

# INVESTING

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## Crusader or Bully?

An inveterate short-seller on fraud, regulators and the First Amendment.

Manuel Asensio, 49, is either a great investor and do-gooder or an evil exploiter and bully—it all depends upon whom you talk to. As Asensio notes in his book, *Sold Short* (John Wiley & Sons, 2001), he has been portrayed by the companies he shorts as a “stockbuster, demolition man, Attila the Hun and a company’s worst nightmare.” That’s because Asensio has made tens of millions selling short companies he deems frauds. It also rankles some that he puts his short positions on and then publicizes his negative opinions (which some compare to screeds) on the stock and the company on his Web site, *asensio.com*, a Web site he says he no longer edits or controls. Truth be told, Asensio is merely following ►

Wall Street's lead—issuing press releases on PR Newswire, publishing research. Further, he talks openly, and bluntly, to journalists, who relish quoting his pointed barbs. After all, Asensio says, companies have whole units devoted to communications and PR. Why not take a page from their playbook? In short, there is something of a moral righteousness to his investing, although he downplays that, saying that it's just business and he's in it to make money. (Still, Asensio does consider himself a champion of the First Amendment.)

For his "advocacy" of short positions, as he calls it, he has been sued for "\$1 billion in seven states," he proudly states. Asensio has spent around \$10 million defending himself, and has yet—despite his claims of fraud or misrepresentation by 26 companies—to lose a monetary judgment. Although, one company recently won a verdict against him (he was found liable for "misrepresentation"), the jury awarded the company zero dollars for its injuries. But the NASD fined him for \$75,000 as a

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result; he has subsequently disbanded his broker/dealer.

Either way, Asensio has a remarkably strong record in picking shorts: Of 26 companies he publicly campaigned against, the average decline in value was around 86 percent, he says. That represents a wipeout of around \$30 billion dollars worth of market value, he says, a wipeout that grossed him millions. For that talent, one company has called him "one of the world's best-known short-sellers." Like regulators, such as Eliot Spitzer, Asensio says there are a lot of shenanigans going on in the market. But Asensio doesn't have many kind things to say about regulators, either, saying that the SEC in particular misses too many glaring frauds.

**Registered Rep:** Describe your investing style.

**ASENSIO:** Whether we go long or short, the first step is always to determine valuation versus projected cash flow. We look at the size of the market, unit pricing, cost of the units sold and, on the flip side, the gross profit of whatever the company is selling. We're the opposite of macro, momentum, big-picture investors. We look at the hard-wired, inherent economics of the business. We're looking to separate what costs are discretionary and what is inherent in the company's business. We're fundamental, bottoms up, unit growth analysis. Cost analysis. Expense analysis. Very focused on the character of management.

On the short side, the only thing we look at is the repre-

sentations made by the company. Are they flawed? Is there a substantial variance between the independently obtained information that we can verify and what the company is saying? If there's a big variance between that and with what the company is saying, which we know is not right, it is reflected in the stock price that attracts us to a market. If you do identify a security that's trading significantly above its fundamental value and if there are a set of representations made by a company which you find to be faulty, and that those representations impact the stock price, you will make money. If you have the sophistication to be able to trade, you will be able to make a substantial amount of money.

**RR:** Of the 26 companies you shorted and then publicly campaigned against in the last few years, how many were de-listed?

**ASENSIO:** Eleven were de-listed or went bankrupt or otherwise failed completely. The SEC only took action against one of the

26. So, that's the first thing you notice is that there are few regulatory actions against these companies. And the ones that do have regulatory actions against them, you'll see that it's someone else that started it, someone other than the self-regulatory organization that's supposed to be the first line of defense. That's the first thing we learn. The SEC never interferes. The U.S. agency in charge of regulation and you never see them respond, and we, as a matter of course, notify the SEC of our views and opinions and provide them with material.

**RR:** Are you saying then that the SEC should go around and check the business of every company to make sure what they say is true?

**ASENSIO:** Absolutely not. But the opposite is not true either. Regulators shouldn't be creating the belief among investors that they are in the business of protecting their interests. So they should just walk away. And the best way for them to walk away is to remove the obstacles on short-selling.

**RR:** So what you are saying is, that short-sellers and the free market can serve as policeman if only we didn't have these obstacles to shorting? What are those obstacles?

**ASENSIO:** I wouldn't call it policing, but a creation of a level playing field between those that are truly representing the investors, which are short-sellers, and those that are advocat-

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ing the companies' promotional campaign—underwriters, brokers, analysts, company insiders and industry regulators.

**RR:** Wait, you're placing regulators in there with promoters?

**ASENSIO:** The regulatory system is part of the status quo that created the problem. There is no better evidence of the lack of effectiveness of the securities regulatory system than the success of Eliot Spitzer. To remove the barriers, there are three things that we advocate. First, we advocate freedom of speech. You're not going to have an open debate about the value of securities and the legitimacy of representation by management and by companies unless those that oppose those views can voice their opposition without fear of retaliation. The second thing is to eliminate the barriers to allocation of capital, the downtick rule—you should be able to short when a stock is falling. The borrowing requirements impede short-selling, too. And there's one more thing: We need to move the seat of the SEC enforcement authority away from Washington to the local SEC precincts. In Washington, they are political animals.

**RR:** What made you want to go public with your positions and to issue research?

**ASENSIO:** The public is well aware of the fact that there are companies out there that are overly promoted. That's the business of Wall Street, to sell stock. I think we are all just businessmen advocating our own position.

**RR:** But most short-sellers prefer to work quietly. And you've been sued by companies. Doesn't that bother you?

**ASENSIO:** It's not just the money, it's the aggravation. We, as Americans, believe in the First Amendment. What I learned through the process is that,

in fact, the attorneys have placed the boundaries of the First Amendment so tightly that it's of no use in defense of speech when it comes to a securities analyst speaking about a public company's valuation.

**RR:** Now speak to my readers, the retail brokers. What can they learn from all of this or even by watching you or from your experience and then from short-sellers in general?

**ASENSIO:** Brokers rely upon many sources in order to decide what to do for their customers: newspapers, company management, other brokers and analysts. I have found that most of them, once they have a book full of the stock, unfortunately will put their head in the sand and hope. And they have the big support mechanism for that type of behavior. Because when they don't have the time or the support to be able to analyze the work that we produce, they rely upon the [PR] opinions. If it's an in-house recommended stock and they bring out work to the analyst that's on the sell-side of this thing and recommending it, you know he's gonna get a biased opinion about what the work means. So he's at an unfortunate disadvantage. In order to be able to determine the accuracy of it and the possible outcome and other brokers and everyone is holding hands. It's hard. Very hard.

**RR:** Do you ever deal with retail brokers? You ever see them?

**ASENSIO:** Oh, yes. I enjoy talking to them. I take all the calls.

**RR:** You get phone calls from retail brokers?

**ASENSIO:** Totally. I like to understand what brought them into the stock. I like to understand what they're doing. Those are my most valued relationships—relationships with retail brokers.

**RR:** Because they bring you insight?

**ASENSIO:** Absolutely. There's no doubt that I spend much more time talking to retail brokers than talking to institutional brokers that are actually doing the buying and selling in the stock and talking to company managers. ●

