

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9401 / May 3, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 69506 / May 3, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3601 / May 3, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30505 / May 3, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15024

In the Matter of

**WALTER V. GERASIMOWICZ,
MEDITRON ASSET
MANAGEMENT, LLC,
MEDITRON MANAGEMENT
GROUP, LLC**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER PURSUANT
TO SECTION 8A OF THE SECURITIES ACT
OF 1933, SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTIONS 203(e), 203(f) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940 AND ORDERING
CONTINUATION OF PROCEEDINGS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) and Ordering Continuation of Proceedings

against Walter V. Gerasimowicz (“Gerasimowicz”), Meditron Asset Management, LLC (“MAM”), and Meditron Management Group, LLC (“MMG”) (collectively, “Respondents”).¹

II.

Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 and Ordering Continuation of Proceedings (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offer, the Commission finds that:

Summary

1. This matter involves misconduct by MAM, a registered investment adviser, its sole owner and principal, Gerasimowicz, and MMG, an unregistered investment adviser wholly owned by Gerasimowicz, for misappropriating and misusing client assets and repeatedly making material misrepresentations and omissions to clients.
2. From at least September 2009 through September 2011, Gerasimowicz, MAM and MMG diverted approximately \$2.65 million from their client, the Meditron Fundamental Value/Growth Fund, LLC (“Meditron Fund” or “Fund”), to prop up SMC Electrical Contracting Inc. (“SMC”), a private contracting company controlled by Gerasimowicz that is currently in Chapter 11 bankruptcy proceedings.
3. Gerasimowicz, MAM and MMG repeatedly lied or failed to disclose to Fund investors the dramatic deviations from the Fund’s stated investment strategy and deviations from the Fund’s disclosed valuation policy. Gerasimowicz and MAM also failed to disclose the material conflict of interest posed by their own investments of approximately \$2 million in SMC.

¹ On September 14, 2012, the Commission instituted administrative and cease-and-desist proceedings pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 against Respondents.

4. Gerasimowicz also misrepresented MAM's regulatory assets under management at \$1.1 billion in published articles authored by Gerasimowicz and made available on Respondents' website.

5. MAM, aided and abetted by Gerasimowicz, violated the custody rule applicable to registered investment advisers by failing to distribute annual audited financial statements to Meditron Fund investors within the rule's prescribed time periods.

Respondents

6. **Gerasimowicz**, age 60, is a resident of New York, New York. He is the Chairman, Chief Executive Officer, Chief Compliance Officer, and sole owner of Respondent MAM, an investment adviser registered with the Commission, and is the sole owner of Respondent MMG, an unregistered investment adviser, through which he manages the Meditron Fund. Gerasimowicz is also the founder and operating manager of Meditron Real Estate Partners, LLC ("MREP"), a private company, and serves as Chairman of the Board of Directors of SMC, a private contracting company owned by MREP.

7. **MAM** is a New York limited liability company and registered investment adviser with its principal place of business in New York, New York. MAM has been registered with the Commission since April 9, 2003 and is wholly owned by Gerasimowicz. MAM claimed to have approximately \$50 million in regulatory assets under management in its March 24, 2012 Form ADV filing, and claimed that approximately ten percent of its advisory clients also have invested in the Meditron Fund.

8. **MMG** is a Delaware limited liability company, formed on March 14, 2003, and an unregistered investment adviser with its principal place of business in New York, New York. MMG is named as the Meditron Fund's manager in the Fund's offering documents and is wholly owned by Gerasimowicz. MMG has no bank or brokerage accounts in its name, and advisory fees for managing the Meditron Fund are paid to MAM and, through MAM, to Gerasimowicz.

