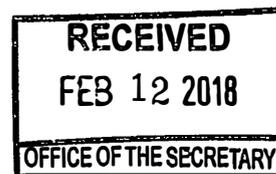


# HARD COPY

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-18127

In the Matter of  
  
MARTIN SHKRELI,  
  
Respondent.

DIVISION OF ENFORCEMENT'S  
MOTION FOR RECONSIDERATION OF  
DECISION ON MOTION FOR  
SUMMARY DISPOSITION AGAINST  
RESPONDENT MARTIN SHKRELI

The Division of Enforcement respectfully requests that the Court reconsider its decision, entered on November 17, 2017, to the extent it denied in part the Division's motion for summary disposition pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice [17 C.F.R. § 201.250].

In support of this Motion, the Division relies upon the accompanying memorandum of law and the Declaration of Eric M. Schmidt. The Division respectfully requests that the Court grant this motion.

Dated: New York, New York  
February 9, 2018

Respectfully submitted,

*/s/ Paul G. Gizzi*  
*/s/ Eric M. Schmidt*

Paul G. Gizzi (gizzip@sec.gov)  
Eric M. Schmidt (schmidte@sec.gov)  
Counsel for the Division of Enforcement  
200 Vesey Street, Suite 400  
New York, NY 10281  
(212) 336-1100

**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2018, I caused the original and three copies of the foregoing motion for summary disposition and accompanying papers to be filed:

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE, Mail Stop 1090  
Washington, DC 20549

I further certify that I caused to be served a copy of the foregoing via email upon:

Martin Shkreli  
c/o Andrea Zellan, Esq.  
Brafman & Associates, P.C.  
767 Third Avenue, 26<sup>th</sup> Floor  
New York, NY 10017

I further certify that I caused a courtesy copy of the foregoing to be provided by email to:

The Honorable James Grimes  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street NE, Mail Stop 2582  
Washington, DC 20549

*/s/ Eric M. Schmidt*

---

Eric M. Schmidt

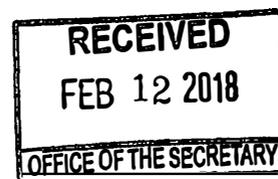
**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18127**

**In the Matter of**

**MARTIN SHKRELI,**

**Respondent.**



**DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR RECONSIDERATION**

The Division of Enforcement respectfully submits that the Court should reconsider its prior decision on the Division's motion for summary disposition and find that respondent Martin Shkreli was associated with an investment adviser during the period he committed securities fraud against his hedge fund clients, conduct for which the jury convicted him. The Court should then proceed to an analysis of the *Steadman* factors based on the record, including the additional materials submitted herewith, and reach the only possible conclusion: that it is in the public interest to impose an industry bar as to Shkreli. In light of this, there is no need for a hearing in this matter.

On November 17, 2017, this Court issued an order granting in part and denying in part the Commission's motion for summary disposition. The Court concluded that the Division had not met its burden to show that respondent was associated with an investment adviser at the time of his misconduct. The Division of Enforcement now submits additional materials attached to the accompanying declaration. This evidence, taken from respondent Martin Shkreli's criminal trial, together with materials from the Division's investigative file, amply demonstrates that

respondent was associated with an investment adviser during a substantial part of the period during which he engaged in conduct for which the jury convicted him on two counts of securities fraud. In addition to establishing that respondent was associated with an investment adviser during the relevant period, this evidence also supports the Division's prior submission – and the only possible conclusion – that an industry bar is in the public interest. Reconsideration is entirely appropriate under the circumstances.

### **BACKGROUND**

The Commission instituted this proceeding under Section 203(f) of the Investment Advisers Act of 1940 on August 22, 2017 based on respondent's conviction following a jury trial on two counts of securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 and one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371. The two counts of securities fraud related to Shkreli's fraudulent conduct while serving as portfolio manager of MSMB Capital and MSMB Healthcare,<sup>1</sup> and as managing member of the LLCs created to act as investment advisers to the funds. This conduct stemmed from 2009 through at least 2012. The conspiracy count related to Shkreli's involvement with public company Retrophin, Inc., which conduct occurred during 2013-2015.

The Court granted the Division permission to move for summary disposition in an order issued September 21, 2017. The Division's motion was fully submitted on November 13, 2017. On November 17, 2017, the Court granted the motion to the extent it was undisputed that Shkreli was convicted of a felony punishable by at least one year in prison. *See Matter of Martin Shkreli*, Admin. Proc. File No. 3-18127 (Nov.17, 2017). The Court then went on to deny the

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<sup>1</sup> Defined terms used in the Division's moving memorandum have the same meaning in this supplemental memorandum.

remainder of the motion. The Court reasoned that the Division had not established that Shkreli was associated with an investment adviser when he engaged in conduct for which he was convicted for securities fraud.<sup>2</sup> It further denied the motion on the ground that it was not clear what evidence the jury had considered in convicting Shkreli on two counts of securities fraud. In light of this, the Court did not consider the *Steadman* factors to make a determination whether an industry bar is in the public interest.

At the prehearing conference held on January 31, 2018, the Court granted the Division permission to move for reconsideration of the Court's order denying in part the Division's motion for summary disposition, and established a briefing schedule in an Order dated February 1, 2018.

As set forth below, the criminal trial evidence establishes that Shkreli was associated with an investment adviser when he engaged in the securities fraud of which he was convicted. Further, the jury had before it plenty of evidence that Shkreli committed securities fraud while so associated. And an analysis of the *Steadman* factors shows a bar is in the public interest.

### ARGUMENT

As a general matter, motions for reconsideration can be made at any time before final adjudication based on factors such as the availability of new evidence or a prior erroneous

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<sup>2</sup> The Court's citation to *Vermont Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004), is inapposite as the issue there was whether the plaintiff established the absence of any issue of material fact such that summary judgment was appropriate. In contrast, here, the Division has proved that Shkreli was associated with an investment adviser when he committed securities fraud, as amplified below. And the Court's citation to *James S. Tagliaferri*, 2017 WL 632134, at \*7 n.45; *cf. Chris G. Gunderson, Esq.*, Exchange Act Release No. 61234, 2009 WL 4981617, at \*5 (Dec. 23, 2009), makes clear that a respondent opposing summary disposition "may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing." Shkreli has not made such a showing and, indeed, has not even requested a hearing.

decision, Cf. Fed. R. Civ. P. 54(b), and after final Commission action setting forth the matters erroneously decided, the grounds relied upon, and the relief sought, Rule of Practice 470(b).<sup>3</sup> The additional evidence clearly shows that Shkreli was associated with an investment adviser during at least 2009-2012. For instance, based on the testimony and documents admitted in the criminal trial, as well as materials from the Division's investigation, the Court should reconsider the denial of the Division's motion for summary disposition on whether Shkreli was associated with an investment adviser when he engaged in the misconduct for which he was convicted of two counts of securities fraud. In the accompanying declaration, the Division submits excerpts from the trial transcript of, and selected exhibits that were admitted in, the criminal case, *U.S. v. Shkreli*, 15-cr-637-KAM (E.D.N.Y.), through victims David Geller and Lindsay Rosenwald, which show that Shkreli held himself out as and acted as being associated with an investment adviser – indeed he controlled two investment advisers. (See Declaration of Eric Schmidt dated Feb. 9, 2018 (“Schmidt Decl.”), Ex. G-H). In addition, Shkreli's Wells Submission, background questionnaire, and letter to the Division staff, materials submitted during the Division's investigation, confirm his role as an investment adviser. (Schmidt Decl. Ex. G-L).<sup>4</sup> Accordingly, summary disposition on this issue is warranted.

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<sup>3</sup> While the new evidence presented by the Division was available to the Division at the time it filed the Motion for Summary Disposition, the Division did not include that evidence in its moving papers. Rather, the Division relied upon Shkreli's assertion of his 5<sup>th</sup> Amendment privilege in his answer and Shkreli's admission in investigative testimony that he was associated with the investment advisory entities operating the MSMB Capital and MSMB Healthcare funds, and that he was portfolio manager to those funds. The Division did not include the new evidence in its reply, because Shkreli did not assert in his response to the Division's motion that he was not associated with an investment adviser during the relevant time periods. Accordingly, the Division respectfully requests that the Court consider that new evidence now.

<sup>4</sup> Shkreli was convicted on Counts 3, 6 and 8 of the Superseding Indictment (“Indictment”). Count 3 of the Indictment charged Shkreli with securities fraud arising out of

### **Materials From the Division's Investigation**

On May 21, 2015, Shkreli, and the two advisory entities, through their counsel at the time, made a joint 82-page Wells Submission (the "Submission," relevant excerpts of which are attached as Ex. J to the Schmidt Decl.) that addressed each of the staff's contemplated charges against Shkreli in great detail. The Submission admits Mr. Shkreli's role as portfolio manager to the MSMB funds:

In 2009, Mr. Martin Shkreli . . . founded the hedge fund MSMB Capital Management LP . . . along with the corresponding investment adviser, MSMB Capital Management LLC . . . . In 2011, he . . . founded a second fund, MSMB Capital Healthcare LP . . . along with the investment adviser, MSMB Healthcare Management LLC . . . . Mr. Shkreli served as the portfolio manager of both funds.

(Submission at 1). Nowhere in the Submission is there any suggestion that Shkreli relinquished that position (the Submission does not affirmatively state that he was still associated with an investment adviser as of the date of the Wells submission). Indeed, the arguments in the Submission are totally at odds with such an assertion.

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what is described in the Indictment as the "MSMB Capital Hedge Fund Scheme." The specific factual allegations relating to that scheme are set forth in paragraphs 8 through 15 of the Indictment, which allege conduct occurring during the period September 2009 through September 2012. Count 6 of the Indictment charged Shkreli with securities fraud arising out of what is described in the Indictment as the "MSMB Healthcare Hedge Fund Scheme." The specific factual allegations relating to that scheme are set forth in paragraphs 16 through 20 of the Indictment, which allege conduct occurring during the period September 2011 through March 2013. Count 8 of the Indictment charged Shkreli with conspiracy to commit securities fraud arising out of what is described in the Indictment as the "Retrophin Unrestricted Securities Scheme." The specific factual allegations relating to that scheme are set forth in paragraphs 36 through 40 of the Indictment, which allege conduct occurring during the period November 2012 through September 2014.

For example, the Submission argued that the Commission should not charge Shkreli because:

- Shkreli showed “exhaustive sleepless devotion” (Submission at 3) to MSMB, and “spent virtually all his waking hours working for MSMB, conducting trades, performing due diligence and engaging in research.” (Submission at 5)
- MSMB investors were sophisticated and gave Shkreli “wide-ranging authority to invest their funds.” (Submission at 2)
- One of Shkreli’s motivations in forming Retrophin was to provide a strong rate of return to MSMB investors. (Submission at 3).
- Even after Shkreli founded Retrophin and began devoting most of his time to running that company, Shkreli was determined to make sure that MSMB investors would benefit from his work at Retrophin and took steps to convert interests in MSMB into Retrophin shares. (Submission at 7-8).

