchasers. The test is whether a reasonable Goldberg LLC Note purchaser would consider the information important before deciding to purchase the notes. Respondents do not dispute that they did not provide the information about the identities and operating histories of the MCA Funding Firms to Goldberg LLC Note purchasers before they purchased the notes. The operating histories of the MCA Funding Firms are deemed to be facts a reasonable Goldberg LLC Note purchaser

would want to know before purchasing the notes. The Department has met its burden of proving that Respondents violated Section 401(b) as it relates to the Goldberg LLC Notes because Respondents failed to disclose adequate information about the MCA Funding Firms in which the Goldberg LLCs were investing.

During Respondent Goldberg's testimony, he indicated that based on his role in the various LLCs he was due compensation in the form of management fees. According to Respondent Goldberg, he did not always withdraw the full compensation that he was entitled from each Goldberg LLC, per the terms of the Goldberg's LLC Notes' PPM. However, Respondent Goldberg conceded that if he withdrew the total compensation to which he was entitled from the Goldberg LLCs, then the Goldberg LLCs would have operated at a loss. The Department argues that Respondents failed to disclose to the Goldberg LLC Note holders the dire consequences of Respondent Goldberg collecting his full management fee pursuant to the terms of the Goldberg LLC Notes. According to the Department, this fact is material because a reasonable investor would want to know if the Goldberg LLC Investors' funds would be seriously endangered in the event the Respondent Goldberg collected his total management fee. (DoBS initial brief, pg. 56).

Respondents argue that the PPMs disclosed that Respondent Goldberg was the one-hundred percent owner of each LLC and the manager of each LLC. Therefore, the Goldberg LLC Note holders were on notice that Respondent Goldberg could take out management fees or refrain from taking them out by treating such as retained earnings. (Respondents' brief, pg. 20). After reviewing the hearing testimony and the PPMs, Respondents did not disclose to the Goldberg LLC Note Holders that the funds would be insolvent if Respondent Goldberg collected all the management fees due him from each of the LLCs.

This information is deemed a fact a reasonable investor would want to know before investing in the various Goldberg LLC Notes. Respondent Goldberg was under no legal obligation to inject additional capital into the Goldberg LLCs to sustain them financially. The Department has met its burden of proving that Respondents violated Section 401(b) as it relates to Respondents' failure to disclose to the Goldberg LLC Note holders the dire consequences of Respondent Goldberg collecting his full management fee pursuant to the terms of the Goldberg LLC Notes.

The Department also alleges that from on or about November 2016 until December 2016, Respondents offered LEGS Notes for sale to investors in Pennsylvania. According to the PPM, the proceeds from the sale of the LEGS Notes would be used to purchase interest in investment funds that would acquire life settlements. Respondents sold LEGS notes to a least one Respondent Golddata client and at least one LEGS investor was aged 60 or more. The LEGS Notes are deemed to be securities within the meaning of the Act. Respondents filed a Notice of Exempt Offering of Securities pursuant to Regulation D, Rule 506(b). The Department argues that Respondents failed to disclose to the LEGS Note investors the following: 1. The financial condition of Respondent LEGS; 2. The financial risk of investing in the LEGS Units; 3. The Life Settlements that would be acquired with LEGS Investor funds, and 4. Respondent LEGS' s operating history. The information identified by the Department, which Respondents omitted disclosing to Respondent LEGS investors is deemed facts a reasonable LEGS 1 investor would want to know before investing in the note. The Department has met its burden of proving that Respondents violated Section 401(b) as it relates to Respondents LEGS omitting facts and information a reasonable investor would want to know before investing in that note.

