

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

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

Respondents.

Administrative Proceeding
File No. 3-15024

Administrative Law Judge
Carol Fox Foelak

**ANSWER TO SEC ORDER
INSTITUTING PROCEEDINGS**



Respondents Walter V. Gerasimowicz (“Dr. Gerasimowicz”), Meditron Asset Management, LLC (“MAM”), and Meditron Management Group, LLC (“MMG”) (collectively, “Respondents”), by their attorneys, Murphy & McGonigle, P.C., as and for their Answer to the Order Instituting Proceedings (“OIP”) filed by the Securities and Exchange Commission (“SEC”), allege, upon information and belief, as follows:

Preliminary Statement

The SEC’s OIP falsely portrays Dr. Gerasimowicz as an unscrupulous investment advisor who, allegedly for his own financial benefit, took advantage of a small group of his clients who are investors in a discretionarily managed hedge fund by willfully diverting client funds to a private equity enterprise in which he had an interest, in violation of the investment objectives of the hedge fund and without disclosing an alleged conflict of interest.

Nothing could be further from the truth.

To add insult to injury, the SEC fails in the OIP to disclose or even acknowledge that Dr. Gerasimowicz was himself the victim of fraud by third-party co-conspirators who looted the enterprise in question, and that Dr. Gerasimowicz—altruistically and not venally—advanced his own funds to support the operations of the enterprise in order to preserve and enhance value for his clients—not to “prop up” a failing business, as the SEC artfully but wrongly portrays in its storyline set forth in the OIP.

Dr. Gerasimowicz is 60 years old and lives in New York City. He is an extremely decent and honorable man who has overcome severe hardships in his life to establish and grow a successful investment advisory business and build solid relationships with his advisory clients through hard work, competence, honesty and integrity. After working as a top research scientist for the U.S. Government, he changed careers and entered the financial services and securities industry where he has worked for approximately 20 years with an unblemished record until this proceeding.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He received a Bachelor’s Degree in Chemistry from Ursinus College in 1974. He then attended Villanova University where he studied Physical Chemistry and received his Master’s Degree in 1978, followed by his Doctorate in 1981.

Afterward, while working for the government, Dr. Gerasimowicz pursued his MBA in Finance from the University of Pennsylvania's Wharton School of Business and earned his degree in 1991. Beginning in 1992, as described below, he spent the next 20 years dedicated to financial services and the securities industry. He passed the following securities industry licensing exams: Series 7 and 63 (1994), Series 16 and 65 (1995 and 1996, respectively). He obtained his Registered Investment Adviser's license in 2003.

Following a distinguished career as a Senior Scientist for the federal government specializing in quantum nuclear magnetic resonance and solid-state thermodynamic research, Dr. Gerasimowicz changed career paths and entered the securities industry. From 1992 to 1995, he worked at JP Morgan Securities as Head of the International Portfolio Advisory Group. There, he pioneered state-of-the-art portfolio and risk management techniques including downside risk measures and methodologies; he specialized in global and international fixed-income strategies relating to benchmark design, replication, and outperformance for major institutions; and, he worked closely with sovereign entities in managing debt issuance on the liability side of the balance sheet.

Between 1995 and 2003, Dr. Gerasimowicz worked at Lehman Brothers as Director of Advisory Services and Chief Investment Strategist for high net worth investors. As a Senior Vice-President, he was responsible for portfolio allocation, construction and rebalancing, risk management and performance attribution. Then, in 2003, Dr. Gerasimowicz formed his own investment advisory firm, MAM. As Chairman and CEO of MAM, he works with fixed income and equity securities classes, as well as with index, derivative products and alternative investments (*i.e.*, private equity and hedge funds) used to diversify and implement long and/or short term allocation decisions.

Dr. Gerasimowicz has served on the boards of directors for a number of public companies, bringing investment banking and financial structuring expertise to these entities, and he continues to serve as an advisor to several private organizations on a pro bono basis. As a result of his knowledge and expertise, he is regularly sought by the financial media to provide commentary and opinions. He has appeared on CNBC and Bloomberg Television. He has been quoted by prominent financial news outlets such as The Wall Street Journal, BusinessWeek, SmartMoney and CNNMoney. He also has a regular radio show called The Matter of Money Matters on WOR Radio 710.