According to the Submission, Shkreli founded MSMB and MSMB Healthcare, worked tirelessly to make money for investors, was unsuccessful in part because he did not have sufficient professional support, but that, even after losing money, he found a way to make the MSMB investments profitable.

Shkreli devoted one section of his Submission to arguing that he should not receive an industry bar pursuant to Section 203(f) of the Advisers Act. (Submission at 82-83). In that section, Shkreli argued that he should not be barred because his conduct did not involve “willful” violations of the securities laws and because such a bar would not be in the public interest. Shkreli did not argue in the Submission (just as he did not argue in his response to the Division’s motion) that a bar should not be issued because Shkreli was not associated with an investment

adviser during the time of the misconduct alleged by the Commission (and also alleged in the criminal indictment). The Submission did not contain this argument because, in fact, Shkreli was associated with an investment adviser during all relevant times.

In addition to the Submission and the portions of his testimony cited in the Division's Moving Memorandum, Shkreli has repeatedly admitted his role as portfolio manager of the funds. For instance in a background questionnaire submitted to the staff that Shkreli testified was accurate, he admits that he was the CIO – or chief investment officer – of MSMB Capital from 2008-2012. (Schmidt Decl. Ex. K). Moreover, in November 2012, Shkreli produced documents to the staff with a cover letter on the letterhead of MSMB Capital Management LLC, the investment advisory entity managing the MSMB Capital funds, which clearly reflects that as of November 2012 Shkreli was associated with that investment adviser. (Schmidt Decl. Ex. L). Thus, the evidence establishes that Shkreli was associated with an investment adviser from 2009 through at least 2012.

#### **Evidence From Shkreli's Criminal Trial**

The evidence at the criminal trial similarly establishes that Shkreli was associated with an investment adviser. For instance, investor Lindsay Rosenwald invested in October 2009 based on an offering memorandum dated in September 2009. (Schmidt Decl. Ex. H, identifying MSMB Capital Management LLC as the investment adviser of the fund and Shkreli as the individual primarily responsible for management and control of the fund and primarily responsible for investing the assets of the fund). Similarly, in October 2011, Shkreli sent a revised private placement memorandum that contained similar disclosures. (Schmidt Decl. Ex. G). Shkreli also blatantly lied to his investors. For instance, in February 2011 Shkreli emailed a false performance estimate to an investor that the investor's account was worth approximately

\$250,000 when, in fact, the account had only approximately \$1,000. (Schmidt Decl. Ex. I). And in January 2012 and March 2012, Shkreli falsely told an investor that his account was worth approximately \$150,000-\$165,000 when, in reality, the account was worth nothing. (Schmidt Decl. Ex. I). The criminal trial evidence shows that Shkreli was associated with an investment adviser when he engaged in the egregious conduct concerning which the jury convicted him on two counts of securities fraud.

Thus there can be no serious dispute that Shkreli acted as portfolio manager for MSMB Capital and MSMB Healthcare during the period for which he was convicted of securities fraud and as of the date of his Submission, May 21, 2015. According to the excerpts from the criminal trial evidence that the Division submits, it is clear that Shkreli committed securities fraud during 2009-2012. As set forth in the investor Geller and Rosenwald exhibits, Shkreli sent numerous statements to his victims suggesting their investments were worth hundreds of thousands of dollars. (Schmidt Decl. Exs. G, H). But FBI agent Braconi testified that at the time these statements were made, MSMB Capital had no money, *i.e.*, that there were *zero* balances in the firms' (and therefore the fund investors') accounts. (Schmidt Decl. Ex. I). Agent Braconi submitted a very telling exhibit with bar charts showing what Shkreli told his victims were MSMB Capital's assets – showing misleadingly high silos suggesting substantial assets – compared with the review of the actual account records – showing little or nothing in the form of assets. (Id.) This testimony and the summary chart show the blatant lies Shkreli provided to, and the lengths he went to in order to defraud his victims. The jury had this evidence presented to it and the evidence – undoubtedly – convinced the jury to convict Shkreli on two counts of securities fraud.

The Division also respectfully suggests that the Court made an error in denying the motion on the notion that the jury could have concluded that Shkreli engaged in securities fraud only during 2013-2014. *See* Order on Motion for Summary Disposition at 7 (Nov. 17, 2017). But the specific allegations of Count 3 of the indictment occurred from 2009 to 2012, a period during which Shkreli was indisputably associated with an investment adviser. Accordingly, the Court should reconsider its decision on this issue as well.

Finally, an application of the *Steadman* factors supports the bar sought by the Division. Shkreli's illegal conduct lasted for many years and involved egregious lies, he misappropriated investor funds and lied about how he used the funds; and, he totally lacks remorse and wants to continue to work as an investment adviser. Shkreli then also defrauded a public company, Retrophin (an entity to whose shareholders Shkreli owed a fiduciary obligation) based on secretly controlling its stock by prohibiting recipients of the stock from selling in an effort to maintain the price of the stock. And while some of his victims ultimately profited from their failed investments in MSMB, it was only as a result of Shkreli and his attorney creating sham consulting agreements whereby MSMB victims received Retrophin stock with the understanding that they would not have to perform any work in exchange for the stock. (The attorney was recently convicted for this conduct through a related but separate trial – *US v. Greebel*.)<sup>5</sup> But as

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<sup>5</sup> The fact that Shkreli was acquitted on Count 7 of the Indictment charging conspiracy to commit securities fraud based on arranging with Greebel to provide sham consulting agreements to victim investors in the MSMB hedge funds is irrelevant. The Commission's complaint charges Shkreli with a direct securities fraud violation for this conduct. The fact that MSMB ultimately profited – at the expense of Retrophin – is beside the point. Shkreli kept from them the fact that their investments were at risk until they were able to monetize the Retrophin stock. The fact that the MSMB hedge fund investors received sham consulting agreements to compensate for their losses in their hedge fund investments with Shkreli further demonstrates that an industry bar is necessary in the public interest for the protection of investors – particularly

Shkreli well knew, the victims never knew that Shkreli had already lost their money and his empty promise to redeem their investments on demand was a flat-out lie.

For all these reasons, the Court should order an industry bar as to Shkreli. It is clearly warranted here. To reiterate what was set forth in the Division's motion papers submitted in support of the motion for summary disposition, the jury that convicted Shkreli of two counts of securities fraud relating to his operation of the two hedge funds necessarily had to conclude that he committed at least one of the acts alleged in the superseding indictment relating to each fund. Any one of those acts supports an industry bar. Shkreli also has shown no remorse for his wrongdoing, maintains he did nothing wrong, engaged in egregious behavior over a long period of time, and wants to be in a position to manage investor funds in the future. *See* Shkreli Mem. in Opp. to Division's Motion at 4-8. It is thus in the public interest to bar Shkreli from the securities industry.

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those who may be enticed to invest with Shkreli because of the fortuitous profits his prior victims realized.

**CONCLUSION**

The Division respectfully requests that the Court reconsider the record, including these additional materials, and enter an industry bar as to respondent Shkreli.

Dated: New York, New York  
February 9, 2018

Respectfully submitted,

*/s/ Paul G. Gizzi*  
*/s/ Eric M. Schmidt*

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Paul G. Gizzi (gizzip@sec.gov)  
Eric M. Schmidt (schmidte@sec.gov)  
Counsel for the Division of Enforcement  
200 Vesey Street, Suite 400  
New York, NY 10281  
(212) 336-1100

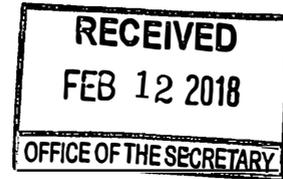
**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18127**

**In the Matter of**

**MARTIN SHKRELI,**

**Respondent.**



**DECLARATION OF ERIC M. SCHMIDT IN SUPPORT OF THE DIVISION OF  
ENFORCEMENT'S MOTION FOR RECONSIDERATION**

I, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed in the Division of Enforcement of the Securities and Exchange Commission as Senior Counsel in the New York Regional Office. I submit this declaration in support of the Division of Enforcement's Motion for Reconsideration dated February 9, 2018. The letters assigned to the exhibits to this declaration continue from the original declaration I submitted in support of the motion for summary disposition dated October 11, 2017 (exhibits A-F).

2. Attached hereto as Exhibit G are excerpts from the trial testimony of David Geller in *United States v. Shkreli*, 15-cr- 637-KAM (E.D.N.Y. 2017), together with portions of admitted exhibits that were referred to during that testimony.

3. Attached hereto as Exhibit H are excerpts from the trial testimony of Lindsay Rosenwald in *United States v. Shkreli*, 15-cr- 637-KAM (E.D.N.Y. 2017), together with portions of admitted exhibits that were referred to during that testimony.

4. Attached hereto as Exhibit I are excerpts from the trial testimony of Michael Braconi in *United States v. Shkreli*, 15-cr- 637-KAM (E.D.N.Y. 2017), together with admitted exhibits that were referred to during that testimony.

5. Attached hereto as Exhibit J is a true and correct copy of excerpts of the Wells Submission on Behalf of Martin Shkreli, MSMB Capital Management LLC, and MSMB Healthcare Management LLC, dated May 21, 2015 that was submitted in the Commission investigation.

6. Attached hereto as Exhibit K is a true and correct copy of a Background Questionnaire prepared by Martin Shkreli and marked as Exhibit 3 during Shkreli's investigative testimony, reflecting in item 18 that Shkreli served as CIO (Chief Investment Officer) of MSMB Capital from 2008-2012.

7. Attached hereto as Exhibit L is a document production cover letter from Shkreli on MSMB Capital Management LLC letterhead, which was received by the Division staff on November 4, 2012 during the Commission investigation.

This Court is respectfully requested to take official notice of the above described documents pursuant to Rule 323 of the Commission's Rules of Practice, 17 C.F.R. § 201.323.

Executed in New York, New York, on February 9, 2018.

I declare under the penalty of perjury that the foregoing is true and correct.

  
Eric M. Schmidt

## D. GELLER - DIRECT - SRINIVASAN

1 Q When did you sign it?

2 A June 29, 2011.

3 Q At the time you invested, did the defendant ever mention  
4 a company called Orexigen or Orex?

5 MR. BRAFMAN: Objection, no testimony that he spoke  
6 to Mr. Shkreli before he invested.

7 MR. SRINIVASAN: He had a phone call, your Honor.

8 THE COURT: Let's not argue in front of the jury.  
9 Lay a foundation about conversations.

10 BY MR. SRINIVASAN:

11 Q Mr. Geller --

12 THE COURT: Before the investment.

13 Q Mr. Geller, before you invested in MSMB Healthcare, did  
14 you ever speak to the defendant?

15 A I did.

16 Q And in that conversation and before the time you  
17 invested, did the defendant ever mention a company called  
18 Orexigen sometimes abbreviated as Orex?

