UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9361 / September 14, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 67860 / September 14, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3464 / September 14, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30202 / September 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15024

In the Matter of

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

Respondents.

DAMAGES BRIEF OF THE DIVISION OF ENFORCEMENT

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I. STIPULATED FACTUAL BACKGROUND

This case involves, along with other violations, the willful misappropriation and misuse of advisory client assets by Dr. Walter V. Gerasimowicz ("Gerasimowicz"), Meditron Management Group, LLC ("MMG"), an unregistered investment adviser, and Meditron Asset Management, LLC ("MAM"), a registered investment adviser – both entities owned and controlled by Gerasimowicz. Gerasimowicz, MMG, and MAM owed duties of candor, loyalty, integrity and full disclosure to their clients – duties that they repeatedly breached in order to evade discovery of their malfeasance and in disregard of their clients' interests.

The parties have settled this action, and pursuant to this settlement, all the facts of the 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") are deemed admitted. (A copy of the Order is attached hereto as Exhibit A). The parties have also agreed that disgorgement and third tier penalties are appropriate. The only issue remaining for judicial resolution is the amount of that disgorgement and penalty award.

The following factual recitation derives from the Order.

A. The Parties And Other Relevant Entities

Walter Gerasimowicz, age 60, resides in New York, New York. He is the Chairman, Chief Executive Officer, Chief Compliance Officer, and sole owner of MAM and of MMG, through which he manages the Meditron Fundamental Value/Growth Fund ("Meditron Fund" or "Fund"). Gerasimowicz is also the founder and operating manager of Meditron Real Estate Partners, LLC ("MREP"), a private company, and served as Chairman of the Board of Directors

of SMC Electrical Contracting Inc. ("SMC"), a private company owned by MREP. (Order ¶ 6.)

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 ("AUM") as of its March 24, 2012 Form ADV filing, and claimed that approximately ten percent of its advisory clients invested in the Meditron Fund. (Order ¶ 7.)

MMG is a Delaware limited liability company, formed on March 14, 2003, with its principal place of business in New York, New York. Gerasimowicz is MMG's sole owner and both the Fund's Private Placement Memorandum ("PPM") and its Operating Agreement name MMG as the Fund's manager. ((Order ¶ 8.) MMG has no bank or brokerage accounts in its name, and advisory fees for managing the Meditron Fund were paid to MAM and, through MAM, to Gerasimowicz. (Order ¶¶ 8, 15.)

Meditron Fund is a Delaware limited liability company that was formed on March 14, 2003. It is a hedge fund managed by Gerasimowicz, MMG and MAM with approximately thirteen investors and a reported $4.2 million in assets as of MAM's March 2012 Form ADV filing. (Order ¶ 9; SEC Trial Exs. 89, 97 at p.18.[1]) The Meditron Fund has no board of directors or investment committee, and Gerasimowicz controls the Fund's bank and brokerage accounts. (Order ¶ 9.)

MREP is a Delaware limited liability company formed by Gerasimowicz on June 28, 2004. Gerasimowicz is MREP's operating manager and sole employee. In 2007, MREP functioned as a vehicle for Gerasimowicz, the Meditron Fund, and certain individual MAM

[1] References to "SEC Trial Exhibits" are to the Exhibits provided to Respondents' counsel in advance of the previously scheduled March 11, 2013 hearing in this matter and are included for ease of reference in a binder accompanying this submission.

advisory clients to co-invest in SMC, which is MREP's sole investment. (Order ¶ 10.)

SMC is a private electrical contracting company and New York corporation headquartered in New York, New York. SMC is owned by MREP, and 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 Southern District of New York (Case No. 11-14599 (Bankr. S.D.N.Y.)). (Order ¶ 11.)

B. The Admitted Conduct

1. Misrepresentations Made to Investors

Respondents repeatedly made material misrepresentations and omissions to Fund investors concerning the Fund's investment strategy and valuation policy, as well as concerning Gerasimowicz's and MAM's own interest in SMC. First, Respondents dramatically deviated from the Fund's stated investment strategy by, contrary to representations to investors that the Fund would be invested in a diversified portfolio of listed equities, instead siphoning off the assets in the Fund to shore up the floundering SMC. Among those representations:

- The Meditron Fund PPM represented 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." (Order ¶ 13; SEC Trial Ex. 39 (PPM).)

- 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." (*Id.*)

- 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."] (Order ¶ 14; SEC Trial Ex. 39.)

- The "Quarterly Communiques," authored by Gerasimowicz and sent by Respondents to Meditron Fund investors, represented that individual Fund investments generally comprised between one and three percent of the Fund's portfolio; that the Fund was well diversified; and that the Fund's risk levels were comparable to bonds and lower than the overall marketplace. (Order ¶ 39; SEC Trial Exs. 30, 66, 67, 160.)