Other Relevant Entities

9. **Meditron Fund**, a Delaware limited liability company formed on March 14, 2003, is a hedge fund managed by Gerasimowicz, MMG and MAM. The Fund had approximately thirteen investors, several of whom are also MAM advisory clients, and claimed to have \$4.2 million in assets under management as of MAM's Form ADV filing on March 24, 2012. The Meditron Fund has no board of directors or investment committee, and Gerasimowicz controls the Fund's bank and brokerage accounts. The Fund's custodian was Goldman Sachs Execution & Clearing ("Goldman") until approximately July 2010, and is currently Charles Schwab & Co., Inc.

10. **MREP**, a Delaware limited liability company, was formed by Gerasimowicz on June 28, 2004 as a vehicle for potential investments in real estate ventures. Gerasimowicz is the operating manager and MREP has no other employees. In 2007, MREP functioned as a vehicle

for Gerasimowicz, the Meditron Fund, and certain individual MAM advisory clients to co-invest in SMC, which is MREP's sole investment.

11. **SMC**, a New York corporation, is a private contracting company with its principal place of business in New York, New York. SMC is owned by MREP. Gerasimowicz serves as the Chairman of the Board of Directors of SMC. On September 30, 2011, SMC filed a petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of New York.

Meditron Fund Offering and Related Disclosures

12. Meditron Fund investors received the Fund's Private Placement Memorandum ("PPM"), Operating Agreement, and subscription documents, as well as a one-page document detailing the Fund's historical monthly and annual performance returns.

13. The PPM stated that the Fund's investment objective was to "seek to outperform the S&P 500 Index through the purchase of undervalued securities and their subsequent sale upon reaching price appreciation targets. The Fund's portfolio is normally comprised of 15 to 50 stocks with expected fair values considerably greater than their current market prices." The PPM also disclosed that the "Fund's portfolio may be heavily weighted in small and mid-cap issues, and is not necessarily composed of stocks which comprise the S&P 500." The PPM represented that the Fund would maintain "a diversified portfolio of long and short positions" with "controlled risk diversification of investments" and "positions will often be hedged selectively to reduce market risk and volatility."

14. The PPM represented that the Fund's manager would select investments by using a "proprietary quantitative stock selection methodology centered upon fair value calculations" and that the Fund's manager would also consider "other fundamental data such as corporate earnings and growth potential." The PPM also represented that the manager of the Fund would "compute[] weekly fair values of the securities." The PPM required the Fund manager to value the Fund's publicly-traded securities based on market prices, or in the absence of such prices, based on prices "reasonably assigned by the Manager."

15. Although the Fund was obligated to pay Gerasimowicz and MMG an annual 1% management fee as well as an incentive allocation of 20% of annual net profits (along with payment for "investment-related expenses, such as brokerage commissions, clearing fees, interest, custodial fees, and similar expenses," and "[o]rganizational expenses (including legal and accounting fees)"), these management fees were actually paid to Gerasimowicz and MAM.

16. While the Operating Agreement provided that any member or manager "may engage in and possess interests in other business ventures of any and every type and description," it limited the ability of the Meditron Fund to transact business with any member or manager to circumstances where "the terms of those transactions are no less favorable than those the [Fund] could obtain from unrelated third parties."

The SMC Acquisition

17. In 2007, Gerasimowicz began raising capital through the offer and sale of limited partnership interests in MREP for the purpose of investing in SMC. Respondents caused the Meditron Fund to invest \$200,000 in MREP in June 2007. During the same period, Gerasimowicz recommended and caused seven individual MAM advisory clients to purchase MREP limited partnership interests totaling \$750,000, and Gerasimowicz personally invested \$50,000 in MREP in May 2007.

18. In July 2007, Gerasimowicz caused MREP to invest \$1 million in SMC in exchange for a 50% ownership interest in SMC.

19. In approximately September 2008, SMC fired its President and CEO. In connection with his termination, the President and CEO agreed to allow MREP to acquire his 50% ownership interest in SMC at no additional cost, and MREP became the sole equity owner of the company.