19 A He did not.

20 Q Over the course of your investment, did you receive  
21 information about the performance of your investment?

22 A Yes.

23 Q How did you receive that information?

24 A I got investor statements.

25 Q You have a binder that's labeled 91 series, it has ten

## D. GELLER - DIRECT - SRINIVASAN

1 tabs in it. These exhibits are marked for identification as  
2 Government's Exhibits 91-1 through 91-10, do you recognize  
3 these documents?

4 A Yes.

5 Q What are they?

6 A These are the investor statements.

7 MR. SRINIVASAN: Your Honor we move to admit  
8 Government's Exhibit 91-1 through 9-10.

9 MR. BRAFMAN: No objection.

10 THE COURT: We will receive 91-1 through 91-10.

11 (Government Exhibit 91-1 through 91-10, was received  
12 in evidence.)

13 Q Tab one, 91-1, if you look at the middle e-mail, it  
14 should be on your screen, who sent the e-mail to you?

15 A NAVConsulting.net.

16 Q What, if anything, did you understand NAV Consulting to  
17 be?

18 A I believed it was their consulting and administrative  
19 type firm.

20 Q What is the date on the e-mail?

21 A August 9, 2011.

22 Q For what month is this statement?

23 A July 2011.

24 Q Let's go to page two of this exhibit, Bates R013294, what  
25 was your ending balance according to this statement?

## D. GELLER - DIRECT - SRINIVASAN

1 A 205,000.

2 Q Did you believe that these investor statements were  
3 accurate?

4 A I did.

5 Q Did you rely on these statements to keep track of your  
6 investment.

7 A Yes.

8 Q Did these statements have any influence in terms of  
9 keeping your money in MSMB Healthcare?

10 A They had some.

11 (Continued on following page.)

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## GELLER - DIRECT - SRINIVASAN

1 A They had some. Just pretty much, you know, you see to  
2 how the game is going, to see what the score is.

3 DIRECT EXAMINATION (CONTINUED)

4 BY MR. SRINIVASAN:

5 Q Okay. Let's go to the next tab, which is Government  
6 Exhibit 91-2.

7 And focusing on the middle email, Mr. Geller, what's  
8 the date on this email?

9 A October 27th, 2017.

10 Q For what month is this statement?

11 A September 2011.

12 Q Let's go to page 2. What was your ending balance for  
13 this month?

14 A \$210,354.

15 Q Mr. Geller, do you see some fine print at the bottom of  
16 that page?

17 A Yes.

18 Q And is there a reference to Retrophin in this fine print?

19 A Yes.

20 Q Did this fine print make any impression on you at this  
21 time?

22 A To tell you truth, I didn't -- I didn't notice -- I mean,  
23 there was something there but I never -- I never -- I never  
24 bothered to really read it.

25 Q Let's go to Government Exhibit 91-3, which is the next

1 tab in your binder.

2 Mr. Geller, what's the date on the email?

3 A November 30th, 2011.

4 Q And for what month is the statement?

5 A October 2011.

6 Q Let's go to the second page. What was your ending  
7 balance for this month?

8 A \$199,938.

9 Q And if we could zoom in on that paragraph at the bottom.

10 Mr. Geller, do you see a reference to Retrophin in  
11 this time frame?

12 A Yes.

13 Q Did this fine print make any impression on you at this  
14 time?

15 A Yes, it did. It absolutely did. I mean, I did notice  
16 the footnote at this time.

17 Q At this point what, if anything, was your understanding  
18 of Retrophin?

19 A I really had no idea what it was.

20 Q And in the first sentence of the fine print, it says:

21 MSMB Healthcare, LP has accepted the transfer of 30,000  
22 investment units consisting of Class A common units of  
23 Retrophin, LLC, a Delaware limited liability company focused  
24 on developing biopharmaceutical products for Martin Shkreli at  
25 no consideration as a gift.

## GELLER - DIRECT - SRINIVASAN

1           What, if anything, was your understanding of the  
2 language "at no consideration as a gift"?

3     A     My understanding was that it was -- it was a gift that  
4 was gifted to all -- whoever he gifted it to.

5     Q     To MSMB Healthcare?

6     A     Well, in looking at this footnote, yes, MSMB Healthcare.

7     Q     At this point, did you believe that MSMB Healthcare had  
8 paid money to invest in Retrophin?

9     A     I'm sorry, say it again?

10    Q     Of course. At this point, did you believe that MSMB  
11 Healthcare had paid money to invest in Retrophin?

12    A     No.

13    Q     Did you have any understanding of the size of MSMB  
14 Healthcare's position in Retrophin?

15    A     I did not.

16    Q     So let's go back to the big binder. And I'm showing you  
17 what's been marked for identification as Government  
18 Exhibit 109-6. It's Tab 6 in your -- in the big binder.

19    A     Okay.

20    Q     Now, what kind of document is this?

21    A     An investor letter.

22    Q     Did you receive it?

23    A     I did.

24           MR. SRINIVASAN: Your Honor, we move to admit  
25 Government's Exhibit 109-6.

## GELLER - DIRECT - SRINIVASAN

1 MR. AGNIFILIO: No objection.

2 THE COURT: We will receive 109-6.

3 (Government Exhibit 109-6, was received in  
4 evidence.)

5 Q And, Mr. Geller, who sent this email to you?

6 A NAV Consulting.

7 Q And the email says: Dear investor, please find attached  
8 an important notice from the fund, along with a materially  
9 revised PPM dated October 28th, 2011. These are critical  
10 notices for your information and may require a response action  
11 on your part, if you have any objection to the changes to the  
12 PPM. For this reason we urge you to carefully review both  
13 documents and exercise due care in your investment decision.

14 Do you see that?

15 A Yes.

16 Q And I'm looking at the attachment line. Are there  
17 attachments? On the email, sir.

18 A Okay.

19 Q On that first page, are there attachments to this  
20 document?

21 A Private placement memorandum.

22 Q And letter to investors?

23 A And letter to investors, yes.

24 Q You know, I'm not sure if I asked you before.

25 Traderexp@aol.com, who is that?

## GELLER - DIRECT - SRINIVASAN

1 A That's my email.

2 Q Okay. So let's go to the fourth page of this exhibit,  
3 which is Bates number DG00010.

4 What is this document?

5 A A private placement memorandum.

6 Q For what month?

7 A MSMB Healthcare.

8 Q What's the date of this document?

9 A October 28th, 2011.

10 Q Now, if you could just keep this page open for a second.  
11 I'm showing you what's been marked for identification as  
12 Government Exhibit 11B, which is Tab 31 in your binder.

13 What is this document?

14 A Private placement memorandum.

15 Q What's the date on this document?

16 A October 28th, 2011.

17 Q Mr. Geller, is this the same document that we saw just a  
18 minute ago?

19 A Yes.

20 MR. SRINIVASAN: Your Honor, we move Government's  
21 Exhibit 11B into evidence.

22 MR. AGNIFILIO: No objection.

23 THE COURT: We received Government's Exhibit 11B.

24 (Government Exhibit 11B, was received in evidence.)

25 Q Mr. Geller, let's go back to the Tab 6 in the binder and

## GELLER - DIRECT - SRINIVASAN

1 stick to the documents there. And that's Government  
2 Exhibit 109-6 in evidence.

3 If you can go back two pages from where you were,  
4 it's Bates-numbered DG0008.

5 So this is a letter to investors from the defendant.  
6 And if we can zoom in on the first three paragraphs of this  
7 letter?

8 MR. BRAFMAN: Is that a separate exhibit number?

9 MR. SRINIVASAN: No, this is all part of 109-6, the  
10 attachments to the email.

11 Q Mr. Geller, this part of the letter reads: MSMB  
12 Healthcare, LP has updated it's private placement memorandum  
13 to reflect new disclosures regarding the fund. Specifically,  
14 MSMB Healthcare, LP has expanded its disclosure regarding its  
15 ability and intent to invest in illiquid securities including  
16 venture capital, private equity limited partnerships and other  
17 hedge funds. If you disagree with these changes, we will  
18 facilitate your redemption within our standard parameters.  
19 MSMB Healthcare, LP has and will continue to invest in  
20 MSMB-affiliated entities, which are controlled by the  
21 MSMB Capital umbrella. These entities may or may not be  
22 administered and audited, and the fund will rely heavily on  
23 our impressions of value of these assets. These investments  
24 are expected to be a material portion of the funding assets.  
25 MSMB Healthcare, LP may invest in private equity, directly or

1 indirectly. MSMB-affiliated partnerships are most likely to  
2 carry out these private equity investments. There's no  
3 assurance that these investments will be profitable, and any  
4 equity invested may not be able to be returned for a  
5 redemption.

6           What, if anything, was your reaction to receiving  
7 this information?

8 A    Very negative reaction.

9 Q    Why is that?

10 A    Because they were changing the objective of the fund,  
11 which is not what I originally planned for. Originally  
12 wanted.

13 Q    Was it consistent or inconsistent with your objectives?

14 A    Inconsistent.

15 Q    In what way?

16 A    It looked like they were trying to turn the fund into an  
17 illiquid fund that invested in -- in private type -- private  
18 type of investments, as it says, in the first paragraph.

19 Q    At some point after you received this information, did  
20 you try to redeem your investment?

21 A    Yes.

22 Q    I'm showing you what's marked for identification as  
23 Government's Exhibit 109-7, which is Tab 7 in your binder.

24           Now, what kind of document is this?

25 A    It's a email.

1 Q At this point, in September 2012, did you believe that  
2 MSMB Healthcare had an administrator?

3 A Yes.

4 Q And at this point, was having or not having an  
5 administrator important to your decision to keep investing in  
6 MSMB Healthcare?

7 A Yes.

8 Q Why is that?

9 A Because if they didn't have an administrator, then  
10 something would be wrong.

11 Q What do you mean by "wrong"?

12 A Well, what we talked about before, like the administrator  
13 has -- I mean, the fund has to run with an administrator.