SECTION 401(c): SALES AND PURCHASES

Respondent Goldberg is charged with fourteen counts under Section 401(c) of the 1972

Act which provides:

It is unlawful for any person, in connection with the offer, sale or purchase of any security in this State, directly or indirectly;

(c) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

70 P.S. §1-401(c).

The Department points out that 1931 Funding's PPM included a balance sheet as of July 31, 2019, that contained a line item for assets of \$5,256,082. However, 1931 Funding's internal general ledger as of July 31, 2019, stated 1931 Funding's assets were \$4,036,622.28. According to the Department, the 1931 Investors were provided a misleading financial statement that represented that its assets were \$1,219,459.72 more than the total assets on 1931 Funding's internal financial statements. Respondents argue that Section 401(c) requires scienter, and the Department has failed to prove Respondents acted with scienter. A reading of the plain text of Section 401(c) does not indicate that scienter is required. As previously indicated, the Pennsylvania Supreme Court in *Mimi* determined that Section 401(b) did not require proof of scienter. In making its determination, the Court noted that the language in Section 401(a) requires proof of scienter. A review of Sections 401(a), 401(b), and 401(c), shows that the language in 401(c) matches the language of 401(b) more than it matches the language in 401(a).¹⁴ Therefore, based on the plain text of 401(c) and the ruling in *Mimi*, it is determined that 401(c) does not require the Department to prove scienter.

¹⁴ § 1-401. Sales and purchases

It is unlawful for any person, in connection with the offer, sale or purchase of any security in this State, directly or

In the instant case, Respondent Goldberg failed to provide any testimony or evidence to explain the discrepancy, as a result, the evidence does support a finding that 1931 Funding was inflating its assets on the balance sheet with false entries. In addition to these false entries, Respondent Goldberg testified that the financial documents presented to Goldberg LLC Investors as a balance sheet were not really balance sheets. Goldberg testified that, despite this error, he never provided Goldberg LLC Investors with a notice explaining that the balance sheets that he provided them in the PPMs were not actual balance sheets. A reasonable investor would want to review accurate financial information and properly identified financial statements when deciding on whether to purchase the Goldberg LLC Notes. The Department has met its burden of proving that Respondents, in connection with the offer, sale or purchase of any security in this State, directly or indirectly engaged in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person in violation of Section 401(c) of the Act.

SECTION 404 of the Act, 70 P.S. § 1-404, and 10 Pa. Code § 404.014(a)(1):
CUSTODY REQUIREMENTS FOR INVESTMENT ADVISORS

Respondent Golddata is charged with five counts under Section 404 of the Act, 70 P.S. § 1-404, and 10 Pa. Code § 404.014(a)(1) of the Regulations which provides for:

(a) Safekeeping required. It is unlawful and considered to be a fraudulent, deceptive, or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404), for an investment adviser, registered or required to be registered under section 301 of the act (70 P.S. § 1-301), to have custody of client funds or securities unless:

indirectly:

- (a) To employ any device, scheme or artifice to defraud;
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

70 P.S. § 1-401.

(1) The investment adviser notifies the Department promptly in writing on Form ADV that the investment adviser has or may have custody.

Respondent Goldata, as a registered investment advisor and Respondent Goldberg, as an investment advisor representative for Respondent Goldata, sold several active Goldata investment advisor clients Goldberg LLC Notes and LEGS Notes.¹⁵ To invest in the Goldberg LLCs, the Goldata Clients transferred funds directly to the Goldberg LLCs. The funds Goldata Clients transferred to the Goldberg LLCs were their personal funds and would meet the definition of client funds or securities. Additionally, the funds Goldata Clients invested into the Goldberg LLCs were not maintained by a third-party custodian. Goldberg testified that he had complete control of the Goldberg LLCs, including total control and possession of the Goldberg LLCs' bank accounts. Goldberg had complete control over and authority to obtain possession of the funds invested by the Goldata Clients in the Goldberg LLCs and LEGS Notes, therefore, every time a Goldata Client transferred funds and invested in the Goldberg LLCs, Goldata and Goldberg were in custody of client funds or securities.