Misappropriation and Misuse of Meditron Fund Assets

20. Beginning at least by the fall of 2008, SMC experienced financial difficulties and Gerasimowicz and MAM began to prop up SMC using their own funds. Between approximately October 2008 and September 2011, when SMC filed for bankruptcy, Gerasimowicz and MAM provided over \$2 million in funding to SMC. Neither Gerasimowicz nor MAM disclosed these investments in SMC to the Meditron Fund or to Fund investors.

21. Beginning in approximately September 2009, Respondents began siphoning off Meditron Fund assets for the benefit of SMC. Between September 2009 and September 2011 (the “relevant period”), Gerasimowicz directed at least 36 separate transfers of Meditron Fund assets, totaling approximately \$2.65 million, either to SMC or directly to SMC’s creditors in order to provide SMC with working capital.

22. In order to obtain the money to make these transfers, Gerasimowicz sold publicly-traded, liquid securities held by the Meditron Fund. Using the proceeds, between September 2009 and June 2010, Respondents directed six separate transfers, totaling \$1.025 million, from the Meditron Fund’s brokerage account at Goldman, directly to SMC or for its benefit. In the letters of authorization provided to Goldman, Gerasimowicz represented that the monies paid for the purchase of the following securities:

- World Trade Center Memorial Development Bond at 12%
- Erasmus High School Bond at 9%
- Brooklyn High School Bond at 9%
- Brooklyn PS 225K Bond at 8%

23. The letters of authorization list the recipient of the funds as either SMC or MREP, which subsequently transferred the funds to SMC.

24. The \$1.025 million transferred from the Meditron Fund's Goldman account, together with the Fund's 2007 \$200,000 investment in SMC through MREP, represented approximately 29% of the Fund's assets as of June 30, 2010.

25. In return for the six transfers between September 2009 and June 2010, the Meditron Fund received four promissory notes issued by SMC (the "Notes"). The first Note was issued on December 20, 2009, for \$500,000 at a 12% annual interest rate. The second Note was issued on March 1, 2010 for \$100,000 at a 9% annual interest rate. The third Note was issued on June 6, 2010 for \$225,000 at a 6% annual interest rate. The fourth Note was issued on June 23, 2010 for \$200,000 at an 8% annual interest rate. All four Notes were issued for a five-year term and required no interest or principal payments until the end of that term. To date, SMC has made no payments on the Notes, the first of which comes due in December 2014.

26. Between approximately September 2010 and September 2011, and on at least 30 separate occasions, Respondents diverted a total of approximately \$1.63 million of Meditron Fund assets, either to SMC or for its benefit.

27. The approximately \$2.65 million transferred from the Meditron Fund to SMC between September 2009 and September 2011 represented approximately 80% of the Fund's assets as of December 31, 2011.

28. In making these "investments," Respondents failed to perform the type of disciplined, quantitative-based investment selection strategy as promised in the PPM, or to take any other steps to protect the Meditron Fund's interests in the SMC-related transactions.

29. Gerasimowicz or MAM also did not assess whether the terms obtained by the Fund were "no less favorable than those the [Fund] could obtain from unrelated third parties," as required by the Fund's Operating Agreement. As a matter of fact, however, SMC was unable to acquire funding on these terms from unrelated third parties. To the contrary, SMC was unable to obtain unrelated third-party financing unless Gerasimowicz agreed to personally guarantee repayment. Furthermore, when SMC did manage to obtain a short-term loan for \$190,000 from a friend of Gerasimowicz in February 2009, the firm paid an annualized interest rate of approximately 60%, significantly more than the 6%-12% range that Gerasimowicz unilaterally set for the Fund's Notes.

30. Investors continued to purchase membership interests in the Meditron Fund during the relevant period after Respondents began deviating from the Fund's strategy and funneling Fund assets to SMC.

31. Several of MAM's advisory clients also invested in the Meditron Fund.

32. On September 30, 2011, SMC filed a petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of New York. According to SMC's bankruptcy financials, SMC's net worth is negative and the business is insolvent with liabilities of between \$8-\$10 million and net assets of approximately \$6-\$7 million including accounts receivable.