14 Q Go to the next tab, Government's Exhibit 91-9.

15 What's the date of this email?

16 A June 2012.

17 Q If you look closer to the top, what's the date on the  
18 email?

19 A Oh, I'm sorry. September 9th, 2012.

20 Q And for what month is it, the statement?

21 A June 2012.

22 Q And if we go to page 2 of the document. What's your  
23 ending balance here?

24 A \$272,760.

25 Q And let's go to the next tab, which is Government's

1 Exhibit 91-10 in evidence.

2 What's the date on this email?

3 A September 10, 2012.

4 Q For what month is this statement?

5 A July 2012.

6 Q And going to the second page, what was the value of your  
7 investment here?

8 A \$299,343.

9 MR. SRINIVASAN: Ms. Zellan, if we can put the first  
10 pages of 91-9 and 91-10 side by side. And if we can zoom in,  
11 please, on the email at the top of this page.

12 Q Mr. Geller, it's on your screen.

13 Taking these exhibits together, in your experience,  
14 was there anything unusual about the timing of these investor  
15 statements?

16 A Yes.

17 Q What was that?

18 A There was a four- or five-month lag from when the  
19 statements were sent out from the actual -- from the actual  
20 date.

21 Q Did you have any reaction to the timing of the  
22 statements?

23 A It wasn't -- it wasn't kosher with me because I mean a  
24 five-month lag, I didn't understand why there was a five-month  
25 lag.

## GELLER - DIRECT - SRINIVASAN

1 I was -- I was a little bit worried.

2 Q Mr. Geller, now taking all of these performance  
3 statements together, did you rely on them?

4 A Yes.

5 Q Do you believe them to be accurate?

6 A I did.

7 Q To what extent were inaccurate or accurate performance  
8 statements important to your investment decision?

9 A Repeat that again, I'm sorry.

10 Q I'm sorry, I said that quickly.

11 To what extent were accurate or inaccurate  
12 performance statements important to your continued investment  
13 decisions?

14 A It's -- I think I said it before, it's just like a -- an  
15 ongoing line score just to see how the fund is doing, how --  
16 how the month -- how the performance changes month to month.

17 Q Now, during the course of your MSMB Healthcare  
18 investment, did you approve any personal loans by MSMB  
19 Healthcare to the defendant?

20 A No.

21 MR. BRAFMAN: Objection, Your Honor, it assumes a  
22 requirement.

23 THE COURT: I think this was the subject of a prior  
24 discussion.

25 A sidebar, I'm going to sustain the objection.

---

**From:** Martin Shkreli [Martin@msmbcapital.com]  
**Sent:** Sunday, September 09, 2012 11:30 PM  
**To:** redacted  
**Cc:** Kevin Mulleady; Martin Shkreli  
**Subject:** June 2012 Investor Statement for MSMB Healthcare LP | David Geller  
**Attachments:** Investor Statement 0014 June 2012.pdf

Dear Investor,

Please see the attached statement for the month of June 2012 for your investment in MSMB Healthcare LP.

Thank You,

Martin Shkreli  
MSMB Healthcare LP  
212-983-1310

**MSMB HEALTHCARE LP  
C/O MSMB Healthcare Investors LLC  
330 Madison Avenue, 6th Floor  
New York, NY 10017**

**INDIVIDUAL ACCOUNT STATEMENT  
(PREPARED FROM BOOKS WITHOUT AUDIT)**

**Investor No:**

**0014**

**David Geller**

**redacted**

**INVESTOR STATEMENT FOR THE MONTH ENDED**

**30-Jun-12**

	<b>MTD (USD)</b>	<b>YTD (USD)</b>
<b>BEGINNING BALANCE</b>	<b>251,228.97</b>	<b>222,585.67</b>
<b>ADDITIONS</b>		
<b>REDEMPTIONS</b>		
<b>NET INCOME</b>	<b>21,531.30</b>	<b>50,174.60</b>
<b>ENDING BALANCE</b>	<b>272,760.27</b>	<b>272,760.27</b>
<b>RATE OF RETURN</b>	<b>8.57%</b>	<b>20.73%</b>

Please contact the General Partner at (212) 983-1310 should you have any questions or if you would like additional information regarding these investments, including detailed disclosure on valuation and size of investment.

---

**From:** Martin Shkreli [Martin@msmbcapital.com]  
**Sent:** Monday, September 10, 2012 12:53 AM  
**To:** redacted  
**Cc:** Kevin Mulleady; Martin Shkreli  
**Subject:** July 2012 Investor Statement for MSMB Healthcare LP | David Geller  
**Attachments:** Investor Statement 0014 July 2012.pdf

Dear Investor,

Please see the attached statement for the month of July 2012 for your investment in MSMB Healthcare LP.

Thank You,

Martin Shkreli  
MSMB Healthcare LP  
212-983-1310



**MSMB HEALTHCARE LP  
C/O MSMB Healthcare Investors LLC  
330 Madison Avenue, 6th Floor  
New York, NY 10017**

**INDIVIDUAL ACCOUNT STATEMENT  
(PREPARED FROM BOOKS WITHOUT AUDIT)**

**Investor No:** 0014

**David Geller**

**redacted**

**INVESTOR STATEMENT FOR THE MONTH ENDED**

**07/01/12 - 07/31/12**

**31-Jul-12**

	<b>MTD (USD)</b>	<b>YTD (USD)</b>
<b>BEGINNING BALANCE</b>	<b>272,760.27</b>	<b>222,585.67</b>
<b>ADDITIONS</b>		
<b>REDEMPTIONS</b>		
<b>NET INCOME</b>	<b>26,583.58</b>	<b>76,758.18</b>
<b>ENDING BALANCE</b>	<b>299,343.85</b>	<b>299,343.85</b>
<b>RATE OF RETURN</b>	<b>9.75%</b>	<b>34.48%</b>

Please contact the General Partner at (212) 983-1310 should you have any questions or if you would like additional information regarding these investments, including detailed disclosure on valuation and size of investment.

From: Investor Relations at NAV <Investor.Relations@navconsulting.net>

To: redacted

Cc: Alison Russo <arusso@msmbcapital.com>; Martin Shireff <Martin@msmbcapital.com>

Subject: IMPORTANT NOTICE from MSMB Healthcare LP

Date: Mon, Oct 31, 2011 3:55 pm

Attachments: MSMB Healthcare LP Letter to Investors 10-31-11.pdf (768K), MSMB Healthcare LP -- Private Placement Memorandum.pdf (546K)

Dear Investor,

Please find attached an important notice from the Fund along with a materially revised PPM dated October 28<sup>th</sup>, 2011. These are critical notices for your information and may require response action on your part if you have any objection to the changes to the PPM. For this reason, we urge you to carefully review both documents and exercise due care in your investment decision.

Thank you,

Aneesh Kumar | Account Manager - Transfer Agency Services

NAV CONSULTING, INC. | 2A15 DeWitt Field Road, Suite 200W | Oak Brook, IL 60451 | UNITED STATES | www.navconsulting.net

☎ +1 630 954 1919 Ext. 137 | 📠 +1 630 954 4544 | 📧 transfer.agency@navconsulting.net

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To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

GOVERNMENT  
EXHIBIT  
109-6  
15 CR 637 (KAM)

MSMB Capital  
330 Madison Avenue, 6<sup>th</sup> Floor  
New York, NY 10017

OCT 31, 2011

Dear Limited Partner,

MSMB Healthcare LP has updated its Private Placement Memorandum to reflect new disclosures regarding the fund. Specifically, MSMB Healthcare LP has expanded its disclosure regarding its ability and intent to invest in illiquid securities, including venture capital, private equity, limited partnerships and other hedge funds. If you disagree with these changes, we will facilitate your redemption within our standard parameters.

MSMB Healthcare LP has and will continue to invest in MSMB affiliated entities, which are controlled by the MSMB Capital umbrella. These entities may or may not be administered and audited and the fund will rely heavily on our impressions of value of these assets. These investments are expected to be a material portion of the fund's assets.

MSMB Healthcare LP may invest in private equity, directly or indirectly. MSMB affiliated partnerships are most likely to carry out these private equity investments. There is no assurance that these investments will be profitable and any equity invested may not be able to be returned in time for a redemption.

We are making these changes to better align MSMB's resources and abilities with investor requests to gain access to our projects. We think we are balancing the interests of all investors favorably and we hope you are excited about what MSMB is able to bring to your investment. Please review the new disclosures, located on pages 2, 9, 10, 12, 14, 15, 16, 17, 18, 21, 27 and 36. Please don't hesitate to call me with any questions on these new disclosures.

Thanks,

Martin Shkreli

MSMB Capital

MSMB Capital  
330 Madison Avenue, 6<sup>th</sup> Floor  
New York, NY 10017

Dear Limited Partner,

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Thanks,

Martin Shkreli

MSMB Capital

**CONFIDENTIAL PRIVATE OFFERING MEMORANDUM**

**OFFERING OF LIMITED PARTNER INTERESTS**

**IN**

**MSMB Healthcare LP**

**General Partner:**

**MSMB Healthcare Investors LLC**

**330 Madison Avenue, 6<sup>th</sup> Floor  
New York, New York 10017  
Telephone: (212) 983-1310**

**Investment Manager:**

**MSMB Healthcare Management LLC**

**October 28<sup>th</sup>, 2011**

## THE PARTNERSHIP

### General Partner and Investment Advisor

The sole general partner of the Partnership will be MSMB Healthcare Investors LLC, a Delaware limited liability company (the "General Partner"). The General Partner will have full responsibility for the management and control of the Partnership. Mr. Martin Shkreli is the founder and managing member of the General Partner. As such, Mr. Shkreli will be the individual primarily responsible for the management and control of the Partnership.

MSMB Healthcare Management LLC, a Delaware limited liability company and an affiliate of the General Partner (the "Advisor," and collectively with the General Partner, "MSMB"), will serve as investment adviser of the Partnership and will have full discretionary authority and responsibility to invest the assets of the Partnership. Mr. Martin Shkreli, the founder and managing member of the Advisor, will serve as the portfolio manager (the "Portfolio Manager") of the Partnership on behalf of the Advisor and, as such, will be the individual primarily responsible for investing the assets of the Partnership.

One or more affiliates of MSMB may in the future be appointed to replace the General Partner or the Advisor, or the responsibilities of the General Partner or the Advisor, in their respective capacities with respect to the Partnership, may be assigned to one or more affiliates of MSMB, without the consent of the limited partners, provided, that in any such event Mr. Shkreli continues to serve as the Partnership's Portfolio Manager.

### Portfolio Manager

The following is a summary of the business and educational background of the Portfolio Manager, who will be responsible for all investment decisions of the Partnership.

*Martin Shkreli.* In addition to forming and operating MSMB, Mr. Shkreli is the founder and portfolio manager of Elea Capital Management LLC, a private partnership. Prior to forming MSMB, Mr. Shkreli was a healthcare and technology analyst with Intrepid Capital Management. Prior to that, Mr. Shkreli was employed by Cramer Berkowitz & Co.