- The Quarterly Communiques also listed the Fund's "Top Ten Long Portfolio Positions," none of which ever represented more than five percent of the Fund's portfolio. (*Id.*)

- Despite the Fund's rapidly increasing SMC position, the Quarterly Communiques never disclosed the Fund's SMC position. (*Id.*)

Despite these representations to Fund investors, Respondents misappropriated the majority of the Fund's assets in an ultimately failed effort to sustain SMC's operations. (Order ¶¶ 37, 41.) Furthermore, Respondents never disclosed to Fund investors the deviation from the Fund's disclosed valuation policy, which provided that "reasonable" valuations would be assigned and that the Fund would use a fair value methodology, when in fact SMC was valued at cost despite its deterioration and ultimate bankruptcy, and even though the Fund received no consideration for the assets siphoned off for SMC. (Order ¶¶ 38, 43, 44.) Finally, Respondents never disclosed Gerasimowicz's and MAM's significant conflict of interest resulting from their own undisclosed $2 million SMC investment. (Order ¶ 38.)

2. The Diversion of Fund Assets to SMC

This administrative proceeding arose because Respondents misappropriated over $2.7 million from the Meditron Fund to support SMC, a failing company owned by Respondents' other entity, MREP. Respondents invested in SMC beginning in 2007, when Gerasimowicz

began raising capital through the offer and sale of limited partnership interests in MREP for the specific purpose of investing in SMC. In July 2007, Gerasimowicz caused MREP to invest $1 million – including a $200,000 investment by the Meditron Fund and a $50,000 investment by Gerasimowicz personally – in SMC in exchange for a 50% ownership interest in SMC. (Order ¶¶ 17, 18.)

In approximately September 2008, MREP became the sole equity owner of SMC. (Order ¶ 19; SEC Trial Ex. 72.) Between approximately October 2008 and September 2011, Gerasimowicz and MAM invested over $2 million of their own money in SMC in order to sustain the company. (Order ¶ 20.)

Notwithstanding this infusion of money, SMC continued its decline. Desperate to avoid having to admit to MREP investors that their investment had lost most, if not all of its value, Respondents needed more financing. Unable to obtain third-party financing absent either a personal guarantee from Gerasimowicz or approximately five percent monthly interest rates, Respondents turned to the Fund, using it as a piggy bank to delay SMC's inevitable collapse. (Order ¶¶ 21, 29.)

Between 2009 and 2011, Gerasimowicz, MAM and MMG misused and misappropriated over $2.7 million of Meditron Fund assets to prop up SMC. During this period, Gerasimowicz directed at least 43 separate transfers of assets from the Fund's bank and brokerage accounts directly to SMC, to MREP for the benefit of SMC, or to SMC's creditors. (Order ¶ 21; SEC Trial Exs. 149, 256.) Respondents made these transfers from the Fund largely in three different fashions: transfers that were memorialized in purported promissory notes issued by SMC (the "Notes"); undocumented transfers to SMC or to MREP, which then were funneled to SMC; and transfers from the Fund directly to SMC's creditors. (Order ¶¶ 22-27; SEC Trial Ex. 149 at 1-8;

SEC Trial Ex. 256.)

Between September 2009 and June 2010, Gerasimowicz directed six transfers, totaling $1.025 million, from the Meditron Fund's brokerage account at Goldman Sachs, directly to SMC or for its benefit. (Order ¶¶ 21-23.) SEC Trial Exhibit 257 graphically depicts the amounts and dates of those six transfers. As shown in that Exhibit, Respondents simply transferred monies from the Fund and then, at a later date (sometimes months later) SMC issued four Notes memorializing those transfers.[2] (*See also* Order ¶ 25; SEC Trial Exs. 17, 22, 24 and 26 (Notes).)

Between September 2010 and September 2011, Gerasimowicz directed 37 additional transfers of Meditron Fund assets, totaling approximately $1.7 million, to SMC, to MREP for SMC's benefit, or directly to SMC's creditors. None of those transfers were documented in Notes. (Order ¶ 26; SEC Trial Ex. 149 at 1-8; SEC Trial Exs. 256-260.)

SEC Trial Exhibit 258 shows in graphic form the transfers made by Respondents directly to SMC from the Fund (the two 2009 transfers listed in Exhibit 258 were memorialized in Notes). In addition, Respondents transferred Fund assets to MREP which then forwarded them to SMC, as depicted in SEC Trial Exhibit 259 (the four transfers made in March and June 2010 listed in Exhibit 259 were memorialized in Notes). Finally, Respondents misappropriated Fund assets to pay SMC's creditors directly, as depicted in SEC Trial Exhibit 260.

In total, between 2009 and 2011, Respondents misappropriated over $2.7 million from the Meditron Fund to benefit SMC, representing approximately 80% of the Fund's investment portfolio as of December 31, 2011. (Order ¶¶ 21, 27; SEC Trial Ex. 149 at 1-8; SEC Trial Exs. 256-260.) The Fund and its investors received no consideration or any value as a result of any of these transfers. Ultimately, the Fund's transfers to SMC or for its benefit constituted, by June

[2] Those transfers, 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. (Order ¶ 24.)