Respondents argue that they did not have custody of client funds and as a result they were not in violation of the Code. Specifically, Respondents argue that the LLCs were not managed by Goldata, a registered investment advisor, nor Respondent Goldberg as an investment advisor representative. According to Respondents, each LLC from its inception was set up as Respondent Goldberg's stand-alone business separate in every possible manner from Respondent Goldata and its registered investment advisor business. Respondents point to the testimony of Robert Harmelin, who testified that he was a 1931 Note Holder and a client of Goldata and he knew that

¹⁵ Respondents have stipulated that Goldata Clients invested in the Goldberg LLCs. Specifically, there were: 7 Goldata Clients invested in 1931 Funding; 2 Goldata Clients invested in 803 Funding; 5 Goldata Clients invested in 442 Funding; 2 Goldata Clients invested in 567 Funding; and 1 Goldata Client invested in LEGS.

1931 and Goldata were "separate" at the time he purchased his LLC Notes. Finally, Respondents argue that Goldata did not have custody of customer funds as the LLCs are not and were not "pooled investment vehicles."

At the outset, it should be noted that Respondents' argument that the LLCs are not and were not "pooled investment vehicles" is erroneous and without merit. The Code defines a "pooled investment vehicle" in relevant part as "[a] limited partnership, limited liability company or an entity with a similar legal status and performing similar functions." 10 Pa. Code § 102.021. Thus, the definition is broad and there is no requirement that investors receive an equity interest in the underlying assets to qualify as a pooled investment vehicle. Nor is there any limitation on the types of asset classes or investments that fall within the definition. According to Respondent Goldberg, the purpose of the various LLCs was to pool money together and participate with the funders who underwrote the cash advances. (N.T. 357). If the investments through the MCA funders did well, everyone would be able to get paid back and if the investments did poorly, there was a possibility that everyone could suffer a bit of a loss. (*Id.*).

The above regulation makes clear that it is unlawful and considered to be a fraudulent, deceptive, or manipulative act, practice, or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404); for an investment adviser, registered or required to be registered under section 301 of the act (70 P.S. § 1-301), to have custody of client funds or securities unless the investment adviser notifies the Department promptly in writing on Form ADV that the investment adviser has or may have custody. The plain reading of the cited regulation makes clear that once a registered investment advisor takes on an investment client, all funds or securities received from that investment client are to be documented and the Department notified. Respondents suggest that even though they had a fiduciary duty to their registered

investment advisor clients, they could sidestep the Act and regulations designed to protect the investment advisor client simply by creating another business in the form of an LLC and drafting disclaimer language stating the businesses are separate. Respondents do not cite any case law to support this interpretation of the Act and its regulation on this point. The purpose of the Act and its regulation is to protect investment advisor clients from being taken advantage of by unscrupulous investment advisors. If Respondents were allowed do what they suggest, the Acts purpose would be severely undermined.

It is undisputed that Respondent Goldata was not in compliance with the requirements of the cited regulation. Specifically, Goldberg testified or admitted that Respondent Goldata did not: file an audited balance sheet at the end of its fiscal year; notify the Department that it has custody of client funds on its Form ADV¹⁶; have its clients' funds of which it had custody verified by a certified public accountant; or maintain a net worth over \$35,000 from July 1, 2017, to June 30, 2018. As a result, the Department has met its burden of proving by a preponderance of the evidence that Respondent Goldata was in violation of: Section 404 of the 1972 Act, 70 P.S. §1-404 and Regulation 404.014(a)(1), 10 Pa. Code §404.014(a)(1).

SECTION 404 of the Act, 70 P.S. § 1-404 and 10 Pa. Code § 404.014(a)(5):
CUSTODY REQUIREMENTS FOR INVESTMENT ADVISORS

Respondent Goldata is charged with five counts under Section 1-404 of the Act, 70 P.S. § 1-404, and 10 Pa. Code § 404.014(a)(5) of the Regulations which provides for:

- (a) Safekeeping required. It is unlawful and considered to be a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404), for an investment adviser, registered or required to be registered under section 301 of the act (70 P.S. § 1-301), to have custody of client funds or securities unless:

¹⁶ (N.T. 135). It should be noted that Mr. Houtz also testified that in his review of the Department's records, he did not find any documentation showing that Respondent Goldata notified the Department on Form ADV that it had or may have custody of client funds or securities. (N.T. 79).