### Management Fee

The Advisor will be entitled to receive a management fee (the "Management Fee") from the Partnership, payable quarterly at the rate of 0.25% per calendar quarter (i.e., 1.0% per annum) of the net asset value of the Partnership, for the investment advisory and other management services to be provided to the Partnership. The Management Fee will be calculated on the basis of 0.25% of Partnership net assets at the opening of business on the first business day of each calendar quarter (after giving effect to capital contributions and withdrawals) and will be due and payable in advance on such date. The Management Fee will be charged on a *pro rata* basis to the capital accounts of the Limited Partners, other than such Limited Partners, if any, as the Advisor shall designate; provided, however, that in no event shall any Limited Partner be charged a Management Fee greater than 0.25% per quarter as a result of such designation. Limited Partners admitted to the Partnership during a calendar quarter will be charged a ratable portion of the Management Fee for the balance of the calendar quarter. The Advisor, in its sole discretion, may waive or reduce the Management Fee chargeable to any Limited Partner.

### Allocations of Profits and Losses; General Partner's Incentive Allocation

1 Q Did you learn anything about his educational background,  
2 meaning the defendant?

3 A No.

4 Q Did the defendant mention anything about any companies  
5 that he was running at the time?

6 A I have, at best, a vague recollection of anything from  
7 that far along -- far away, but I said I don't remember any  
8 companies.

9 Q At some point did you and the defendant have any  
10 discussions about an investment that you might make?

11 A To the best of my recollection, at some point he was  
12 going to start an investment partnership.

13 Q Did you exchange any communications with him about that?

14 A I mean I think we had some e-mails about it, yes.

15 Q Okay. Dr. Rosenwald, you have two binders that are right  
16 to your left, the bigger one and the skinnier one, and I am  
17 going to refer to those at different points. Let's start with  
18 the bigger binder.

19 And I'd like you to turn to Tab Number 1, which is  
20 Government's Exhibit 101-1.

21 A Okay.

22 Q It's marked for identification as Government's Exhibit  
23 101-1. Do you recognize this document?

24 A I mean I recognize that it's an e-mail from Martin to me.

25 Q What is the date on the top e-mail?

1 A September 7th, 2009.

2 MR. SRINIVASAN: Your Honor, we move Government's  
3 Exhibit 101-1 into evidence.

4 MR. AGNIFILO: No objection, Your Honor.

5 THE COURT: We will receive 101-1 in evidence.

6 (Government's Exhibit 101-1 was received in  
7 evidence.)

8 (Exhibit published.)

9 BY MR. SRINIVASAN:

10 Q Dr. Rosenwald, before we go through this e-mail in a  
11 second, I believe you've mentioned a second ago that you  
12 manage your personal investments from home, is that right?

13 A Yes.

14 Q In the 2009 through about 2013 timeframe, did you live in  
15 Lawrence, New York?

16 A Yes.

17 Q What county is Lawrence in?

18 A Nassau.

19 Q And would the management of your personal investments  
20 involve checking e-mail and receiving mail --

21 A Yes.

22 Q -- at your home?

23 A Yes.

24 Q Okay. Now, I'd like to call your attention, turning to  
25 this document, Government's Exhibit 101-1, to the third e-mail

1 on the page.

2 A Uh-hum.

3 Q And this is an e-mail from Martin Shkreli -- to Martin  
4 Shkreli.

5 A Uh-hum.

6 Q Is this a document that you received?

7 A Yes.

8 Q And the defendant wrote: Here are the returns for the  
9 portfolio I started managing in May 2009 with my colleague  
10 Marek Biastek. We have registered and launched a fund in case  
11 we decide to take outside money in the coming months. The  
12 funds are currently primed at RBC and held in custody at  
13 Goldman, and official documents are available. If you would  
14 like more information, please let me know.

15 Do you see that language?

16 A Yes, I do.

17 Q Did you have any understanding of who Marek Biastek was?

18 A No.

19 Q Did you know one way or another whether this individual  
20 worked with the defendant?

21 A He said it was his colleague, so I assumed he worked with  
22 him.

23 Q Now, going up one e-mail.

24 A Yes.

25 Q And this is from you to the defendant, is that right?

1 (Exhibit published.)

2 A Yes, it is.

3 Q What's the date on this e-mail?

4 A September 7th, 2009.

5 Q And what did you write?

6 A Definitely interested. Forward any docs, et cetera, when  
7 you get a chance. Thanks.

8 Q And when you wrote any docs, what was that a reference  
9 to?

10 A Documents.

11 Q And if we go up one more e-mail, to the top e-mail, and  
12 this is an e-mail from the defendant to you dated September  
13 7th, 2009, is that right?

14 (Exhibit published.)

15 A Yes.

16 Q And the defendant wrote: Thanks for the lunch the other  
17 day. Here's the PPM. Do you see that?

18 A Yes, I do.

19 Q What is a PPM, if you know?

20 A Private Placement Memorandum.

21 Q And what is a PPM used for?

22 A So if you're raising money for a Private Offering,  
23 whether it's a fund or a company, whatever the investment  
24 vehicle is, the person who's raising the money sends you a  
25 Private Placement Memorandum. It's something that discloses

1 all the risk factors, discloses the business description, the  
2 people behind it; everything that should be pertinent to that  
3 investment.

4 Q And then continuing on in the e-mail, the defendant I  
5 writes: We are rolling the money we're managing now into a  
6 fund open to outsiders on October 1st, 2009. So far it's  
7 100 percent our money and it's a little less than 1m.

8 A Yes.

9 Q What did you understand "it's a little less than 1m" to  
10 mean?

11 A I assumed it was less than \$1 million.

12 Q And when it says it's, is that a reference to the fund?

13 A It's a little -- the money they were rolling into the  
14 fund was a little less than a million dollars was how I  
15 interpreted that.

16 Q Okay. And he continues: We want to keep it small,  
17 probably looking for 100,000 to 500,000-dollar contributions  
18 from LP, except from Josiah Austin who we'll probably take  
19 more from.

20 Do you see that?

21 A Yes, I do.

22 Q Do you know who Josiah Austin is?

23 A I mean I know of him. He's a big investor. I think he  
24 invests a lot in biotech, but I don't think I've he ever met  
25 him and I don't know that I've ever had cause to speak to him.



**From:** Martin Shkreli  
**To:** Rosenwald, Lindsay  
**Sent:** 9/7/2009 7:21:05 PM  
**Subject:** RE: Returns  
**Attachments:** MSMB Capital Management LP PPM 9-07-09.docx

Thanks for the lunch the other day. Here's the PPM. We are rolling the money we're managing now into a fund open to outsiders on October 1<sup>st</sup>, 2009. So far it's 100% our money and it's a little less than \$1m. We want to keep it small, probably looking for \$100,000 - \$500,000 contributions from LP, except from Josiah Austin who we'll probably take more from. I'll send you a presentation that goes through the process in more detail, likely tomorrow. And of course, you're always welcome to come to the office and check the software I wrote out. I'm proud of my foray into this area and I think it's a good solution, probably a better solution, for most investors. Monthly liquidity and daily performance is also a plus—the stuff I do in healthcare is best done with a handful of investors with long-term lockups.

**From:** Rosenwald, Lindsay [mailto:redacted]  
**Sent:** Monday, September 07, 2009 4:08 PM  
**To:** Martin Shkreli  
**Cc:** Rosenwald, Lindsay  
**Subject:** RE: Returns

Definitely interested. Forward any docs etc when u get a chance. Thx

**From:** Martin Shkreli [mailto:martin@eleacap.com]  
**Sent:** Friday, September 04, 2009 4:17 PM  
**To:** 'Martin Shkreli'; marek@eleacap.com  
**Subject:** Returns

Here are the returns for the portfolio I started managing in May 2009 with my colleague Marek Biestek. We have registered and launched a fund in case we decide to take outside money in the coming months. The funds are currently primed at RBC and held in custody at Goldman, and official documents are available. If you would like more information, please let me know.

Thanks,

Martin Shkreli  
Elea Capital Management  
Office: 212 983 1510  
Mobile: 646 217 2783  
151 Martin Shk

111 Broadway, 4th Floor  
New York, NY 10036

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**LR0000043**

**CONFIDENTIAL  
PRIVATE OFFERING MEMORANDUM**

**OFFERING OF LIMITED PARTNER INTERESTS**

**IN**

**MSMB Capital Management LP**

**General Partner:**

**MSMB Investors LLC**

**111 Broadway  
4<sup>th</sup> Floor, Suite 405  
New York, New York 10006  
Telephone: (212) 983-1310**

**Managing Directors:**

**Martin Shkreli  
Marc L. Birstek  
Gary Mohamed**

**September 7<sup>th</sup>, 2009**

**LR0000044**

## THE PARTNERSHIP

### General Partner and Investment Advisor

The sole general partner of the Partnership will be MSMB Partners LLC, a Delaware limited liability company (the "General Partner"). The General Partner will have full responsibility for the management and control of the Partnership. Mr. Martin Shkreli is the founder and managing member of the General Partner. As such, Mr. Shkreli will be the individual primarily responsible for the management and control of the Partnership.

MSMB Capital Management LLC, a Delaware limited liability company and an affiliate of the General Partner (the "Advisor," and collectively with the General Partner, "MSMB"), will serve as investment adviser of the Partnership and will have full discretionary authority and responsibility to invest the assets of the Partnership. Mr. Martin Shkreli, the founder and managing member of the Advisor, will serve as the portfolio manager (the "Portfolio Manager") of the Partnership on behalf of the Advisor and, as such, will be the individual primarily responsible for investing the assets of the Partnership.

One or more affiliates of MSMB may in the future be appointed to replace the General Partner or the Advisor, or the responsibilities of the General Partner or the Advisor, in their respective capacities with respect to the Partnership, may be assigned to one or more affiliates of MSMB, without the consent of the limited partners, provided, that in any such event Mr. Shkreli continues to serve as the Partnership's Portfolio Manager.

### Portfolio Manager

The following is a summary of the business and educational background of the Portfolio Manager, who will be responsible for all investment decisions of the Partnership.

*Martin Shkreli.* Mr. Shkreli is the founder and managing member of the General Partner and the Advisor. Prior to forming MSMB, Mr. Shkreli founded Elea Capital Management LLC in 2006. Mr. Shkreli is still the managing partner of Elea Capital Management. Mr. Shkreli was also a healthcare and technology equities analyst for Intrepid Capital Management Inc. ("Intrepid") from 2004 to 2006, where he was responsible for analysis and monitoring of healthcare and technology investments for several funds managed by Intrepid. He also coordinated with the Intrepid portfolio managers on portfolio selection matters. Also in 2004, he was a private client services analyst for UBS Wealth Management Inc., where he was responsible for discretionary stock selection and analysis for private portfolios of high-net worth individuals. From 2000 to 2004, Mr. Shkreli was a research associate for Cramer Berkowitz & Co., where he provided general research assistance to the portfolio managers and analysts.