During his lengthy career in financial services and the securities industry, Dr. Gerasimowicz has never been the subject of any disciplinary charge or proceeding, nor has he ever been found to have committed any wrongdoing in any arbitration, litigation or other proceeding.¹ Since forming MAM, Dr. Gerasimowicz had never received a complaint from any investor or client until recently, which he believes was spawned by the SEC's campaign to contact many of his clients over the past year.

Dr. Gerasimowicz continues to diligently operate MAM and manage investors' assets consistent with their investment objectives, applicable program guidelines, and his desire to best serve their interests, often waiving his right to compensation to which he was contractually entitled. His conduct has been the opposite of the story of malfeasance contrived by the SEC. In short, this administrative proceeding against Respondents is not supported by the weight of the credible evidence.

¹ In one instance, Dr. Gerasimowicz was named as co-respondent in a SRO arbitration along with Lehman Brothers and the Investment Representative on the account. The panel found no wrongdoing and the matter was expunged from his CRD record.

SPECIFIC RESPONSES TO ALLEGATIONS OF THE OIP

A. 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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 1 of the OIP, except admit that MAM is a registered investment adviser, that Dr. Gerasimowicz is MAM's sole owner and principal, and that Dr. Gerasimowicz is also the sole owner of MMG.

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 a private contracting company controlled by Gerasimowicz that is currently in Chapter 11 bankruptcy proceedings.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 2 of the OIP, except admit that (i) the Fund extended loans to SMC Electrical Contracting, Inc. ("SMC") between September 2009 and September 2011, (ii) that SMC is wholly owned by Meditron Real Estate Partners, LLC ("MREP"), a private equity construction and real estate limited liability company of which Dr. Gerasimowicz is the managing member as well as one of several investors, and (iii) that SMC 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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 3 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 4 of the OIP, except admit that Dr. Gerasimowicz submitted articles for publication to *Worth Magazine* at certain times, and that *Worth Magazine* published information regarding the amount of MAM's assets under management, which Dr. Gerasimowicz believed to be correct.

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' ANSWER:

Respondents deny the allegations set forth in paragraph 5 of the OIP.

B. 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 President and Chairman of the Board of Directors of SMC Electrical Contracting Inc., a private contracting company owned by MREP.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 6 of the OIP, except deny that MMG is an unregistered investment adviser through which Dr. Gerasimowicz manages the Meditron Fund.

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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 7 of the OIP.

8. **MMG** is a Delaware limited liability company, formed on March 14, 2003, and 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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 8 of the OIP, except deny that MMG is an unregistered investment adviser. Respondents further affirmatively state that Dr. Gerasimowicz, who is the sole owner and principal of both MAM and MMG, uses MMG for branding and marketing purposes, and that MAM performs all substantive investment advisory functions.

C. 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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 9 of the OIP, except deny that MMG manages the Meditron Fund.

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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 10 of the OIP, and further affirmatively state that, although SMC is currently MREP's sole investment, MREP had one other prior investment.

11. **SMC Electrical Contracting Inc. ("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 President and 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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 11 of the OIP.

D. 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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 12 of the OIP.

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."

RESPONDENTS' ANSWER:

Respondents admit that the PPM contains the language quoted in paragraph 13 of the OIP, but further affirmatively state that the quoted language has been selectively extracted from a "summary" on page 1 of the PPM captioned "**The Fund**," and that the OIP fails to quote material language on page 4 of the PPM in the section captioned "**Objective**." As such, paragraph 13 is contrived and misleading. Specifically, the PPM states on page 1 that "[t]his

summary is qualified in its entirety by the full text of the Private Placement Memorandum” Further, in the section captioned “**Objective**” on page 4, the PPM states “The following is a description of the *principal* types of securities in which the Fund may invest, certain trading techniques that may be employed, criteria which may be applied and *general guidelines* with respect to the composition of the investment portfolio. *The following description is merely a summary, and the Fund Manager has discretion to invest in other types of securities and to follow other investment criteria and guidelines.*” (Emphasis added.)

