

# MEMORANDUM of OPINION

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**Robert L. Chapman, Jr. – Long Term Herbalife Shareholder**

**DATE:** August 8, 2014

**TO:** Herbalife Regulators and Related Parties

**RE:** Bill Ackman's Attempt to Goad Regulators Into a Baseless, Unnecessary Legal Battle

**Introduction.** As has been [covered widely by the media](#), Pershing Square Capital Management's [Bill Ackman has been engaged in a nearly two-year campaign to profit by putting Herbalife out of business](#). Ackman's goal appears quite obvious: to [add \\$2 billion to Pershing Square's and his own wealth](#) while feeding his apparently [insatiable appetite for ego and reputational aggrandizement](#). The first goal – earning profits for himself and his investors, is the cornerstone of legal and socially acceptable capitalism. As such, it deserves no rebuke. However, Ackman's unconventional method of accomplishing that profit goal – making what I and an indisputably respectable list of [Herbalife institutional](#) and [individual investors](#) view as a [seemingly endless string of false, exaggerated, and/or misleading statements](#) via an [unprecedented \\$50 million "research" \(propaganda\) campaign](#) – is worthy of the [high volume of criticism it has received](#).

**My Motive.** Unlike Ackman and his gang, I shall not attempt to obfuscate the motive underlying this communication, nor will I make false claims about what conclusions I claim to believe the short sellers have drawn. Unlike the short sellers preposterously stating that the shareholders of Herbalife believe it to be an illegal operation, I shall not baselessly state that the short sellers of Herbalife believe it to be a legal operation, although there are various signs that Ackman belatedly has come to realize that is the case and thus shall pivot next to goading lawmakers into changing the law itself. I shall state my motive honestly and clearly: to portray accurately my view of this last ditch tactic being used by Ackman and his gang – **to goad and attempt to shame regulators into a baseless, unnecessary legal battle against Herbalife**.

**Desperate Situations Require Desperate Measures.** Having incurred an [estimated \\$200 million - \\$400 million in realized and unrealized losses](#) on this one investment, Pershing Square finds itself in a fragile reputational position. Particularly following Ackman's unapologetic yet highly influential role in the [dismantling and near bankrupting of 100-year old retailer JCPenney](#), his status as an investment superstar is in further jeopardy with Pershing Square's Herbalife debacle, which unlike massive money losers JCPenney or Target, is far from over. Having proclaimed ubiquitously that Pershing Square's research on Herbalife had led to this "best investment idea ever," -- this despite [Ackman's reported decision not to have even one meeting with Herbalife management before launching his bear raid](#) in December 2012 -- his reputation, and potentially his franchise should there be legal repercussions, is on the line. Indeed, [the investment and regulatory worlds appear to be converging on an agreement that Ackman's claims vs. Herbalife are mostly wrong](#). Moreover, there exists [no shortage of those who believe that Ackman now appears to know that his emotionally fraught analysis was and remains](#)

“wrong.” Even so, he persists in a [quixotic and most un-valiant holy war against an enemy of his own fabrication](#).

### **Ackman’s Final, Desperate Strategy: [Goad/Shame the FTC into a Self Serving, Baseless Legal Battle](#)**

- **Goad/Prodding Just the Latest Tactic at Manipulating Regulators:** It is no coincidence that Bill Ackman kick started his July 22<sup>nd</sup> Herbalife-bashing presentation with John Hempton’s thoughtless categorization of the [global nutrition products company Herbalife](#) as “scumbags” in a 2012 CNBC interview. Ackman’s nutrition club presentation followed [Bruce Craig’s letter from the day earlier to FTC](#) Chairwoman Edith Ramirez, in which the anti-MLM campaigner went over the heads of both [FTC Bureau of Consumer Protection \(CPB\) Director Jessica Rich](#) and [FTC CPB Marketing Practices Director Lois Greisman](#) in an overtly hostile attack. Essentially, Craig publicly accused Ramirez subordinate Jessica Rich of having the wrong priorities (based on a March 2014 speech whereof in a MLM clampdown was not highlighted) and preposterously seemed to categorize her subordinate Lois Greisman as a feckless shill for the MLM industry, based apparently on the absurd theory that since her prior boss at the FTC was Amway’s lawyer, she must be aligned with the MLM industry herself. I can only imagine how Ms. Rich and Ms. Greisman felt when they read how they were being depicted by Ackman ally Mr. Craig to their own common boss.
- **The Order Apparently Has Been Sent Down from Pershing Square:** Very recently and non-coincidentally, one can hardly read any of the myriad Seeking Alpha “articles” or other short seller propaganda without recognizing an obvious pattern of the short sellers *trying to shame the FTC into shutting down or otherwise impairing Herbalife*. In the [most recent post by Bill Ackman’s close personal friend and Herbalife short seller Whitney Tilson](#), Tilson claimed that many of Herbalife’s investors “concede the company is deceptive, but invest because they think regulators are spineless.” Tilson is surprisingly shameless in displaying his coopting of Ackman’s “goad the FTC” tactic. As one of his correspondents (per Tilson’s own concession) wrote to him on July 26 and then published proudly by Tilson, “**I believe you are correct that the regulators will ultimately be goaded into action.**” Tilson’s correspondent then took a shot at goading the regulators himself: “**Many of our regulators are not fond of complex cases and hard work.**” One can expect more disrespectful propaganda like this coming from those who stand to strike it rich by maiming or dealing a “death blow” to Herbalife. They indeed seem willing to try virtually any tactic to manipulate the markets, [media](#) or regulators to that dire end.
- **Short Sellers Must Know Their Claims Are False:** The short sellers are spreading these transparently manipulative and, in my view, *knowingly* false depictions of the true investment thesis of Herbalife’s investors. The true long/bullish thesis I actually do hear is that the Company is a legitimate, legally operating global MLM selling products desired and purchased by ultimate consumers, both internally and externally. Again, whether it be [D.A. Davidson’s \(Tim Ramey\)](#) or [Barclays \(Meredith Adler\)](#) with their in-depth sell-side research, or 19% Herbalife owner Carl Icahn’s repeated public statements that he believes [Herbalife is a legitimate, legally run company selling products that help people worldwide](#), there is not a single Herbalife investor amongst the many with whom I have spoken who ever has indicated in any way that Herbalife is ‘deceptive’ or ‘fraudulent’. Even John Hempton’s careless choice of words in 2012 were intended to convey his view that the MLM industry has participants, including some distributors of Herbalife products, who are overly aggressive and opportunistic. Moreover, that singular

