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Market Place

A Stock Crusader In a Short-Seller Suit

He Says Blunt Talk Fights Fraud, But Critics Say He Talks Too Much

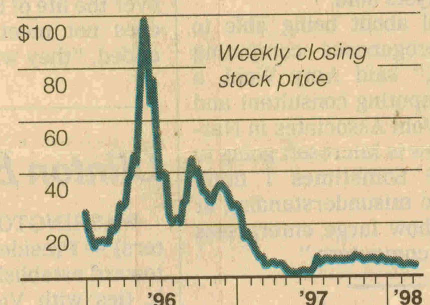
Philip Greenberg for The New York Times

From his small brokerage firm in Manhattan, Manuel P. Asensio pursues a public style often at odds with the silent world of short-selling.

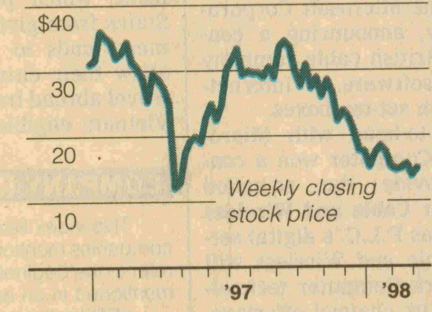
Wall Street Gadfly

Manuel P. Asensio, who makes a living betting that certain stocks will fall, has drawn attention to himself by publicly challenging some companies' claims. Here are two examples.

DIANA The company, now called Coyote Network Systems, said it had an innovative Internet technology. Mr. Asensio attacked its claims and the stock collapsed after investors agreed.



AVANT Mr. Asensio and others say the company stole software that it sold. Avant denies the accusation but faces criminal charges.



Source: Bloomberg Financial Markets

By LESLIE EATON

Satanism has a better reputation in financial circles than does short-selling — the practice of betting that stocks will fall.

Though short-sellers say, with some justice, that they are often on the side of the angels when it comes to investing, they have a few things in common with devil worshipers. They loom larger than life in the popular imagination. They are blamed for natural and man-made disasters. Above all, they tend to conduct their activities in secret.

But not Manuel P. Asensio. Far from sticking to the shadows, Mr. Asensio, the proprietor of a small brokerage firm that bears his name, actively courts the limelight. He publishes his research on the Internet and even puts out news releases announcing his "sell" recommendations.

And recently, Mr. Asensio has taken to writing letters to the mutual fund companies and money managers who favor the companies he pans, accusing them of manipulating stocks or breaching their duty to their shareholders. In December, he went a step further, asking New York City's pension fund to dismiss a money manager for investing in a company that has been accused of stealing its products from a rival.

All of which is making even his fans wonder if Mr. Asensio's tactics are a bit out of control. His critics and targets use terms like reprehensible, hysterical, outrageous and loathsome.

Mr. Asensio is unbowed. "I have an inability to tolerate improper actions," he said recently. And he is proud of his accomplishments and of his profession, which he describes as a "free-market solution to persistent stock fraud."

The controversy over Mr. Asensio is reigniting the debate over short-selling and the role it plays in the stock market, a debate that stretches back to Jesse Livermore, the "stock operator" who shook the markets early in this century.

But the stakes may now be greater than ever, as Americans pour record sums into the soaring stock market. Amateur investors are often particularly drawn to the world of small-capitalization stocks, where the most promising new companies are poised — and where the most damaging scams and hype occur.

Regulators tend to take short-sellers' claims of virtue with a grain of salt, but do not discount them entirely. The shorts "are not simply market purists — they're basically out to make a buck," said William R. McLucas, director of enforcement for the Securities and Exchange Commission. "That said, in a number of instances short-sellers have identified bad companies, and you can argue that they have performed

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a public service," he added.

Paradoxically, Mr. Asensio is drawing attention to the secretive world of short-sellers just when their numbers have dwindled. "So many of them have gone out of business," said Lois B. Peltz, managing editor of Managed Account Reports/Hedge, which tracks private investment pools. And it's not hard to see why: poor investment performance. While the stock market has risen about 20 percent a year since 1993, the typical short-seller lost more than 14 percent a year, according to Ms. Peltz's publication.

Short-sellers borrow stocks from their owners and sell the shares, hoping to buy them back at a lower price, pocket the difference, and return the shares to their original owners. The shorts take the risk not merely that the shares will rise, but also that the original owner will demand them back at an inopportune time.

Even in favorable (i.e., falling) markets, a certain degree of self-confidence — even self-righteousness — is probably a necessary part of every short-seller's psychology. These are qualities Mr. Asensio has in spades.

Born in Cuba, he came to the United States in 1961 at age 6 and grew up in Brooklyn. He seems to have inherited his force of character from his mother, Caridad, who now runs a health clinic in Florida; his idealism he got from his father, who had high hopes for the Cuban revolution and waited for more than a year before joining his family in the United States. Mr. Asensio graduated from the Wharton School at the University in Pennsylvania and worked for several years in Venezuela before returning to the United States to get an M.B.A. from Harvard in 1982. It was there that he bought his first stock. "I was hooked," he said.

After he got his securities license, Mr. Asensio moved around a lot; he was affiliated with more than a dozen firms before he founded **Asensio & Company** in 1993. "I don't take direction well," he said.

Not even from regulators. His firm's license from the National Association of Securities Dealers initially limited the amount of trading he could do, a limit he quickly surpassed. He settled an N.A.S.D. complaint in 1994 and paid a $7,500 fine. Mr. Asensio did not start out on the short side — one of his first reports for his new company was a bullish analysis of Coca-Cola. For the most part, he said, he practiced what Wall Street calls risk arbitrage, which means betting on the outcome of takeovers and mergers.