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.”

RESPONDENTS’ ANSWER:

Respondents admit that the PPM contains the language quoted in paragraph 14 of the OIP, but further affirmatively state that the quoted language has been selectively extracted from sections of the PPM entitled “**Portfolio Composition**,” “**Calculations**” and “**Value of Securities**” on pages 4, 9 and 10 of the PPM, and that the OIP fails to quote material language on page 4 of the PPM in the section captioned “**Objective**.” As such, paragraph 14 is contrived and misleading. Specifically, the PPM states on page 1 that “[t]his summary is qualified in its entirety by the full text of the Private Placement Memorandum” Further, in the section captioned “**Objective**” on page 4, the PPM states “The following is a description of the *principal* types of securities in which the Fund may invest, certain trading techniques that may be employed, criteria which may be applied and *general guidelines* with respect to the composition of the investment portfolio. *The following description is merely a summary, and the Fund*

Manager has discretion to invest in other types of securities and to follow other investment criteria and guidelines.” (Emphasis added.)

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.

RESPONDENTS’ ANSWER:

Respondents admit the allegations of paragraph 15 of the OIP, except deny that Gerasimowicz was paid the incentive allocations to which he was entitled, and otherwise repeat and reiterate their responses to paragraph 8 of the OIP, above, as if fully set forth herein.

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."

RESPONDENTS’ ANSWER:

Respondents admit the allegations set forth in paragraph 16 of the OIP.

E. 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.

RESPONDENTS’ ANSWER:

Respondents admit the allegations set forth in paragraph 17 of the OIP, except deny and object to the phrase “caused seven individual MAM advisory clients to purchase MREP limited partnership interests.” Notwithstanding the foregoing, Respondents affirmatively state that Dr. Gerasimowicz, as the sole owner and principal of the Manager of the Fund, exercised the broad

grant of discretionary authority provided under the PPM to invest in MREP on behalf of the Fund; that as the Operating Manager of MREP, he facilitated the independent decisions of seven individual MAM advisory clients to invest in MREP; and that all of these investors signed subscription documents indicating that they knew and accepted the risks associated with this particular investment.

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

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 18 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 19 of the OIP, and further affirmatively state for completeness and accuracy that, in or about September 2008, Dr. Gerasimowicz learned that the President and CEO of SMC, Theodore Doumazios, had violated the Sales Purchase and Shareholders Agreement with MREP when it was discovered that certain invoices on SMC's books did not relate to SMC jobs; that Mr. Doumazios ultimately acknowledged that, in concert with his sister, Peggy Doumazios, as well as the former local union superintendent and SMC's controller, Mr. Doumazios referred customers and jobs, and also diverted materials, labor and other resources from SMC to another contracting company, First Central Electric Corp., which was owned by Peggy Doumazios; that upon these disclosures, Dr. Gerasimowicz and MREP forced Mr. Doumazios out of SMC and installed George Kazantzis as the CEO of SMC; that in partial restitution for his fraud, Mr. Doumazios surrendered his 50% ownership interest to MREP, giving MREP 100% ownership in and control

of SMC; and that in further restitution, Mr. Doumazios executed a promissory note to SMC in the amount of \$118,916.10 (24 month duration, with payments in the amount of \$5,000/month starting on June 1, 2009) as reimbursement to the company for invoices falsely submitted to SMC for non-SMC jobs.