2012, over 97% of the Fund's portfolio, as set forth graphically in SEC Trial Exhibits 261 and 262. Yet Respondents continued to value the Fund's SMC "investment" at cost despite SMC's deteriorating financial condition and eventual bankruptcy, and despite the fact that the Fund received no consideration in exchange for the transfer of substantially all of its assets. (Order ¶ 34.)

Furthermore, MAM's Form ADV, filed March 30, 2010 (SEC Trial Ex. 95 at 8), represented that the adviser had $1 billion in AUM. MAM's subsequent Forms ADV filed on March 31, 2011 and March 24, 2012 both claimed that MAM had $50 million in AUM. (SEC Trial Exs. 96 at 8; 97 at 11.) Notwithstanding this correction, Gerasimowicz continued to misrepresent MAM's AUM at $1.1 billion in articles he wrote for *Worth Magazine* through November 2011. (Order ¶ 45; SEC Trial Ex. 137.)

Finally, Meditron Fund investors did not receive quarterly account statements from the Fund's qualified custodian, nor was MAM subject to an annual surprise examination by an independent public accountant. Respondents failed to distribute annual, audited financial statements to investors within 120 days of fiscal year end. 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. (Order ¶¶ 46-49.)

C. The Violations At Issue

As a result of this conduct, Respondents agreed that they committed the following violations:

- Respondents willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
- Respondents willfully violated Sections 206(1), (2), and (4) of the Advisers Act

and Rule 206(4)-8 thereunder;

- 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; and

- 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.

(Order ¶¶ 50-53.)

II. RELIEF SOUGHT

The assessment of whether a particular sanction recommended by the Division is in the public interest is derived from the Court's analysis in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), which includes the following elements: (1) the egregiousness of the defendant's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the defendant's assurances against future violations; (5) the defendant's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the defendant's occupation will present opportunities for future violations. In addition, the Commission has listed three additional factors to be considered in making the public interest determination concerning sanctions: (1) the age of the violation; (2) the degree of harm to investors and the marketplace as a result of the violations (*see In the Matter of Marshall E. Melton, et al.*, Release No. 2151, 2003 WL 21729839, at *2 (July 25, 2003)); and (3) the "extent to which the sanction will have a deterrent effect" (*see McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005); *see also Schield Management Co. and Marshall L. Schield*, Exchange Act Release No. 53201, 2006 WL 231642, at *8 (Jan. 31, 2006)).

Here, however, the analysis is greatly simplified by the fact that the parties have agreed

that disgorgement and third tier penalties are appropriate, and disagree only on the appropriate amount of such disgorgement and penalties. Based on the above factors, this Court should impose the sanctions against Respondents that are recommended below on account of the violations complained of herein.

A. Disgorgement

The Court enjoys broad equitable power to order Respondents to disgorge the profits from their illegal activities. *See SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996), *cert. denied*, 522 U.S. 812 (1997). "The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable. The deterrent effect of an SEC enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits." *Id.* (citations omitted). The primary purpose of disgorgement is to deprive violators of their ill-gotten gains, thereby maintaining the deterrent effect of the federal securities laws. *Id.* The amount of disgorgement ordered "need only be a reasonable approximation of profits causally connected to the violation," and "any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created the uncertainty." *Id.* at 1475 (citations omitted). *See also In the Matter of Joseph John VanCook*, Admin. Proc. File No. 3-12753, Rel. No. 34-61039A (Comm. Opin. Nov. 20, 2009) at 28 (citations omitted); *In the Matter* of *Thomas C. Bridge*, Exchange Act Release No. 60736, 2009 WL 3100582, at *23-24 (Sept. 29, 2009) ("The disgorged amount must be causally connected to the violation, but it need not be figured with exactitude."); *In the Matter of John A. Carley*, Exchange Act Release No. 57246, 2008 WL 268598, *24 (Jan. 31, 2008) (citations omitted); *SEC v. Jones*, 476 F. Supp.2d 374, 386 (S.D.N.Y. 2007) ("a court need not determine the precise amount of funds a defendant acquired").

Once the Division shows that its disgorgement figure is a reasonable approximation of the amount of unjust enrichment, the burden shifts to the respondent to demonstrate that the Division's disgorgement figure is not a reasonable approximation. *Joseph John VanCook*, Admin. Proc. File No. 3-12753, Rel. No. 34-61039A (Comm. Opin. Nov. 20, 2009) at 28 (citations omitted); *John A. Carley,* 2008 WL 268598, at *104 (quotation omitted); *SEC v. Opulentica, LLC*, 479 F. Supp.2d 319, 330 (S.D.N.Y. 2007) (once the SEC has made a "reasonable showing" then "the burden shifts to the defendant to show that the disgorgement figure was not a reasonable approximation"). Where disgorgement cannot be exact, any risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty. *John A. Carley,* 2008 WL 268598, at *104 (quotation omitted).