### Management Fee

The Advisor will be entitled to receive a management fee (the "Management Fee") from the Partnership, payable quarterly at the rate of 0.25% per calendar quarter (i.e., 1.0% per annum) of the net asset value of the Partnership, for the investment advisory and other management services to be provided to the Partnership. The Management Fee will be calculated on the basis of 0.25% of Partnership net assets at the opening of business on the first business day of each calendar quarter (after giving effect to capital contributions and withdrawals) and will be due and payable in advance on such date. The Management Fee will be charged on a *pro rata* basis to the capital accounts of the Limited Partners, other than such Limited Partners, if any, as the Advisor shall designate; provided, however, that in no event shall any Limited Partner be charged a Management Fee greater than 0.25% per quarter as a result of such

1 MR. AGNIFILO: No objection.

2 MS. KASULIS: 78-1 through 78-6 was the first range.  
3 Thank you, Your Honor.

4 THE COURT: So no objection. We will admit 78-1  
5 through 78-6; 84-1 through 84-13; 85-1 through 85-4; 86-1 and  
6 two; 87-1; 88-1 through 88-4; 89-1 through 89-16; 90-1 through  
7 90-9; 92-1 through 92-11; 93-1 through 93-5; and 94-1.

8 (Government's Exhibit Number 78-1 through 78-6; 94-1  
9 through 94-13; 85-1 through 85-4; 86-1, 86-2; 87-1, 88-1  
10 through 88-4; 89-1 through 89-16; 90-1 through 90-9; 92-1  
11 through 92-11; 93-1 through 93-5; and 94-1 so marked and  
12 received in evidence.)

13 MS. KASULIS: Thank you, Your Honor.

14 BY MS. KASULIS:

15 Q Special Agent Braconi, if we could turn to tab 14 of your  
16 binder, Government's Exhibit 78-1. Can you please explain  
17 this exhibit for the jury?

18 A This is an e-mail from Martin Shkreli to Brent Saunders  
19 with his MSMB performance estimate for February 2011.

20 Q If you could read below the title starting with MSMB  
21 returned, the first sentence?

22 A "MSMB returned positive 4.24 percent in February 2011."

23 Q Below that?

24 A "MSMB has returned positive 8.2 percent year to date."

25 Q That's what "YTD" stands for?

- 1 A Yes.
- 2 Q Right below that, the first sentence?
- 3 A "MSMB has returned positive 41.71 percent since inception  
4 on November 1st, 2009."
- 5 Q And again, this is a statement for February of 2011?
- 6 A That's correct.
- 7 Q Then the sentence a couple of sentences below starting  
8 "in total"?
- 9 A "In total you have invested \$250,000. The value of this  
10 investment is now approximately \$258,590 after fees, a  
11 3.44 percent return after fees."
- 12 Q Then this is signed by Martin Shkreli MSMB Capital  
13 Management LP; is that correct?
- 14 A That's correct.
- 15 Q I'd like to pull up what is in evidence already as  
16 Government's Exhibit 520 one of Wendy Spaulding's who  
17 testified previously, one of her summary charts for MSMB  
18 Capital. If we can look at the January and February 2011 time  
19 period for the accounts for MSMB Capital for January 2011.  
20 What is the ending balance for the bank and brokerage accounts  
21 on this chart for MSMB Capital?
- 22 A \$1,126,464.
- 23 Q So that's for January of 2011?
- 24 A That's correct.
- 25 Q So for February of 2011, which is what this statement

1 Government's Exhibit 78-1 that month is earning, what is the  
2 ending balance for the MSMB Capital bank and brokerage  
3 accounts?

4 A \$58,502.

5 Q Thank you. If we can turn to tab 16, Government's  
6 Exhibit 78-3, can you explain what this document is to the  
7 jury?

8 A Sure. This is an e-mail from Martin Shkreli to Brent  
9 Saunders, his MSMB performance estimates a correction for  
10 November 2011.

11 Q What is the date on this e-mail?

12 A January 25, 2012.

13 Q So when you're saying this is a correction, the  
14 performance numbers listed in the original e-mail is that  
15 supposed to be for November 2011 and not October 2011, which  
16 is listed in the original e-mail?

17 A Yes. It looks like the percentage also changes.

18 Q So with respect to how much MSMB returned in that month,  
19 what is listed here?

20 A "MSMB lost 4.08 percent net in November 2011."

21 Q If you look at the line under net returns for year to  
22 date starting "MSMB has returned," do you see that?

23 A Yes.

24 Q Can you read that sentence?

25 A "MSMB has returned positive 6.89 percent net of fees year

1 to date through the end of November 2011."

2 Q Then the first sentence right below that?

3 A "MSMB has returned positive 30.53 percent net of fees  
4 since inception on November 1st, 2009."

5 Q Under account values, can you please read those two  
6 sentences?

7 A "You invested \$150,000 on August 3rd, 2010, the value of  
8 this investment is now approximately \$147,761 net of fees or  
9 positive 6.89 percent year to date or negative 1.49 percent  
10 since inception."

11 Q If you look at right before the signature area for  
12 Mr. Shkreli, can you read that line December 2011?

13 A "December 2011 results will be reported shortly. Our  
14 preliminary estimate is a positive 10 percent net return for  
15 December 2011."

16 Q Okay. So let's go ahead and go back to Government's  
17 Exhibit 520, one of Ms. Spaulding's summary charts for the  
18 bank and brokerage accounts for MSMB Capital. If we look to  
19 the right side of this chart it appears to end July 2011; is  
20 that correct, Special Agent Braconi?

21 A That's correct.

22 Q Do you have an understanding as to why there is nothing  
23 after July 2011?

24 A The balances were zero in these accounts.

25 Q So for example, if we go back to Government's Exhibit

1 78.3, the bank and brokerage records for this time period  
2 November 2011 for MSMB Capital, the balance was zero between  
3 those brokerage accounts; is that correct; and bank accounts?

4 A That's correct.

5 Q Directing your attention to tab 18, Government's Exhibit  
6 78-5. Can you please describe this e-mail for the jury?

7 A This is an e-mail from Martin Shkreli to Brent Saunders  
8 on March 4, 2012 regarding his MSMB performance estimate for  
9 2011.

10 Q So this e-mail is two months after the month ending in  
11 December 2011?

12 A Yes.

13 Q Can you read the first sentences of the first three lines  
14 there under net returns?

15 A Sure. "MSMB returned positive 12.14 percent net in  
16 December 2011.

17 "MSMB has returned positive 19.87 percent net of  
18 fees in 2011.

19 MSMB has returned positive 48.29 percent net of fees  
20 since inception on November 1, 2009.

21 Q If could you read under the account values the first two  
22 sentences there?

23 A "You invested \$150,000 on August 3rd, 2010, the value of  
24 the investment is now approximately \$165,704 net of fees, or  
25 19.87 percent year to date or positive 10.47 percent since

1 inception."

2 Q So for this time period December of 2011, if you recall  
3 Wendy Spaulding's summary chart at Government's Exhibit 520,  
4 how much money was in the bank and brokerage accounts for MSMB  
5 Capital in December of 2011?

6 A Zero.

7 Q I'm showing you what is marked for identification as  
8 Government's Exhibit 704, it's behind tab C of your binder,  
9 behind the chart section.

10 Special Agent, can you please describe what this  
11 exhibit is?

12 A This exhibit shows MSMB Capital's, what was listed in the  
13 investor statements, sent to the investors versus what was  
14 actually in MSMB Capital's bank accounts. So the left hand --

15 Q The jury hasn't seen it yet.

16 A Sorry.

17 Q Did you prepare this chart?

18 A Yes.

19 Q What did you review to prepare this chart?

20 A I reviewed all the MSMB Capital investor statements, as  
21 well as the summary bank statements and brokerage accounts.

22 Q Were all these materials voluminous?

23 A Yes.

24 MS. KASULIS: Your Honor the Government moves 704  
25 into evidence.

1 MR. AGNIFILO: Can I have a one-minute voir dire?

2 THE COURT: Okay.

3 VOIR DIRE EXAMINATION

4 BY MR. AGNIFILO:

5 Q Special Agent Braconi, very quick, in preparing this  
6 chart, did you account for the value of Retrophin at any point  
7 in making the chart?

8 A No.

9 MR. AGNIFILO: Nothing else. Thank you.

10 THE COURT: Do you have any objection to admitting?

11 MR. AGNIFILO: Not with that understanding I don't.

12 THE COURT: All right. We will receive Government's  
13 Exhibit 704 in evidence. You may publish.

14 (Government's Exhibit Number 704 so marked and  
15 received in evidence.)

16 MS. KASULIS: Thank you, Your Honor.

17 DIRECT EXAMINATION (CONTINUED)

18 BY MS. KASULIS:

19 Q Special Agent Braconi, for Government's Exhibit 704 can  
20 you please explain this chart for the jury?

21 A Sure. Like I said before, I compared what was sent to  
22 the investors, all the investor statements, I added it up,  
23 that's the blue. Then I also totaled the MSMB Capital  
24 brokerage and bank accounts, that's in the red.

25 Q Can you please explain the three months that you looked

1 at?

2 A Sure. So February 2011, March 2011, and November 2011  
3 were the months that I picked. Investors sometimes got  
4 statements sporadically, these were months that I had for all  
5 the investors.

6 Q For February of 2011, the blue there is MSMB Capital  
7 investor statements; is that right?

8 A That's right.

9 Q So what is that \$3,270,913 number, what does that mean?

10 A That means I totaled all the investors for MSMB Capital,  
11 all their statements, together it added up to \$3,270,913.

12 Q And the red bar \$58,502, what is that number?

13 A That is MSMB Capital's bank and brokerage accounts  
14 combined.

15 Q And for March of 2011, for the total amount for MSMB  
16 Capital as listed in the investor statements, what was the  
17 total amount?

18 A \$3,182,232.

19 Q With respect to the amount that was in MSMB Capital's  
20 bank account and brokerage accounts for that month?

21 A \$58,051.

22 Q With respect to the next month, November, 2011 what was  
23 the total amount listed from the investor statements for MSMB  
24 Capital investors for that month?

25 A \$3,074,185.

1 Q How much for the month of November 2011 was in MSMB  
2 Capital as bank and brokerage accounts?

3 A Zero.

4 Q Now I want to refer you back to Government's Exhibit 917,  
5 which is tab eight of your binder, which is already in  
6 evidence. Again, this is Mr. Shkreli's statement to the SEC  
7 on August 7 of 2013. If we go to the next page, when  
8 Mr. Shkreli was asked, "So what was the maximum asset value  
9 for MSMB Capital Management, or do you know what it was in  
10 December of 2010," what did he answer?