33. SMC's bankruptcy filing lists the Meditron Fund as a creditor holding an unsecured, nonpriority claim of \$2.5 million against SMC for loans provided from 2007 through 2011.

34. Despite SMC's bankruptcy and the fact that secured and other creditor claims totaling \$3.2 million take priority over the Fund's claims, Respondents continued to value the Fund's SMC Notes and loans at cost.

Misrepresentations and Omissions to Fund Investors

35. During the relevant period, Respondents solicited potential investors by means of material misrepresentations and omissions. The Fund's PPM represented that the Fund maintained a "diversified portfolio," employed "controlled risk diversification" of investments, and hedged positions to "reduce market risk and volatility." According to the PPM, the Fund's investment objective is to "seek to outperform the S&P 500 Index through the purchase of undervalued securities and their subsequent sale upon reaching price appreciation targets. The Fund's portfolio is normally comprised of 15 to 50 stocks with expected fair values considerably greater than their current market prices."

36. Although the PPM was originally issued in 2003, several years before the Fund first invested in SMC, investors continued to purchase membership interests in the Fund after Respondents began diverting Fund assets to SMC, and Respondents continued to provide potential investors with this same PPM, which misrepresented the Fund's investment strategy.

37. Respondents misrepresented and failed to disclose the fundamental change in the Fund's investment strategy represented by the investment of the majority of its assets in SMC, a private company that ultimately filed for bankruptcy.

38. Respondents misrepresented and failed to disclose to those MAM advisory clients who invested in the Meditron Fund the deviations from the Fund's stated investment strategy and valuation processes as well as conflicts of interest resulting from their own economic interests in SMC.

39. During the relevant period, Gerasimowicz prepared and sent quarterly newsletters on MMG stationery to Meditron Fund investors. Each newsletter misrepresented to investors that generally Fund investments comprised between one and three percent of the Fund's portfolio on an individual basis; that the Fund was well diversified both in terms of individual position as well as across market sectors; and that the Fund's risk was comparable to bonds and lower than the overall market. Each quarterly newsletter also listed the Fund's "Top Ten Long Portfolio

Positions.” None of the listed positions ever represented more than five percent of the Fund’s overall portfolio. Despite the Fund’s rapidly increasing and concentrated SMC position, the quarterly newsletters never disclosed the Fund’s SMC investment.

40. During the relevant period, Gerasimowicz prepared and sent quarterly account statements on MAM stationery to Meditron Fund investors, listing the investor’s capital contribution(s), the investor’s net asset value (“NAV”) at the end of the quarter, the Fund’s quarterly return, and the S&P 500 quarterly return. The statements provided no information about specific portfolio investments, or about the Fund’s investment in SMC.

41. Contrary to Gerasimowicz’s representations to Fund investors, including those MAM advisory clients invested in the Fund, and contrary to the information provided to them in the offering documents, quarterly newsletters and account statements, Respondents misappropriated approximately \$2.65 million of Meditron Fund assets to provide operating capital for SMC.

42. Fund investors received no written disclosures concerning the 2010 diversion of assets and the Fund’s rapidly increasing SMC position (approximately 40% of portfolio as of 2010 year-end) until at least December 2011, in the 2010 audited financial statements, by which time Respondents had diverted approximately 80% of the Fund’s portfolio to SMC. Even this disclosure was only made to a subset of Fund investors, as some investors never received the 2010 audited financial statements and thus received no written disclosures concerning the Fund’s SMC position. No written disclosures have been made concerning the 2011 diversion of Fund assets to SMC.

43. The Fund’s audited financial statements claimed that the Fund employed a fair value methodology (pursuant to ASC 820) to value its investments. Respondents rendered these disclosures false and misleading by failing to disclose that they never performed any valuation to value the Fund’s SMC position, nor did they “reasonably assign” a valuation to the SMC position as required under the PPM. In fact, no valuation analysis was performed on the Fund’s SMC investments. As reflected in the 2010 audited financial statements, Respondents continued to value these investments at cost despite having no reasonable basis for doing so as SMC’s financial condition worsened and the company assumed increasing levels of debt. Respondents continued to take management fees from the Fund based on the inflated NAV.