(5) The investment adviser meets the following conditions: (i) The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, under a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without previous notice or announcement to the investment adviser and that is irregular from year to year. (ii) The written agreement provides for the first examination to occur within 6 months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities under this section as a qualified custodian, the agreement must provide for the first examination to occur no later than 6 months after obtaining the internal control report. (iii) The written agreement must require the independent certified public accountant to: (A) File a certificate on Form ADV-E with the Department within 120 days of the time chosen by the independent certified public accountant in this paragraph, stating that it has examined the funds and securities and describing the nature and extent of the examination. (B) Notify the Department within 1 business day of the finding, by means of a facsimile transmission or e-mail, followed by first class mail, directed to the attention of the Department on finding any material discrepancies during the course of the examination. (C) File Form ADV-E within 4 business days of the resignation or dismissal from, or other termination of, the engagement or removing itself or being removed from consideration for being reappointed, accompanied by a statement that includes:

(I) The date of resignation, dismissal, removal or other termination, and the name, address and contact information of the independent certified public accountant.

(II) An explanation of any problems relating to examination scope or procedure that contributed to resignation, dismissal, removal or other termination.

It is undisputed that Respondent Goldata was not in compliance with the requirements of the cited regulation. Specifically, Respondent Goldberg admitted that, as the individual in charge of Respondent Goldata, he did not have an independent CPA conduct audits of the funds in the various entities. (N.T. 135-136). Respondent also admitted that Respondent Goldata did not have a party review the fees, expenses, and withdrawals of the various entities. (N.T. 136). Finally, Respondent Goldberg admitted that Respondent Goldata never filed an audited balance sheet with the Department. (*Id.*). As a result, the Department has met its burden of proving Respondent Goldata failed to comply with Regulation 404.014(a)(5), 10 Pa. Code §404.014(a)(5), which

acts, and conduct constitute a fraudulent, deceptive or manipulative act, practice, or course of business in willful violation of Section 404 of the 1972 Act, 70 P.S. § 1-404 and Regulation 404.014(a)(5), 10 Pa. Code §404.014(a)(5).

**SECTION 305(a)(v) of the Act, 70 P.S. § 1-305(a)(v), and 10 Pa. Code § 305.011 (a) and (c):
SUPERVISION OF AGENTS, INVESTMENT ADVISER REPRESENTATIVES AND
EMPLOYEES**

Respondent Goldata is charged with five counts under Section 305 (a)(v) of the Act, 70 P.S. § 1-305(a)(v), and 10 Pa. Code § 305.011 (a) and (c) of the Regulations which provides for:

(a) Every broker-dealer and investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall exercise diligent supervision over the securities activities and securities related activities of its agents, investment adviser representatives and employees by:

(1) Establishing and maintaining written procedures and a system for applying and enforcing those written procedures which are reasonably designed to:

(i) Achieve compliance with the act and this title.

(ii) Detect and prevent any violations of statutes, rules, regulations or orders described in any of the following:

(A) Section 305(a)(v) and (ix) of the act (70 P.S. § 1-305(a)(v) and (ix)).

(B) The Conduct Rules of FINRA.

(C) An applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a National securities exchange.

(c) As evidence of compliance with the supervisory obligations imposed by this section, a broker-dealer or investment adviser shall:

(1) Implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business.

(2) Establish, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a).