Here, Respondents should disgorge the proceeds they received from the Fund, which were obtained by false pretenses. These consist of the following:

- Funds diverted from the Meditron Fund to SMC between approximately September 2009 and September 2011, totaling over $2.7 million (Order ¶¶ 21-27; SEC Trial Exs. 149 at 1-8; SEC Trial Exs. 256-260.)

- Management, performance and other fees paid to Respondents by the Meditron Fund between approximately September 2009 through the present, totaling approximately $ 811,093.14.[3]

See, e.g., *SEC v. Kapur,* 2012 WL 5964389, *3-*5 (S.D.N.Y. Nov. 29, 2012) (finding disgorgement of management and incentive fees was appropriate); *SEC v. Radical Bunny, LLC,* 2011 WL 1458698, at *8 (D. Ariz. Apr. 12, 2011) (finding disgorgement of 2% fee charged to investors was appropriate); *see also S.E.C. v. Merchant Capital, LLC*, 486 Fed. Appx. 93, *96-97 (11th Cir. 2012) (holding that disgorgement of defendant's compensation derived from fees

[3] As set forth in the annexed Exhibit B, which is the accompanying May 3, 3013 Declaration of Staff Accountant Doreen Rodriguez, with accompanying spreadsheet, this figure was obtained through an analysis of Respondents' bank and brokerage records and other materials provided by Respondents.

charged to funds was appropriate). Furthermore, an award of prejudgment interest (and the rate used) is within the discretion of the Court, and is appropriate here. *See First Jersey Secs.*, 101 F.3d at 1476.

The only "defense" to the imposition of the disgorgement amount is the claim that, since Gerasimowicz ultimately "lost" all the money he stole from the Fund, by giving it to SMC or its creditors, he should not be held liable for this amount. But case law provides that disgorgement of all funds taken from investors is authorized even where the violator gave or invested or lost the money elsewhere. As a threshold matter, "to withhold the remedy of disgorgement or penalty simply because a swindler claims that she has already spent all the loot and cannot pay would not serve the purposes of the securities laws." *SEC. v. Inorganic Recycling Corp.*, 2002 WL 1968341 at *4 (S.D.N.Y. Aug. 23, 2002). "The disgorgement amount should not be offset by any losses incurred by the wrongdoer when the scheme collapsed." *SEC v. McCaskey*, 2002 WL 850001 at *5 (S.D.N.Y. Mar. 26, 2002) (holding that the court is not required to consider "whether or not the defendant may have squandered and/or hidden the ill-gotten profits") (quoting *SEC v. Rosenfeld*, 2001 WL 118612 at *2 (S.D.N.Y. Jan. 9, 2001)); *see also SEC v. First Pacific Bancorp*, 142 F.3d 1186, 1192 n. 6 (9th Cir.1998) (defendant's disgorgement obligations were not affected by fact that the "scheme ultimately failed and [defendant] lost ... $1,000,000 of his own funds"), *cert. denied*, 525 U.S. 1121 (1999). A defendant may not "avoid or diminish his responsibility to return his ill-gotten gains by establishing that he is no longer in possession of such funds due to subsequent, unsuccessful investments or other forms of discretionary spending." *SEC. v. Thomas James Associates, Inc.*, 738 F. Supp. 88, 95 (W.D.N.Y. 1990); *see also SEC v. Universal Exp., Inc.*, 646 F. Supp. 2d 552, (S.D.N.Y. 2009) (noting that it is "irrelevant for disgorgement purposes, how the defendant chose to dispose of the ill-gotten

gains; subsequent investment of these funds ... are not deductible from the gross profits subject to disgorgement").[4]

Nor does it matter that a defendant may be currently unable to pay. *McCaskey*, 2002 WL 850001 at *5; *see also SEC v. Grossman*, 1997 WL 231167 at *10 (S.D.N.Y. May 6, 1997) ("there is no legal support for [defendant's] assertion that his financial hardship precludes the imposition of an order of disgorgement"), *aff'd in part, vacated in part on other grounds sub nom. SEC v. Hirshberg*, 1999 WL 163992 (2d Cir. Mar.18, 1999). Entry of a disgorgement judgment is appropriate regardless of the defendant's inability to pay. *See McCaskey*, 2002 WL 850001 at *5; *Grossman*, 1997 WL 231167 at *10 (noting that entry of disgorgement judgment is appropriate despite inability to pay, given that "defendant may subsequently acquire the means to satisfy the judgment"); *cf. Inorganic Recycling*, 2002 WL 1968341, at *4 ("[C]laims of poverty cannot defeat the imposition of a disgorgement order or civil penalty.").