11 A "I don't, but the fund was never more than 3 million or  
12 so."

13 Q Now Special Agent Braconi, did you review all of  
14 Ms. Spaulding's summary charts?

15 A Yes.

16 Q Did you review Government's Exhibit 501C, 501E, 502B,  
17 502C?

18 A Yes.

19 Q Based on your review of those exhibits, what was the  
20 total money invested in MSMB Capital?

21 A \$3,040,000.

22 Q What is approximately 1 percent of that amount?

23 A \$30,000.

24 (Continued on next page.)

25

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**From:** Martin Shkreli  
**Sent:** Wednesday, March 02 2011 8:54:00 PM  
**To:** brent.saunders@redacted  
**Subject:** MSMB Performance Estimate

MSMB returned +1.24% in February 2011. The S&P 500 Index returned +3.20% in February 2011.  
MSMB has returned +8.20% YTD. The S&P 500 Index has returned +5.54% YTD.  
MSMB has returned +1.71% since inception on 11/1/2009. The S&P 500 Index has returned +28.04% during this period.

You invested \$150,000 on 8/13/2010. The value of this investment is now approximately \$150,390 after fees.  
You invested \$100,000 on 1/12/2011. The value of this investment is now approximately \$108,200 after fees.

In total you invested \$250,000. The value of this investment is now approximately \$258,590 after fees, a 3.44% return after fees.

These values are estimates only and inaccuracies may exist.

Martin Shkreli  
MSMB Capital Management LP  
Office: 212-983-1310  
Mobile: 646-217-2783



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**From:** Martin Shkreli  
**Sent:** Wednesday, January 25 2012 10:39:44 PM  
**To:** brent.saunders [redacted]  
**Subject:** RE: MSMB Performance Estimate

Correction: This statement should have read MSMB returned -4.08% net in November 2011, not October.

**From:** Martin Shkreli  
**Sent:** Wednesday, January 25, 2012 8:01 PM  
**To:** brent.saunders [redacted]  
**Cc:** Martin Shkreli  
**Subject:** MSMB Performance Estimate

**NET RETURNS**

MSMB returned -2.83% net in October 2011. The S&P 500 Index returned -0.51% in November 2011. MSMB has returned +6.89% net of fees YTD through the end of November 2011. The S&P 500 Index has returned -0.85% YTD.

MSMB has returned +30.53% net of fees since inception on 11/1/2009. The S&P 500 Index has returned +20.34% during this period.

**ACCOUNT VALUES**

You invested \$150,000 on 8/3/2010. The value of this investment is now approximately \$147,761, net of fees, or +6.89% YTD, or -1.49% since inception.

You converted your \$100,000 investment on 1/12/2011 into Retrophin LLC units.

These values are estimates only and inaccuracies may exist.

We apologize for the delay in sending this report.

December 2011 results will be reported shortly. Our preliminary estimate is a +10% net return for December 2011.

Martin Shkreli

MSMB Capital

Telephone: 212-983-1310



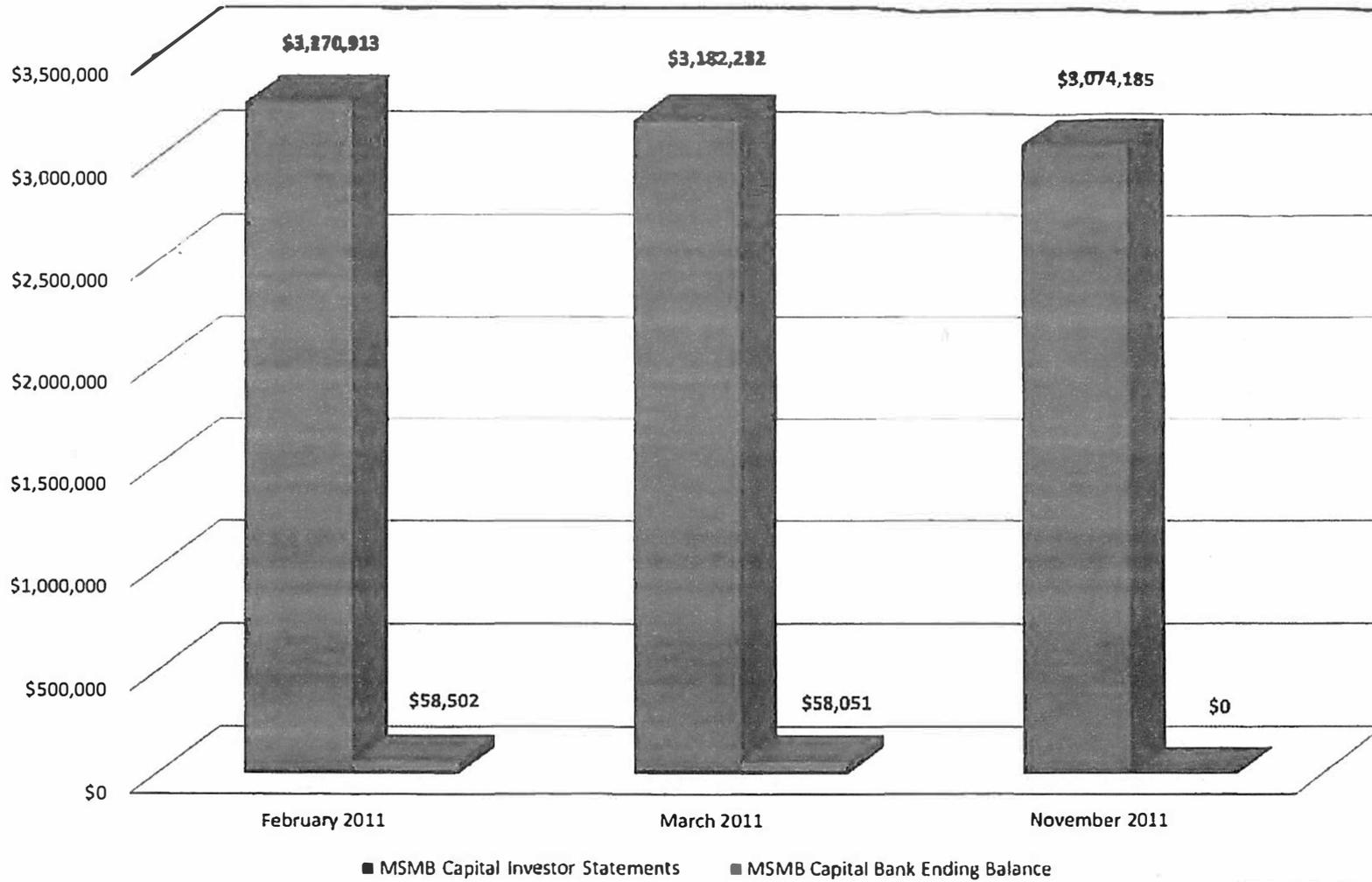


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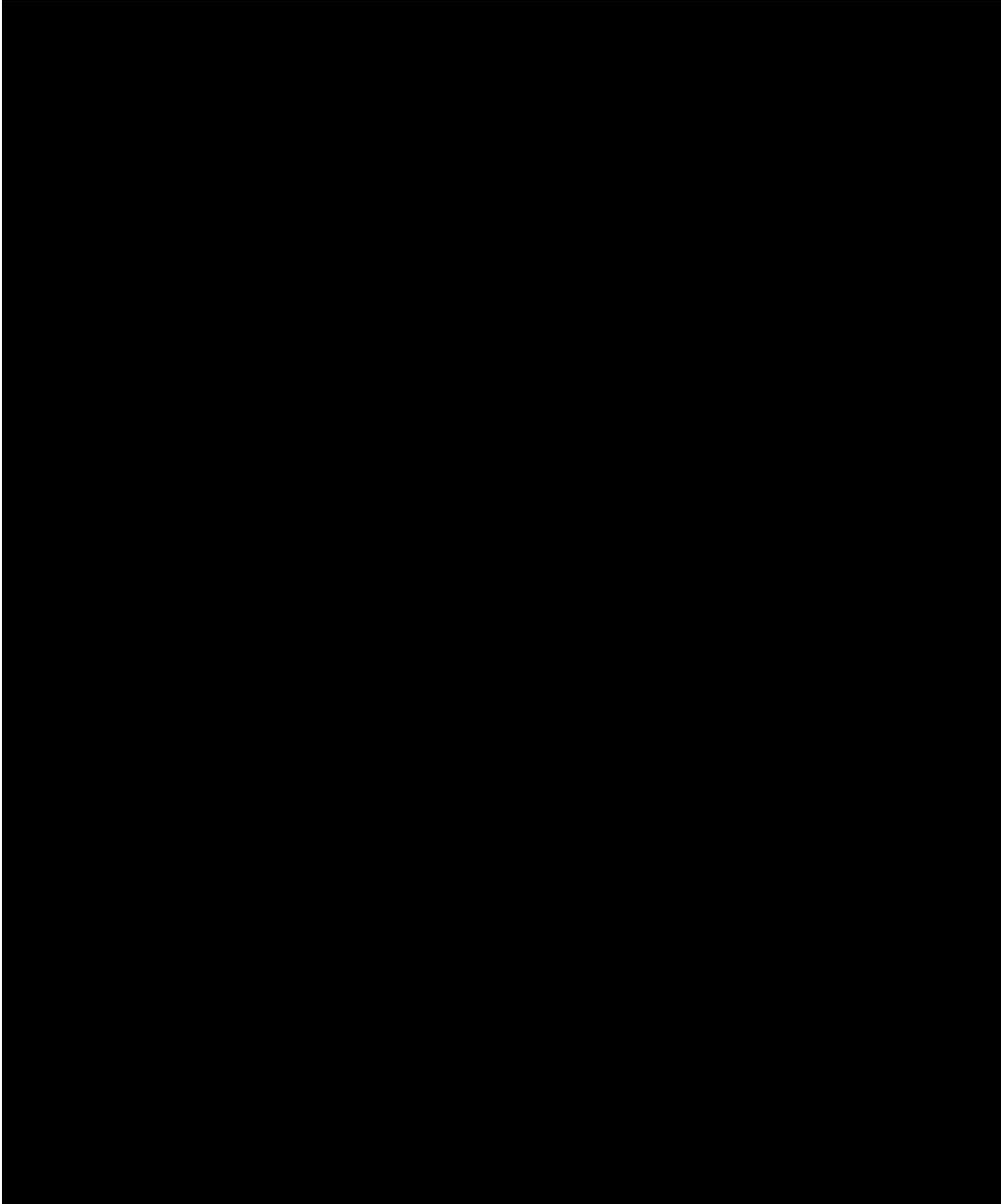
GOVERNMENT  
EXHIBIT  
**78-5**  
15 CR 637 (KAM)



## MSMB Capital (Investor Statements vs. Bank Records)



**In the Matter of MSMB Capital Management LLC Valuation (File No. NY-8799)**











[REDACTED]

[REDACTED]



[REDACTED]

- [REDACTED]

**BACKGROUND QUESTIONNAIRE**

**Please respond to the following questions in the space provided. If you need additional space for any response, you may attach additional pieces of paper.**

Today's date: 8/6/13 M.S.