Mr. Houtz testified that Respondent Goldberg was asked to provide the Department with all versions of Respondent Goldata's written supervisory procedures in effect with respect to the offer, sale, or recommendation of alternative or non-conventional securities, such as pooled investment vehicles, to Goldata clients. (N.T. 80-81). According to Mr. Houtz, Respondent

Goldberg's response was that Respondent Golddata did not have any written supervisory procedures in place. (N.T. pg. 82). As a result, the Department has met its burden of proving that Respondent Golddata failed to comply with its supervisory obligations as required by Section 305 (a)(v) of the Act, 70 P.S. § 1-305(a)(v), and 10 Pa. Code § 305.011 (a) and (c).

SECTION 305 (a)(v) of the ACT, and 10 Pa. Code § 303.042(a)(3)(ii)(A)-(B):
INVESTMENT ADVISOR CAPITAL REQUIREMENTS

Respondent Goldberg and Respondent Golddata are charged with one count under Section 305(a)(v) of the Act, 70 P.S. § 1-305(a)(v), and 10 Pa. Code § 303.042 (a)(3)(ii)(A)-(B) of the Regulations which provides for:

a. Net worth requirements

(3) An investment adviser registered under section 301 of the act that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain a minimum net worth of \$35,000 unless the investment adviser has custody solely as the result of one of the following:

(ii) Serves as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities and the following conditions are met:

(A) The pooled investment vehicle is subject to audit at least annually and distributes its audited financial statements which have been prepared by an independent certified public accountant in accordance with generally accepted accounting principles to all limited partners, members or beneficial owners within 120 days of the end of its fiscal year.

(B) The investment adviser:

(I) Hires an independent party to review all fees, expenses and capital withdrawals from the accounts included in the pooled investment vehicle before forwarding them to the qualified custodian with the independent party's approval for payment.

(II) Sends written invoices or receipts to the independent party describing: (-a-) The amount of the fees, including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based. (-b-) The expenses or capital withdrawals for the independent party to verify that payment of the fees, expenses or capital withdrawals is in accordance with the documents governing the operation of the pooled investment vehicle and any statutory requirements applicable thereto.

(III) Notifies the Department in writing on Form ADV that the investment adviser intends to employ the use of the audit safeguards in subclauses (I) and (II).

Mr. Houtz testified that based on his review of the records Respondents submitted to the Department, Respondent Goldata failed to maintain a net worth of \$35,000 for the period from July 1, 2017, to June 30, 2018. (N.T. 79). Additionally, Mr. Houtz testified that Respondent Goldata failed to submit any documentation showing it had subjected pooled investment vehicles (Goldberg LLCs) to an annual audit and then subsequently distributed the results of those audits to the investors. (*Id.*). As a result, the Department has met its burden of proving that Respondent Goldberg and Respondent Goldata violated Section 305(a)(v) of the Act, 70 P.S. § 1-305(a)(v), and 10 Pa. Code § 303.042 (a)(3)(ii)(A)-(B) of the Regulations.

**SECTION 305 (a)(v) of the ACT, 70 P.S. § 1-305(a)(v), and 10 Pa. Code § 304.022 (a)(1):
INVESTMENT ADVISOR REQUIRED FINANCIAL REPORTS**

Respondent Goldberg and Respondent Goldata are charged with five counts under Section 305(a)(v) of the Act, 70 P.S. § 1-305(a)(v), and 10 Pa. Code § 304.022 (a)(1) of the Regulations which provides for:

(a) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file with the Department an audited balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant.

Mr. Houtz testified that a review of the records shows that Respondent Goldata did not file an audited balance sheet with the Department which contained an unqualified opinion of an independent certified public accountant at the end of a fiscal year. (N.T. 80). As a result, the Department has met its burden of proving that Respondent Goldberg and Respondent Goldata

failed to comply with Section 305(a)(v) of the Act, 70 P.S. § 1-305(a)(v), and 10 Pa. Code § 304.022 (a)(1) of the Regulations.