B. Civil Penalties

Section 8A(g) of the Securities Act, [15 U.S.C. § 77h-1(g)], authorizes the Commission to impose a civil penalty upon a finding, with notice and opportunity for a hearing, that any

[4] Thus, both administrative law judges and federal courts have repeatedly held that what the defendant does with the misappropriated funds is irrelevant to the disgorgement calculation. "The fact that [Respondent] lost her investment ... is no reason why she should keep the funds she earned as part of the fraud. [Respondent's] investment loss is of her own making. There is no basis for her retaining the illegal gains she received as a result of her illegal acts." *In the Matter of Maria T. Giesige, Admin.* Proc. File No. 3-12747, at 34 (Initial Dec. Rel. No. 359, Oct. 7, 2008); *see also SEC v. Benson*, 657 F. Supp. 1122, 1134 (S.D.N.Y. 1987) ("[t]he manner in which [the defendant] chose to spend his misappropriations is irrelevant as to his objection to disgorge. Whether he chose to use this money to enhance his social standing through charitable contributions, to travel around the world, or to keep his co-conspirators happy is his own business."). In *SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1115 (9th Cir. 2006), the Ninth Circuit Court of Appeals, in affirming the lower court's disgorgement order, found that the subsequent investment of ill-gotten investor funds is disgorgeable. *Id.* ("The manner in which [the defendant] chose to spend the illegally obtained funds has no relevance to the disgorgement calculation"). *See also SEC v. Seghers*, 298 F. App'x 319, 336 (5th Cir. 2008) (hedge fund manager who overstated value of the fund's investments was required to pay disgorgement even though he lost money in the transactions because "[a] defendant is not immune from disgorgement merely because he has spent or lost the proceeds of his fraudulent scheme. Any profits that [the defendant] obtained by wrongdoing are ill-gotten gains whether he retained them or lost them in the [hedge fund] or another investment.") (internal citations omitted).

person is violating or has violated any provision, rule or regulation issued under the Securities Act and that such penalty is in the public interest. Similarly, Section 21B(a) of the Exchange Act, [15 U.S.C. § 78u-2], provides that a civil penalty may be imposed in any proceeding instituted pursuant to Section 15(b)(4) of the Exchange Act on any person who has willfully violated the federal securities laws if such a penalty is in the public interest. Finally, Section 203(i)(1) of the Advisers Act, [15 U.S.C. § 80b-3)i)], authorizes the Commission to impose a civil penalty against any one that has willfully violated any provision of the Securities Act, the Exchange Act or subchapter II of the Advisers Act or the rules or regulations thereunder if such penalty is in the public interest.

The parties have agreed that third tier penalties are appropriate, and have left it to the Court's discretion to determine the amount of such penalties to be imposed. Third tier civil penalties in administrative proceedings are not to exceed $150,000 against individual defendants, and $725,000 against entities, "for each act or omission" for violations occurring after March 3, 2009. *See* 17 C.F.R §§ 201.1003, 201.1004 (adjusting penalties for inflation).

While it is up to the Court's discretion to determine the amount to be imposed, consistent with the plain language of these statutes, respondents in numerous Commission actions have been penalized for *each* violation of the federal securities laws, with what constitutes a specific "violation" being determined in a variety of fashions. *See, e.g., In the Matter of Steven E. Muth*, Initial Decision Rel. No. 262, 2004 WL 2270299, at *41 (Oct. 8, 2004) (holding that "each fraudulent misrepresentation to each investor constitutes a separate act or omission" since the "statutory maximum is not an overall limitation, but a limitation per violation."). In *In the Matter of Mark David Anderson,* the Commission imposed ninety-six penalties against a respondent, one for each of ninety-six trades in which he charged customers an undisclosed

markup or markdown. Securities Act Rel. No. 8265, Exchange Act Rel. No. 48352, 2003 WL 21953883, at *10 (Aug. 15, 2003). *Accord In the Matter of Kevin H. Goldstein*, Initial Decision Rel. No. 243, 2004 WL 69156, at *19 (Jan. 16, 2004) (finding in fraudulent offering of securities that each fraudulent misrepresentation to each investor constituted a separate act or omission); *In the Matter of J.W. Barclay & Co.*, Initial Decision Rel. No. 239, 2003 WL 22415736, at *40 (Oct. 23, 2003) (holding that each unauthorized trade and each unsuitable transaction constituted a separate act or omission); *In the Matter of Robert G. Weeks*, Initial Decision Rel. No. 199, 2002 WL 169185, at *177 (Feb. 4, 2002) ("Thus, a 'Dear Investor' letter containing one fraudulent misrepresentation, when mailed to 3,400 Dynamic American shareholders, constitutes 3,400 separate acts or omissions.). Federal courts also have imposed multiple penalties based on a per-violation sanction. *See, e.g., United States v. Reader's Digest Ass'n.*, 662 F.2d 955, 966-67 (3d Cir. 1981) (holding that each individual mailing constituted a separate violation); *SEC v. Ramoil Mgmt., Ltd.*, 2007 WL 3146943, at *13 (S.D.N.Y. Oct. 25, 2007) (penalizing defendant for each false document he filed with the Commission under each statute that the false filings violated).