F. 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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 20 of the OIP, except admit and affirmatively state that, beginning in or about October 2008, Dr. Gerasimowicz learned of operational cash flow needs of SMC that he believed to be temporary, causing him to advance his personal funds to SMC to meet these perceived temporary cash flow needs to sustain the business; that over time, in the months following termination of the former CEO, Mr. Doumazios, Dr. Gerasimowicz began to learn of, and assess, the full magnitude of the fraud committed by SMC's previous owners, employees and others; that the intentional and deliberate fraudulent acts of Mr. Doumazios and his co-conspirators both within and outside of SMC necessitated the infusion of additional funds and resources to SMC in order to fund its operating costs and sustain the business; that to meet these continued needs Dr. Gerasimowicz contributed significant personal funds on an ongoing basis to aid the business, help it overcome the financial difficulties that arose from the fraud of Mr. Doumazios and his cohorts, and preserve value for MREP and Fund investors; that since 2008, Dr. Gerasimowicz and MREP management diligently worked to correct these problems, build SMC's business, and pursue the individuals responsible for SMC's situation; that over time and up to the point of SMC's Chapter 11 filing in

September 2011, Dr. Gerasimowicz's continued to make personal advances to SMC because he believed in the future prospects of the enterprise; that Dr. Gerasimowicz's total advances to SMC are not precisely known at this time; and that Dr. Gerasimowicz informed a number of MREP and Fund investors prior to SMC's bankruptcy about the financial problems affecting SMC.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 21 of the OIP, except admit that Dr. Gerasimowicz, as the sole owner and principal of MAM, which acted as the Manager of the Fund, exercised the broad grant of discretionary authority provided under the PPM to make debt investments in SMC on behalf of the Meditron Fund; and that between late 2009 and September 2011, these investments totaled in excess of \$2 million via a number of different transfers to provide SMC with working capital, the exact amount of which is unknown at this time.

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%

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 22 of the OIP, except deny that all transfers were derived from sales, some having been made from cash, and that Dr.

Gerasimowicz represented that the monies paid for the purchase of "securities," and further object to the use of that term.

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

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 23 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents state that they lack knowledge or information sufficient to form a belief as to the truth of the calculations alleged in paragraph 24 of the OIP, except admit that \$1.025 million was transferred from the Fund's Goldman account, and that the Fund made an investment of \$200,000 in SMC through MREP in 2007.

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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 25 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 26 of the OIP, except admit that the Meditron Fund made debt investments in SMC between September 2010 and September 2011, as permitted by the PPM, and that such investment were made on various occasions..

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.

RESPONDENTS' ANSWER:

Respondents lack knowledge or information sufficient to form a belief as to the truth of the calculations alleged in paragraph 27 of the OIP, except admit that the Fund made debt investments in SMC as permitted by the PPM between September 2009 and September 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.

RESPONDENTS' ANSWER:

Respondents deny and object to the characterizations set forth in paragraph 28 of the OIP as argumentative and misstating the alleged promises set forth in the PPM, and further and repeat and reiterate their responses to paragraph 13 of the OIP, above, as if fully set forth herein.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 29 of the OIP, except admit that SMC was unable to acquire funding on these terms from unrelated third parties and that Dr.

Gerasimowicz secured a short-term loan for SMC in the amount of \$190,000 at 2% in or about February 2009 that he personally guaranteed, and that the loan was repaid within several months.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 30 of the OIP, except admit that investors continued to purchase interests in the Meditron Fund between September 2009 and September 2011.

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

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 31 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 32 of the OIP to the extent the referenced financials relate back to the date of the Chapter 11 filing, and otherwise deny the allegations.

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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 33 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 34 of the OIP, except admit that the Fund's SMC Notes and loans continue to be carried at cost because it is anticipated that the Notes and loans will be paid in full according to their terms.

G. 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."

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 35 of the OIP, except admit that the 28-page PPM (excluding forms and appendices) contains the quoted language, and further repeat and reiterate their responses to paragraph 13 of the OIP, above, as if fully set forth herein.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 36 of the OIP, except admit that the PPM was originally issued in 2003, several years before the Fund first invested in SMC, and that investors continued to purchase membership interests after the Fund first invested in SMC.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 37 of the OIP, except admit that SMC is a private company and that it filed for bankruptcy, and further affirmatively state that the investment strategy of the Fund did not change.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 38 of the OIP, and further affirmatively state that the investment strategy of the Fund did not change.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 39 of the OIP, and further affirmatively state that the disclosures in quarterly newsletters referred to in paragraph 39 referred solely to publicly traded investment vehicles and were identified as such.