SECTION 305(a)(ix) and 10 Pa. Code § 305.019(a):
DISHONEST AND UNETHICAL PRACTICES

Respondent Goldberg and Respondent Goldata are charged with seventeen counts under Section 305 (a)(ix) and 10 Pa. Code § 305.019 (a) of the Regulations which provides for:

- (a) Every person registered under section 301 of the act (70 P.S. § 1-301) is a fiduciary and shall:
 - (1) Act primarily for the benefit of its customers.
 - (2) Observe high standards of commercial honor and just and equitable principals of trade in the conduct of their business.

The evidence presented at the hearing establishes that Respondents engaged in dishonest or unethical practices in the securities business by having custody or possession of client's securities or funds without complying with the Department's regulations regarding custody of funds in violation of 10 Pa. Code § 404.014.

SECTION 305(a)(ix) and 10 Pa. Code § 305.019 (c)(3)(xi):
DISHONEST AND UNETHICAL PRACTICES

Respondent Goldberg and Respondent Goldata are charged with seventeen counts under Section 305(a)(ix) and 10 Pa. Code § 305.019(c)(3)(xi) of the Regulations which provides for:

(c) The Department, for purposes of section 305(a)(xi) of the act, will consider actions such as those in paragraphs (1)---(3) to constitute dishonest or unethical practices in the securities business or taking unfair advantage of a customer

(3) Investment advisers and investment adviser representatives. Includes the following actions:

- (xi) Failing to disclose to a client in writing, before advice is given, a material conflict of interest relating to the investment adviser, the investment adviser representative or an employee of the investment adviser which could reasonably be expected to impair the giving of unbiased and objective advice including:
 - (A) A compensation arrangement connected with advisory services to a client which is in addition to compensation from the client for the services.
 - (B) An advisory fee charged to a client for giving advice when a commission for executing securities transactions under the advice will be received by the

investment adviser, the investment adviser representative or an employee or affiliated person of the investment adviser.

Golddata failed to disclose in writing to the Golddata Clients who purchased Goldberg LLC Notes that Goldberg had a material conflict of interest due to his receipt of compensation from the Goldberg LLCs for his work in offering for sale the Goldberg LLC Notes, in violation of Regulation 305.019(c)(3)(xi). The evidence presented at the hearing establishes that as Respondent Goldberg received compensation for his management of Respondent 1931, Respondent 567, Respondent 442, Respondent 803, and Respondent LEGS, Respondent Golddata failed to act as a fiduciary and acted primarily for its own benefit by recommending the purchase of the 1931 Notes, the 567 Notes, the 442 Notes, the 803 Notes and the LEGS Units. The Department has met its burden of proof on this issue.

SECTION 305 (a)(ix) and 10 Pa. Code § 305.019 (c)(3)(xv):
DISHONEST AND UNETHICAL PRACTICES

Respondent Goldberg and Respondent Golddata are charged with seventeen counts under Section 305(a)(ix) and 10 Pa. Code § 305.019 (c)(3)(xv) of the Regulations which provides for:

(c) The Department, for purposes of section 305(a)(xi) of the act, will consider actions such as those in paragraphs (1)--(3) to constitute dishonest or unethical practices in the securities business or taking unfair advantage of a customer

(3) Investment advisers and investment adviser representatives. Includes the following actions:

(xv) Taking an action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, when the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to, and does not comply with, the requirements of § 404.014 (relating to custody requirements for investment advisers).

By failing to comply with the various custody requirements, including informing the Department on Form ADV that Respondent Goldberg had custody, and by not conducting independent audits and reviews of accounts in which Respondent Goldberg had

custody of client funds, Respondents Goldberg and Golddata violated Regulation 305.019(c)(3)(xv), 10 Pa. Code § 305.019(c)(3)(xv) and has engaged in dishonest and unethical practices.