The penalty amount has been calculated in other ways as well. For example, in one fraud case, the court determined the penalty amount by assessing a penalty for each of four different misrepresentations made. *SEC v. Coates*, 137 F. Supp. 2d 413, 428-30 (S.D.N.Y. 2001). In another case, a court assessed a penalty for each of 12 investors defrauded. *See SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 17 n.15 (D.D.C. 1998) (awarding $1.2 million penalty based on an assessment of a $100,000 third-tier penalty for each of 12 investors that defendant defrauded).

Thus, it would be appropriate for the Court to assess the maximum penalty by assessing a separate penalty based on any of the following metrics:

- The number of violations of the Fund's objectives through its 43 transfers to SMC or for SMC's ultimate benefit. (SEC Trial Exs. 256-260.)
- The number of transmissions to the Fund investors of quarterly Fund summary evaluation statements or similar statements that continued to value SMC at cost even though the Fund either received no value for its transfers to SMC or received Notes of dubious worth. On this basis, the number of violations would be well over a hundred. (*See* SEC Trial Exs. 55 (Summary Statements as of December 31, 2009); 56 (Summary Statements as of March 3, 2010); 57 (Summary Statements as of June 30, 2010); 58 (Summary Statements as of September 30, 2010); 59 (Summary Statements as of December 31, 2010); 84 (Summary Statements as of March 31, 2011); 85 (Summary Statements as of June 30, 2011); 86 (Summary Statements as of September 30, 2011); 87 (Summary Statements as of December 31, 2011); 88 (Summary Statements as of March 31, 2012); 89 (Summary Statements as of June 30, 2012).)
- The number of investors who received repeated misrepresentations, either in the PPM or through any other statements, written or oral, which, according to Respondents' Form ADV, is 13. (SEC Trial Ex. 97 at 18.)
- The number of Quarterly Communiques sent to investors after the first transfers to SMC which concealed the fact of those transfers. (SEC Trial Exs. 66 (Dec. 31, 2009 Quarterly Communique); 67 (June 30, 2010 Quarterly Communique); 192 (June 30, 2011 Quarterly Communique); 160 (September 30, 2011 Quarterly Communique.)

- The number of publications of the false statements of AUM or the publication thereof on Respondents' website. *See* SEC Exs. 122 (listing of Worth Magazine articles); 123, 137 (Worth articles).)

III. CONCLUSION

Respondents' violations and disregard of their fiduciary obligations devastated the investors who entrusted them with their finances. The Division therefore respectfully requests that the Court impose the appropriate disgorgement and penalties as set forth above.

Dated: May 3, 2013
New York, New York

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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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.

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[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

B

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9361 / September 14, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 67860 / September 14, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3464 / September 14, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30202 / September 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15024

In the Matter of

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

Respondents.

DECLARATION OF DOREEN RODRIGUEZ IN SUPPORT OF DIVISION OF ENFORCEMENT'S DAMAGES BRIEF

I, Doreen Rodriguez, pursuant to 28 U.S.C. § 1746, do hereby declare as follows:

1. I am over 18 years of age and am employed as a staff accountant in the New York Regional Office of the Securities and Exchange Commission ("SEC"). I have been employed by the SEC for over seventeen years. My duties include, but are not limited to, assisting in the investigation of possible violations of the federal securities laws and assisting trial counsel in analyzing and compiling data for litigations. In November, 2012, I was assigned to start reviewing and compiling data in the above-captioned matter, and in February 2013, I was assigned to assist in preparing for the administrative proceeding therein.

2. I make this declaration in support of the Division of Enforcement's Damages Brief.

3. I make this declaration based upon personal knowledge, information, and belief. The sources of my information and the bases of my belief are voluminous documents obtained by the SEC staff that I have reviewed extensively and information provided to me by other members of the SEC staff.

4. I have reviewed, among other things, bank and brokerage records for Respondents Walter V. Gerasimowicz ("Gerasimowicz") and Meditron Asset Management, LLC ("MAM"), as well as for the Meditron Fundamental Value/Growth Fund ("Meditron Fund"). I have also reviewed documents produced by Respondents, and have been advised by other members of the SEC staff of facts learned in the course of the investigation resulting in the administrative proceeding through documents obtained by the staff as well as interviews and investigative testimonies that I did not attend.

5. Attached to this declaration is a consolidated schedule of the management and performance fees taken from the Meditron Fund by Respondents between September 2009 through November 2011. This chart, listing management and performance fees, was created as a result of a review and analysis of statements and records of credits and debits for the following accounts:

a. Meditron Fund account [redacted] at Goldman Sachs for the period from April 2009 through August 2010;

b. Meditron Fund account [redacted] at Charles Schwab for the period from August 2010 through June 2012;

c. Meditron Fund account [redacted] at Bank of America for the period from January 2010 through May 2012;

d. Meditron Real Estate Partners account [redacted] at Bank of America for the period from January 2010 through May 2012;

e. MAM account [redacted] at Bank of America for the period from January 2010 through May 2012;

f. Walter Gerasimowicz account [redacted] at Bank of America for the period from August 2011 through June 2012.