1. What is your full name?  
Martin Shkreli

2. Have you ever been known by any other name? Yes  No

If yes, list each such name and the period(s) in which you were known by that name.

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3. Social Security Number? redacted 0437

4. Date and Place of Birth?  
Brooklyn, NY redacted/83

5. Country of Citizenship?  
USA

6. Marital Status? Married  Divorced  Single

If you have ever been married, state for each marriage: (i) the date(s) of the marriage; (ii) the name of your spouse; and (iii) your spouse's maiden name, if any.

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7. List the names, ages and occupations of your children, if any.

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Exhibit  
NY 8799  
3  
8/6/13 MS

Background Questionnaire

Page 2

8. List all residences you occupied at any time during the last three years, including vacation homes, beginning with your current residence. For each residence, state the address, dates of residence, and all telephone numbers (including facsimile numbers) listed at that address.

redacted	2013
redacted	2010-2013

PRIOR PROCEEDINGS

9. Have you ever testified in any proceeding conducted by the staff of the Securities and Exchange Commission, a federal or state agency, a federal or state court, a stock exchange, the National Association of Securities Dealers ("NASD") or any other self-regulatory organization ("SRO"), or in any arbitration proceeding related to securities transactions? Yes  No

If yes, for each such proceeding, identify: (i) the title of the proceeding; (ii) the organization or agency; and (iii) the date(s) on which you testified.

MSMB – Amag Pharmaceuticals – SEC - 2011

10. Have you ever been deposed in connection with any court proceeding? Yes  No

If yes, for each such proceeding, identify: (i) the title of the proceeding, and (ii) the date(s) on which you were deposed.

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11. Have you ever been named as a defendant or respondent in any action or proceeding brought by the SEC, any other federal agency, a state securities agency, the NASD or any stock exchange? Yes  No

If yes, for each such proceeding, identify: (i) the title of the proceeding; (ii) the agency or tribunal; (iii) the substance of the allegations; (iv) the outcome of the proceeding; and (v) the date of the outcome.

Background Questionnaire  
Page 3

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12. Have you ever been a defendant in any action alleging violations of the federal securities laws? Yes  No

If yes, for each such proceeding, identify: (i) the title of the proceeding; (ii) the court or tribunal; (iii) the outcome of the proceeding; and (iv) the date of the outcome.

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13. Have you ever been a defendant in any criminal proceeding other than one involving a minor traffic offense? Yes  No

If yes, for each such proceeding, identify: (i) the title of the proceeding; (ii) the court or tribunal; (iii) the outcome of the proceeding; and (iv) the date of the outcome.

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EDUCATIONAL HISTORY

14. Provide the requested information about each educational institution that you have attended beyond junior high school, beginning with the most recent and working backward to the date that you completed high school.

CUNY Baruch College

Name of School

New York

NY

USA

City

State

Country

Zip Code

9/01 – 12/04

BBA Finance

12/04

Dates of Attendance: Month/Year to Month/Year

Degree/Major

Month/Year of Degree

Background Questionnaire  
Page 4

City-As-School  
Name of School  
New York NY USA  
City State Country Zip Code  
H.S. Diploma 5/01  
Dates of Attendance: Month/Year to Month/Year Degree/Major Month/Year of Degree

Hunter College High School  
Name of School  
New York NY USA  
City State Country Zip Code  
'95 - '01  
Dates of Attendance: Month/Year to Month/Year Degree/Major Month/Year of Degree

Name of School  
City State Country Zip Code  
Dates of Attendance: Month/Year to Month/Year Degree/Major Month/Year of Degree

15. Other than courses taken in connection with institutions listed in response to question 18, list any securities or business related courses taken since high school. For each such course, identify the date that the course was completed and the name of the institution or organization that offered the course.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROFESSIONAL LICENSES/CLUBS

16. Do you hold, or have you ever held, any professional license? Yes X No \_\_

If yes, for each such license, identify: (i) the license; (ii) the licensing organization; (iii) the date the license was awarded; (iv) the date such license terminated, if applicable; (v) the date(s) of any disciplinary proceeding(s) against you; and (vi) the outcome of any such disciplinary proceeding (e.g., reprimand, suspension, revocation).

Series 7 – UBS AG Inc., no proceedings/disc. actions

Background Questionnaire  
Page 5

17. Are you, or have you ever been, a member of any professional or business club or organization? Yes  No

If yes, list for each: (i) the name of the club or organization; (ii) its address; and (iii) the date(s) of your membership.

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EMPLOYMENT HISTORY

18. State your employment activities, beginning with the present and working backward to the date that you completed high school.

<b>Retrophin Inc.</b>	<b>President &amp; CEO</b>
Employer's Name/Self-Employment	Your Title
<b>777 Third Avenue</b>	<b>212-983-1310</b>
Employer's Street Address	Telephone Number
<b>New York</b> <b>NY</b> <b>USA</b>	<b>10017</b>
City                                      State                                      Country	Zip Code
<b>2012 – Present</b>	
Dates of Employment: Month/Year To Month/Year	

<b>MSMB Capital</b>	<b>CIO</b>
Employer's Name/Self-Employment	Your Title
<b>777 Third Avenue</b>	<b>212-983-1310</b>
Employer's Street Address	Telephone Number
<b>New York</b> <b>NY</b> <b>USA</b>	<b>10017</b>
City                                      State                                      Country	Zip Code
<b>2008-2012</b>	
Dates of Employment: Month/Year To Month/Year	

<b>RBC</b>	<b>Affiliate</b>
Employer's Name/Self-Employment	Your Title
Employer's Street Address	Telephone Number
<b>New York</b> <b>NY</b> <b>USA</b>	
City                                      State                                      Country	Zip Code
<b>2008</b>	
Dates of Employment: Month/Year To Month/Year	

Background Questionnaire  
Page 6

Elea Capital Founder  
Employer's Name/Self-Employment Your Title

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Employer's Street Address Telephone Number  
New York NY USA  
City State Country Zip Code  
2006-2007  
Dates of Employment: Month/Year To Month/Year

Intrepid Capital Research Analyst  
Employer's Name/Self-Employment Your Title

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Employer's Street Address Telephone Number  
New York NY USA  
City State Country Zip Code  
2004-2006  
Dates of Employment: Month/Year To Month/Year

UBS Client Services Assoc.  
Employer's Name/Self-Employment Your Title

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Employer's Street Address Telephone Number  
New York NY USA  
City State Country Zip Code  
2004  
Dates of Employment: Month/Year To Month/Year

Cramer Berkowitz & Co. Research Associate  
Employer's Name/Self-Employment Your Title

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Employer's Street Address Telephone Number  
New York NY USA  
City State Country Zip Code  
2000-2004  
Dates of Employment: Month/Year To Month/Year

PUBLICLY-HELD COMPANIES

19. Are you now, or have you ever been, an officer or director of any publicly-held company?  
Yes  No

If yes, identify each such company and state your positions and the dates you held each position.

RTRX

20. Are you now, or have you ever been, a beneficial owner, directly or indirectly, of five per cent or more of any class of equity securities of any publicly held company?  
Yes  No

If yes, identify each such company, and state the amount, percentage, and dates of your ownership.

RTRX

CONTINUE ON ADDITIONAL SHEETS IF NECESSARY

MSMB CAPITAL MANAGEMENT LLC  
777 3<sup>rd</sup> Avenue, 22<sup>nd</sup> Floor  
New York, NY 10017

Mr. Schmidt,

Please find the attached documents responsive to NY-8799. This production is complete to the best of my knowledge. We are willing to supplement the production at your request.

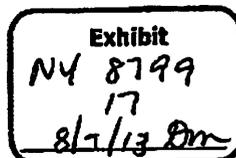
In reviewing the documents, I ask you to keep in mind the following statements which may enhance your investigation or deposition, or limit the need for them.

- We have decided to end the MSMB limited partnerships, with closure targeted for the end of this (November) or next month (December). All limited partners have been notified of the plans for the redemption of their assets. My colleagues and I will focus on the growth of our MSMB-incubated biotechnology business, Retrophin, for which a going-public transaction is being planned as of this production.
- Calculating the MSMB group assets under management ("AUM") is an interpretive task, as with any fund company. MSMB has managed no less than 5 limited partnerships and 2 managed accounts since inception, of which, 5 of 7 have been discontinued.
  - Our most successful and largest effort has been the private equity endeavor which led to creation of Retrophin, LLC which has restructured as Retrophin, Inc. Retrophin's valuation has fluctuated between \$20 million and \$80 million and has always been a MSMB majority-owned company. Because this business represents most of the recent activities of MSMB, one may choose to include it in a calculation of AUM, as a private equity company or fund may do.
  - MSMB has had a long-term advisory relationship with Josiah T. Austin, a private investor. For many years, this advisory relationship represented the bulk of MSMB's activities. Inclusion of these efforts would also affect the AUM calculation.

I hope this information helps you with your investigation. Please do not hesitate to contact me if you need anything.

Thank You,

Martin Shkreli  
MSMB Capital  
212-983-1310



SEC-MSMB-E-0000003

**Schedule of Funds Managed by MSMB**

<b>MSMB Healthcare LP</b>	<b>3<sup>rd</sup> Party Administrator Files Provided</b>
<b>MSMB Capital Management LP</b>	<b>\$2,600,000 AUM – fund being liquidated</b>
<b>MSMB Consumer LP</b>	<b>\$600,000 at peak – fund discontinued in 2012</b>
<b>MSMB Isotope Fund LP</b>	<b>\$100,000 at peak – fund discontinued in 2012</b>
<b>Bloomfield</b>	<b>\$1,000,000 managed account discontinued in 2011</b>
<b>Lattice Managed Account</b>	<b>\$5,000,000 managed account discontinued in 2009</b>
<b>SurePoint</b>	<b>\$600,000 at peak – discontinued in 2011</b>
<b>IronMan</b>	<b>Single-Purpose Private Equity Fund – fund never raised assets</b>
<b>Endocytosis</b>	<b>Single-Purpose Private Equity Fund – fund never raised assets</b>
<b>Retrophin, LLC (Inc)</b>	<b>Biotechnology company. Third party valuation provided.</b>

**Documents in this production are being provided for MSMB Healthcare LP and Retrophin but not the other funds due to their immateriality. Documents for the other funds are available upon request.**

**SEC-MSMB-E-0000002**