But in 1996, Mr. Asensio became involved in a battle — over the Diana Corporation — that would change his life. Diana, a none-too-successful meat distributor, suddenly announced that it was in the telecommunications business and was somehow a play on the Internet. The stock soared from under $16 a share to more than $100 in three months.

But skeptical investors took a hard look at the company's management, and the way it had acquired its technology. Short interest in the stock — the number of shares borrowed and not returned, which can be a rough measure of how negative investors are on a stock — shot up, too.

Mr. Asensio told investors to short the stock in early June 1996, contending that it was "grossly overinflated." In October, he did something radical and remarkable: he opened a study of Diana's technology.

Short-sellers normally stay strictly underground because they fear losing access to a company's management and, perhaps, becoming targets of the dreaded "short squeeze," in which companies try to get their shareholders to call back borrowed stock. In any event, a widely publicized short becomes difficult to execute, short-sellers say, because it becomes hard to borrow shares.

Mr. Asensio calls worries about squeezes "paranoid," and he manages to get information by using analysts who are not in his office and do not use his name. His motivations are also a little different from many short-sellers who manage investment pools; he has a small fund, he says, but makes most of his money from trading for his own account and from commissions on trades sent to him by institutions, where his high profile may be an advantage.

But his main motivation, Mr. Asensio says, is that he wants investors to understand his reasoning. "It is a problem, the fact that short-selling research is not transparent, not widely available, not widely discussed," he said. "If it's all done verbally, with nods and innuendo, then it can be held up to ridicule."

Diana quickly retaliated, issuing a

A foe of nods and innuendo who seems to want the world to know it.

news release contending that Mr. Asensio had tried to bribe analysts to issue negative reports on the company, which he says was a trumped up accusation designed to push up the company's stock.

And Diana went further, he says, digging up a quarter-million-dollar judgment that an ex-client had gotten against him in Florida in 1989.The judgment against Mr. Asensio was by default, meaning that the plaintiff, Norman E. Murphy, won because Mr. Asensio failed to respond. Mr. Asensio says that he was not responsible for the client's problems, thought his former employer had settled, and that he was never served with legal papers in the case. He is currently trying to have the judgment overturned, said his lawyer, Stephen A. Agus. Mr. Murphy's lawyer did not return telephone calls.

Meanwhile, copies of that judgment circulate over the Internet, and almost every one of his opponents finds a way to mention it.

Eventually, Diana collapsed; the stock was kicked off the New York Stock Exchange, and now trades over-the-counter for less than $5 a share, under the name **Coyote Network Systems**.

Mr. Asensio had found his calling. He went on to further successes with stocks like **Solv-Ex**, which said it could recover petroleum from oil sands. The company, whose shares got as high as 38 in early 1996, has gone bankrupt.

But not without a fight; it sued one short-seller and deposed Mr. Asensio. He was recently sued by a Solv-Ex shareholder who blames him for Solv-Ex's demise. He has asked the court to dismiss the suit, Mr. Agus said.

The fiercest battle Mr. Asensio has waged thus far is over **Avant**. The employees of its chief rival, **Cadence Design Systems**, which in 1995 sued Avant (pronounced Ah-von-tee) and its executives for theft of trade secrets, an accusation Avant denies. A Federal judge has issued a temporary restraining order prohibiting Avant from selling some software, which the company says it had discontinued in any event.

Last year, the district attorney in San Jose, Calif., filed criminal charges against Avant and several of its executives, charging them with conspiracy and theft of trade secrets. Avant has asked the court to dismiss the charges, which it says relied too much on information from Cadance.

Back in August, Mr. Asensio said the market was not taking Avant's legal troubles seriously enough; since then, the stock has fallen from as high as $35 a share, to about $15.

But Mr. Asensio went further, arguing that the judge in the civil suit would soon prevent Avanti from selling its newer software and that the company's stock would become worthless, forecasts that have yet to come true.

Mr. Asensio "fundamentally misunderstands our business and our legal situation," said Matthew Lifshultz, a spokesman for Avant, adding that Mr. Asensio has been spreading "inaccurate information, hysterical assessments and extravagant claims in hopes of creating a self-fulfilling prophecy."

But what really stirred things up were Mr. Asensio's letters to some money management firms with investments in Avant, accusing them of recklessness in buying the stock, a charge they vehemently deny. He then wrote to New York City's pension fund that it should dismiss **Amerindo Investment Advisers** for risking pensioners' money on Avant.

The city pension fund continues to employ Amerindo, which continues to own about 20 percent of Avant. "We set the risk parameters; the managers pick individual securities, and we hold them accountable for their performance," said David Neustadt, a spokesman for Alan G. Hevesi, the City Comptroller, who oversees the pension funds.

Alberto W. Vilar, the chairman of Amerindo, who like Mr. Asensio was born in Cuba, is furious at Mr. Asensio. Though the area in which Amerindo specializes, emerging technology companies, often attracts attention from short-sellers, Mr. Vilar said: "I have never seen a short-seller do what this guy has done. He is a mudslinger, and his behavior is unconscionable."

Mr. Asensio, for his part, argues that investors in Avant are the ones whose behavior is wrong. "No research, reasoning or credible analysis could justify their actions" in buying the stock, he said.

The whole brouhaha makes fellow short-sellers cringe. "He's very, very thorough, but he tends to make very sweeping, aggressive calls," said one who knows Mr. Asensio well but, unlike him, is unwilling to see his name in print. "I might agree in private, but I feel like he's inviting a war."