6. The following chart was compiled by, among other things, reviewing materials produced by Respondents, including spreadsheets titled Meditron Fund "Check Detail" (SEC Trial Ex. 12) and Meditron Fund "Expenses by Vendor Detail (SEC Trial Ex. 90).

Pursuant to 28 U.S.C. § 1746, I, Doreen Rodriguez, declare under penalty of perjury that the foregoing is true and correct.

Doreen Rodriguez

Executed on May 3, 2013
New York, New York

MAM Fees Taken From Meditron Fundamental Growth Fund

Trial Exhibit	Date of Transfer	Description	Source of Funds	Amount
SEC Trial Ex. 12	10/9/2009	MAM 4/30/07 Mgmt Fees	BOA Operating Acct	$5,000
SEC Trial Ex. 12	10/27/2009	MAM 4/30/07 & 5/7/07 Mgmt Fees	BOA Operating Acct	$3,000
SEC Trial Ex. 12	11/2/2009	MAM 5/7/07 & 6/29/07 Mgmt Fees	BOA Operating Acct	$4,850
SEC Trial Ex. 12	11/19/2009	Walter Gerasimowicz	Goldman Sachs	$100,000
SEC Trial Ex. 12	12/3/2009	MAM 3/30/07 & 4/30/07 Mgmt Fees	BOA Operating Acct	$4,700
SEC Trial Ex. 12	1/11/2010	Walter Gerasimowicz	Goldman Sachs	$100,000
SEC Trial Ex. 12	4/19/2010	MAM 6/29/07 Mgmt Fees	BOA Operating Acct	$5,000
SEC Trial Ex. 12	4/19/2010	MAM 6/29/07 & 7/31/07 Mgmt Fees	BOA Operating Acct	$10,000
SEC Trial Ex. 12	4/19/2010	MAM 7/31/07 & 8/2/07 Mgmt Fees	BOA Operating Acct	$9,500
SEC Trial Ex. 12	6/25/2010	MAM 8/2/07, 9/28/07, 10/31/07, 11/1/07 Mgmt Fees	BOA Operating Acct	$20,000
SEC Trial Ex. 12	7/13/2010	MAM 12/3/07 & 1/3/08 Mgmt & Perf Fees	BOA Operating Acct	$5,000
SEC Trial Ex. 12	7/28/2010	Walter Gerasimowicz	BOA Operating Acct	$75,000
SEC Trial Ex. 12	8/17/2010	MAM 11/1/07 Mgmt Fees	BOA Operating Acct	$9,266.43
SEC Trial Ex. 12	8/25/2010	MAM 12/3/07 Mgmt Fees	BOA Operating Acct	$8,500
SEC Trial Ex. 12	8/25/2010	MAM	BOA Operating Acct	$3,000
SEC Trial Ex. 12	8/31/2010	MAM 8/10/10 Mgmt Fees	Charles Schwab	$4,933.78
SEC Trial Ex. 12	9/1/2010	MAM 9/1/10 Mgmt Fees	Charles Schwab	$4,686.64
SEC Trial Ex. 12	9/8/2010	MAM 1/3/08 & 2/1/08 Mgmt & Perf Fees	BOA Operating Acct	$20,000
SEC Trial Ex. 12	9/14/2010	MAM 2/1/08, 3/5/08, & 4/3/08 Mgmt Fees	BOA Operating Acct	$20,000
SEC Trial Ex. 12	9/23/2010	MAM 4/3/08, 5/1/08, 6/2/08, 7/1/08, & 7/14/08 Mgmt & Perf Fees	BOA Operating Acct	$55,000
SEC Trial Ex. 12	10/6/2010	MAM 7/14/08, 8/5/08, 9/15/08, 10/1/08, 11/3/08, 12/4/08, 1/2/09, 2/2/09, 3/5/09 Perf & Mgmt Fees	BOA Operating Acct	$50,000
SEC Trial Ex. 12	10/6/2010	MAM 10/6/10 Mgmt Fees	BOA Operating Acct	$5,002.87
SEC Trial Ex. 12	10/12/2010	MAM 10/12/10 Mgmt Fees	BOA Operating Acct	$1,995.93
SEC Trial Ex. 12	11/10/2010	MAM 1/3/08 Mgmt & Perf Fees	BOA Operating Acct	$7,300
SEC Trial Ex. 12	11/10/2010	MAM 1/3/08, 3/5/09, 4/2/09, 5/1/09 Mgmt & Perf Fees	BOA Operating Acct	$13,000
SEC Trial Ex. 12	11/16/2010	MAM 11/16/10 Mgmt Fees	Charles Schwab	$4,883.56
SEC Trial Ex. 12	12/3/2010	MAM 5/1/09, 6/2/09, & 7/1/09 Mgmt Fees	BOA Operating Acct	$5,900