SANCTIONS

The testimony and evidence establish that Respondent Goldberg's conduct reveals a pattern of dishonesty and deception. The Department can issue a maximum assessment of \$100,000 for each act or omission that constitutes a willful violation of the 1972 Act and its regulations.¹⁷ If applied, the maximum assessment for Golddata's and Goldberg's collective two-hundred six violations would be \$14,700,000. Section 602.1 of the 1972 Act pertinently states:

Assessments

(c) ... the department may issue an order... which imposes an administrative assessment in the amounts provided in paragraph (1) ... against any other person if the department determines that the person wilfully violated section... 401....

(1) The department, in issuing an order under this subsection, may impose the administrative assessments set forth below. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

* * *

(ii) In issuing an order against a person for willful violation of section 401 ... (c)..., the department may impose a maximum administrative assessment of up to one hundred thousand dollars (\$100,000) for each act or omission that constitutes a violation of any of those sections. ...

¹⁷ In issuing an order against any broker-dealer, agent, investment adviser or investment adviser representative registered under section 30 I or an affiliate of any broker-dealer or investment adviser, the department may impose a maximum administrative assessment of up to one hundred thousand dollars (\$100,000) for each act or omission that constitutes a violation of the act or rule or order issued under this act that constitutes a dishonest or unethical practice in the securities business, taking unfair advantage of a customer, or failure to reasonably supervise its agents or employees. If any of the victims of the person's violative conduct were individuals aged 60 or more, the Department also may impose a special administrative assessment in addition to the foregoing amounts of up to fifty thousand dollars (\$ 50,000).

* * *

(2) For purposes of determining the amount of administrative assessment to be imposed in an order issued under this subsection, the department shall consider:

(i) The circumstances, nature, frequency, seriousness, magnitude, persistence and willfulness of the conduct constituting the violation.

(ii) The scope of the violation, including the number of persons in and out of this Commonwealth affected by the conduct constituting the violation.

(iii) The amount of restitution or compensation that the violator has made and the number of persons in this Commonwealth to whom the restitution or compensation has been made.

* * *

(v) Any other factor that the department finds appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act.

(3) An administrative assessment imposed by an order issued under this subsection is not mutually exclusive of any other remedy available under this act.

70 P.S. § 1-602.1(c).¹⁸

**CIRCUMSTANCES, NATURE, FREQUENCY, SERIOUSNESS,
MAGNITUDE, PERSISTENCE AND WILLFULNESS**

From 2005 until 2022, Respondent Goldberg has been registered as an investment advisor representative of Respondent Goldata pursuant to Section 301. Despite Respondent Goldberg's seventeen years of knowledge and awareness of the 1972 Act, he repeatedly violated the 1972 Act and its regulations through the offer and sale of the Global Notes, the Goldberg LLC Notes, and the LEGS Units. Goldberg chose to commit these violations, ignoring his years

¹⁸ Remedies to which the Bureau is entitled are limited by Section 602.1, which does not provide for an administrative assessment for a violation of Section 201 at all and does not permit an assessment under Section 401(b) where one is being imposed under Section 401(c). See 70 P.S. § 1-602.1(c)(1)(iii).

of experience and knowledge of the 1972 Act and its regulations. Goldberg sustained his violative conduct over the course of many years and placed the Golddata clients at risk of financial harm by offering and selling the Goldberg LLC Notes.

CONCLUSION

Based on the foregoing, having found that the Bureau met its burden, it is recommended that its assessment request be granted, and a proposed order follows.

**BEFORE THE SECRETARY OF BANKING AND SECURITIES
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES**

Department of Banking and Securities,	:	
Bureau of Securities Compliance and	:	
Examinations	:	
	:	
Petitioner	:	
	:	Docket No. SEC - 21-0039
vs.	:	
	:	
Goldata Computer Services, Inc.	:	
d/b/a Goldata Financial	:	
Elliot Mitchell Goldberg	:	
1931 Funding, LLC	:	
567 Funding, LLC	:	
442 Funding, LLC	:	
804 Funding, LLC	:	
LEGS 1, LLC	:	
	:	
Respondents	:	