44. Gerasimowicz did not disclose SMC’s September 2011 bankruptcy filing in his December 7, 2011 management representation letter provided to the auditor in connection with the audit of the Fund’s 2010 financial statements. The failure to disclose the bankruptcy as a “subsequent event” in the notes to the 2010 audited financial statements is a material omission about an event that impaired a significant asset of the Fund.

Misrepresentations Concerning Assets Under Management

45. Gerasimowicz misrepresented MAM’s assets under management in articles he wrote for *Worth Magazine*, which advertises itself as a wealth management magazine for high

net worth individuals. Specifically, Gerasimowicz authored ten separate magazine articles, dating from April 2010 to November 2011, which misrepresented MAM's assets under management at \$1.1 billion. These articles were published in *Worth Magazine* and made available and accessible by hyperlinks on Respondents' website.

Failure to Comply with Advisers Act Custody Rule

46. During the relevant period, Meditron Fund investors did not receive quarterly account statements from the Fund's qualified custodian. Instead, investors received quarterly account statements from Respondents.

47. During the relevant period, MAM was not subject to an annual surprise examination by an independent public accountant.

48. During the relevant period, Gerasimowicz, MMG and MAM did not distribute annual, audited financial statements prepared in accordance with generally accepted accounting principles ("GAAP") and audited by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board ("PCAOB") to all Meditron Fund investors within 120 days of the end of its fiscal year.

49. The Fund's 2008 audited financial statements were not completed until August 1, 2010. The Fund's 2009 audited financial statements were not completed until March 30, 2011. The Fund's 2010 audited financial statements were not completed until December 7, 2011.

Violations

50. As a result of the conduct described above, Respondents willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

51. As a result of the conduct described above, Respondents willfully violated Sections 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit fraudulent conduct by an investment adviser.

52. As a result of the conduct described above, Gerasimowicz willfully aided and abetted and caused MAM's and MMG's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

53. As a result of the conduct described above, MAM willfully violated, and Gerasimowicz willfully aided and abetted and caused MAM's violations of, Section 206(4) of the Advisers Act, which prohibits fraudulent conduct by an investment adviser, and Rules 206(4)-1 and 206(4)-2 thereunder, which provide that it shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) for an

investment adviser to, respectively, (i) directly or indirectly, publish, circulate, or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading; or (ii) have custody of client funds or securities unless a qualified custodian maintains those funds and securities and, for pooled investment vehicles, the adviser distributes annual audited financial statements prepared in accordance with GAAP and audited by an independent public accountant registered with, and subject to regular inspection by, the PCAOB to all members or other beneficial owners of the pooled investment vehicle within 120 days of the end of its fiscal year.

IV.

Pursuant to this Order, Respondents agree that disgorgement and third tier civil penalties are appropriate, and further agree to additional proceedings in this proceeding to determine the amount of such disgorgement and civil penalties, plus prejudgment interest if ordered, pursuant to Section 8A(e) of the Securities Act, Section 21B of the Exchange Act, Sections 203(i) and 203(j) of the Advisers Act and Section 9(d) of the Investment Company Act. In connection with such additional proceedings: (a) Respondents agree that they will be precluded from arguing that they did not violate the federal securities laws described in this Order; (b) Respondents agree that they may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings of this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer, and to continue the proceedings to determine the amount of disgorgement and civil penalties.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rules 206(4)-1, 206(4)-2, and 206(4)-8 promulgated thereunder.

B. Respondent Gerasimowicz be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

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

C. Any reapplication for association by Respondent Gerasimowicz will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondents, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent MAM is censured.

E. Respondents shall pay disgorgement and third tier civil penalties, in amounts to be determined by additional proceedings.

By the Commission.

Elizabeth M. Murphy
Secretary