MAM Fees Taken From Meditron Fundamental Growth Fund

Trial Exhibit	Date of Transfer	Description	Source of Funds	Amount
SEC Trial Ex. 12	12/7/2010	MAM 7/1/09 & 8/3/09 Mgmt Fees	BOA Operating Acct	$7,500
SEC Trial Ex. 12	12/7/2010	MAM 12/7/10 Mgmt Fees	Charles Schwab	$4,921.32
SEC Trial Ex. 12	12/15/2010	MAM 8/3/09, 9/1/09, 10/1/09, 11/1/09, 12/1/09, 1/4/10, 2/2/10 Mgmt & Perf Fees	BOA Operating Acct	$25,000
SEC Trial Ex. 12	12/28/2010	MAM 2/2/10 & 3/2/10 Mgmt & Perf Fees	BOA Operating Acct	$15,000
SEC Trial Ex. 12	12/31/2010	Walter Gerasimowicz "General Draws"	BOA Operating Acct	$2,000
SEC Trial Ex. 12	1/3/2011	MAM 3/2/10, 4/1/10, 5/3/10, 6/10/10, 7/6/10 Mgmt Fees	BOA Operating Acct	$18,000
SEC Trial Ex. 12	1/6/2011	Walter Gerasimowicz "General Draws"	BOA Operating Acct	$6,000
SEC Trial Ex. 12	1/11/2011	MAM 7/6/10 Mgmt Fees	BOA Operating Acct	$1,000
SEC Trial Ex. 12	1/20/2011	MAM 1/5/11 Mgmt Fees	Charles Schwab	$4,665.66
SEC Trial Ex. 12	2/16/2011	MAM 1/20/11 Mgmt Fees	Charles Schwab	$22,571.78
SEC Trial Ex. 12	2/17/2011	MAM 2/16/11 Mgmt Fees	Charles Schwab	$4,680.87
SEC Trial Ex. 12	3/2/2011	MAM 3/1/11 Mgmt Fees	Charles Schwab	$4,402.39
SEC Trial Ex. 12	3/16/2011	MAM "Miscellaneous Expenses"	BOA Operating Acct	$45,000
SEC Trial Ex. 12	4/5/2011	MAM 4/5/11 Mgmt Fees	Charles Schwab	$4,349.35
SEC Trial Ex. 90 (only those entries not included on Ex. 12)	9/1/2009	HF Fees 9/09	Charles Schwab	$4,481.16
SEC Trial Ex. 90	10/1/2009	HF Fees 10/09	Charles Schwab	$4821,94
SEC Trial Ex. 90	11/1/2009	HF Fees 11/09	Charles Schwab	$4,466.25
SEC Trial Ex. 90	12/1/2009	HF Fees 12/09	Charles Schwab	$4,745.27
SEC Trial Ex. 90	1/4/2010	HF Fees 1/10	Charles Schwab	$4,863.54
SEC Trial Ex. 90	2/2/2010	HF Fees 2/10	Charles Schwab	$4,759.69
SEC Trial Ex. 90	2/2/2010	Incentive Fees 2009	Charles Schwab	$8,461.68
SEC Trial Ex. 90	3/2/2010	HF Fees 3/10	Charles Schwab	$4,823.69
SEC Trial Ex. 90	4/1/2010	HF Fees 4/10	Charles Schwab	$5,038.67
SEC Trial Ex. 90	5/3/2010	HF Fees 5/10	Charles Schwab	$5,022.25
SEC Trial Ex. 90	6/10/2010	HF Fees 6/10	Charles Schwab	$4,804.28
SEC Trial Ex. 90	7/6/2010	HF Fees 7/10	Charles Schwab	$4,768.94
SEC Trial Ex. 90	10/6/2010	HF Fees 10/10	Charles Schwab	$5,002.87
SEC Trial Ex. 90	10/12/2010	HF Fees 10/10	Charles Schwab	$1,995.93

MAM Fees Taken From Meditron Fundamental Growth Fund

Trial Exhibit	Date of Transfer	Description	Source of Funds	Amount
SEC Trial Ex. 90	6/1/2011	HF Fees 6/11	Charles Schwab	$4,302.93
SEC Trial Ex. 90	7/1/2011	HF Fees 7/11	Charles Schwab	$4,368.31
SEC Trial Ex. 90	8/1/2011	HF Fees 8/11	Charles Schwab	$4,082.64
SEC Trial Ex. 90	9/1/2011	HF Fees 9/11	Charles Schwab	$3,534.33
SEC Trial Ex. 90	10/1/2011	HF Fees 10/11	Charles Schwab	$3,871.72
SEC Trial Ex. 90	11/1/2011	HF Fees 11/11	Charles Schwab	$3,496.85
SEC Trial Ex. 90	1/4/2012	HF Fees 1/12	Charles Schwab	$3,591.57
TOTALS				**$811,093.15**