PROPOSED ORDER

AND NOW, this 22nd day of November 2023, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Discussion, it is **ORDERED** that Goldata Computer Services, Inc. d/b/a Goldata Financial, Elliot Mitchell Goldberg, 1931 Funding, LLC, 567 Funding, LLC, 442 Funding, LLC, LEGS 1, LLC, shall pay an **ADMINISTRATIVE ASSESSMENT** of \$7,000 for the sixty-one violations of Section 1-401(b), 70 P.S. § 1-401(b), and \$7,000 for the five violations of Section 1-404, 70 P.S. § 1-404 via 10 Pa. Code § 404.014(a)(1), and \$7,000 for the five violations of Section 1-404, 70 P.S. § 1-404 via 10 Pa. Code § 404.014(a)(5), and \$7,000 for the one violation of Section 1-303, 70 P.S. § 1-303 via 10 Pa. Code § 303.042(a)(3)(ii)(A-B), and \$7,000 for the five violations of Section 1-304, 70 P.S. § 1-304 via 10 Pa. Code § 304.022(a)(1), and \$7,000 for the five violations of Section 1-305, 70 P.S. § 1-305 via 10 Pa. Code § 305.011(a), (c), and \$7,000 for the seventeen violations of Section 1-305, 70 P.S. § 1-305 via 10 Pa. Code §

305.019(a), and \$7,000 for the seventeen violations of Section 1-305, 70 P.S. § 1-305 via 10 Pa. Code § 305.019(c)(3)(xi), and \$7,000 for the seventeen violations of Section 1-305, 70 P.S. § 1-305 via 10 Pa. Code § 305.019(c)(3)(xv), for a total assessment in the amount of \$931,000, pursuant to Section 602.1(c) of the 1972 Act, 70 P.S. § 10602(c). Respondents shall be jointly and severally liable for payment of the assessment. Respondents shall make said payment within 30 days, or within such other period agreed to by the Department, by certified check, attorney's check, or U.S. Postal Service money order, made payable to "Commonwealth of Pennsylvania," and shall deliver the payment to the counsel for the Department set forth below unless otherwise directed by the Department.

IT IS FURTHER ORDERED, Section 305 of the 1972 Act, 70 P.S. § 1-305, that the registration of Respondent Goldata Computer Services, Inc. dba Goldata Financial and Respondent Elliot Mitchell Goldberg be censured.

This Proposed Order shall be effective as a Final Order in accordance with 1 Pa. Code § 35.226(a)(3) in forty days unless a Brief on Exceptions is filed within thirty days in accordance with 1 Pa. Code § 35.211 or the Secretary initiates a review within forty days in accordance with 1 Pa. Code § 35.226(a)(2).

BY ORDER:

Redacted

Monty Batson
Hearing Officer

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Seamus D. Dubbs, Esquire
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Docket Clerk:

Eileen Smith
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Date of mailing:

11/30/2023

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

FILED
2023 NOV 29 PM 12:30
PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, BUREAU OF SECURITIES	:	
COMPLIANCE AND EXAMINATIONS	:	
PETITIONER,	:	
v.	:	Docket No.: 210039 (SEC-OSC)
	:	
GOLDDATA COMPUTER SERVICES, INC. D/B/A	:	
GOLDDATA FINANCIAL,	:	
ELLIOTT MITCHELL GOLDBERG,	:	
1931 FUNDING, LLC,	:	
567 FUNDING, LLC,	:	
442 FUNDING, LLC,	:	
803 FUNDING, LLC,	:	
LEGS 1, LLC	:	
	:	
RESPONDENTS	:	

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the attached Letter and Proposed Report in accordance with the requirements of 1 Pa. Code § 33.31 (relating to service by agency), in the manner indicated below:

By United States First Class Mail 11/30/23 and Electronic Mail 11/29/23:

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(Attorneys for Petitioner)

By:

Redacted

Linnea Freeberg, Docket Clerk
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