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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 40 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 41 of the OIP, except admit that the Fund loaned sums to SMC to provide working capital.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 42 of the OIP, except admit that the 2010 audited financial statements distributed to Fund investors disclosed indebtedness of SMC to the Fund, and further affirmatively state that the SEC's ongoing communications with the Fund's investors resulted in redemption requests which drove down the ratio of the non-SMC portfolio.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 43 of the OIP, except admit that Respondents valued the Fund's SMC investments at cost based on their anticipation that the Fund's Notes and loans to SMC would be repaid according to their terms.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 44 of the OIP, except admit that Dr. Gerasimowicz did not disclose the SMC bankruptcy in his December 7, 2011 letter, and further affirmatively state that as a result of Dr. Gerasimowicz's subsequent disclosure to the auditor, the SMC bankruptcy was disclosed in an updated 2010 audit report distributed to investors.

H. 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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 45 of the OIP, except admit that Dr. Gerasimowicz authored articles for *Worth Magazine* that were published during the period referred to, and that these articles were made available on Respondents' website.

I. 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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 46 of the OIP, except admit that Meditron Fund 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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 47 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 48 of the OIP, except admit that annual audited financial statements were distributed beyond 120 days of the end of the Fund's fiscal year during the relevant period.

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.

RESPONDENTS' ANSWER:

Respondents admit the allegations set forth in paragraph 49 of the OIP, and further affirmatively state that updated audited financial statements for 2010 were completed and distributed in August 2012.

J. 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 and sale of securities and in connection with the purchase or sale of securities.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 50 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 51 of the OIP.

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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 52 of the OIP.

53. As a result of the conduct described above, 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 promulgated 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.

RESPONDENTS' ANSWER:

Respondents deny the allegations set forth in paragraph 53 of the OIP.

DEFENSES

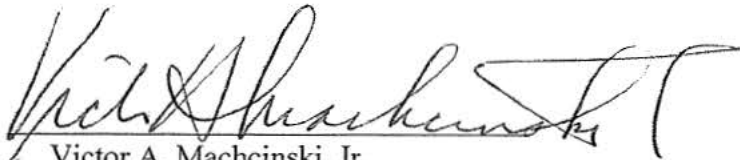
Further answering the OIP, Respondents assert the following defenses, without assuming the burden of proof when such burden would otherwise be on the SEC:

- (i) The OIP fails to state a claim upon which relief may be granted.
- (ii) The OIP fails to allege adequately any basis upon which the relief sought by the SEC could be granted.
- (iii) Respondents acted at all times in good faith and lacked the requisite state of mind to commit any violation of law, rule or regulation as alleged.
- (iv) The claims asserted by the SEC are barred by the defenses of estoppel, waiver and laches.
- (v) The SEC has failed to plead fraud with the requisite particularity.
- (vi) Respondents did not misrepresent or fail to disclose material facts or make material omissions as alleged.
- (vii) Respondents did not intentionally misstate information on books and records as alleged.
- (viii) Respondents did not aid, abet or cause any other Respondent to violate the federal securities laws, rules or regulations.
- (ix) Respondents invested in accordance with the Fund's stated investment strategy and valuation policy and at all times utilized client assets in proper fashion.
- (x) Respondents did not engage in conduct that constituted a conflict of interest under the PPM or any applicable laws, rules or regulations.
- (xi) This proceeding violates Respondents' due process guarantees under the U.S. Constitution.
- (xii) The OIP and the relief sought are not in the public interest.

WHEREFORE, Respondents request a hearing on the allegations of the OIP and that judgment be entered dismissing all claims against them with prejudice and granting such other and further relief as is appropriate.

Dated: New York, New York
October 28, 2012

MURPHY & McGONIGLE, P.C.

By: 
Victor A. Machcinski, Jr.

Katherine M. McGrail

One Exchange Plaza

55 Broadway, Suite 1600

New York, New York 10006

Tel: (212) 825-9811

Fax: (212) 825-9828

email: victor.machcinski@mmlawus.com

email: katherine.mcgrail@mmlawus.com

Attorneys for Respondents