statement, no matter how taken out of context by Bill Ackman, did not represent anyone but John Hempton's apparent view at that particular time.

- **Short Sellers Insult the Regulators' Collective Intelligence:** The irony and hypocrisy of the Herbalife Short sellers vis-à-vis the MLM's regulators is nothing short of astounding. Ackman and his cabal of profiteers are not dissimilar to a small but high pitched gang of school yard bullies who repeatedly egg on an honors student to start a fight by shouting, "Come on! He called you a wimp! You really gonna take that?" As I shake my head in disbelief, I wonder how Ackman & Co. actually believe that these truly sedulous regulators, who have a history of taking on the likes of the Mafia, international drug dealers and money launderers, possibly could be goaded into doing the short sellers' bidding with this patently obvious shaming tactic.
- **Charming, Cajoling, Overwhelming, Bullying and Now Goaded and Shaming Regulators:** In [mid-late 2012, nearly two years ago](#), it appeared that Bill Ackman began his version of a charm offensive with the FTC, SEC and other state regulators. Exhibiting a typical lack self-awareness, Ackman essentially told the FTC, the SEC, and state regulators that Pershing Square was doing these regulators a huge favor by blessing them with his propriety analysis that supposedly proved Herbalife to be a "criminal enterprise." Again, allow me to emphasize, Ackman [essentially accused these regulators of having been asleep at the switch for nothing short of decades](#), and, as such delinquents, they all require Pershing Square's collective perspicacity to *finally* do their regulatory jobs. When his unique form of enchantment predictably failed, Ackman moved on to overwhelming the regulators with a deluge of documentation estimated into the thousands of pages. As that tactic did not attain the immediate prosecution Ackman sought, Ackman moved onto his well-practiced approach of bullying, enlisting a relatively [small segment of LULAC](#) and [a U.S. Senator](#) to replace his own public face of his war. In March this year, some 15 months after his first public presentation, Ackman's final bullying thrust seemed to pay dividends when [the FTC launched the formal investigation](#) for which Ackman had agitated. However, there is a great distance between the investigation and shutting down of Herbalife, as the now 1.5 year SEC investigation exhibits. One may want to ask the following hypothetical: "What might Ackman do if the SEC has turned its focus on *Pershing Square* and/or one of its current or former employees involved in Herbalife? What theoretically might Ackman do if he begins to sense that the results of the FTC investigation were heading toward actually *vindicating* rather than crucifying Herbalife? **Might Ackman and his gang then begin to goad, prod and attempt to shame the FTC into a fight that was baseless and solely served the interests of those who have sold short Herbalife's stock?**" This is precisely what I believe is happening.
- **Regulators of Herbalife are Diligent, Not Spineless:** At the risk of stating the obvious, every bull on Herbalife shares I know thinks the FTC/SEC/AGs/DOJ are anything but spineless. Instead, they are extremely diligent in prosecuting truly illegal, endless chain pyramid schemes that primarily compensate distributors for ENROLLING their downline (vs. selling product/inventory to that down line). The FTC, and the Illinois, Kentucky and North Carolina attorneys general hardly were "spineless when they [worked for years together ahead of halting truly illegal pyramid scheme Fortune High Tech Marketing](#). For over half a decade, the FTC investigated and then [prosecuted truly illegal pyramid scheme BurnLounge](#), successfully [pursuing justice through 2014 all the way to the Ninth Circuit Court of Appeals](#). The diligently laboring Securities and Exchange Commission (SEC) hardly was "spineless" when it [slapped TelexFree with a lawsuit on charges it sold fraudulent and unregistered securities to mostly Brazilian and Dominican immigrants, who served as its promoters](#). [New York Attorney General Eric Schneiderman](#), amongst a plethora of [other effective and legitimate law enforcement](#),

ferociously has pursued enforcement against the High Frequency Trading players, whose business model involves front running the investments made indirectly and directly by America's hard working citizens. [California Attorney General Kamala Harris has risen to superhero status](#) on a national scale for her [hard charging battle against the nation's top banks to win a \\$20 billion settlement for mortgage fraud](#). This is but a tiny sample of many examples of strict, appropriate enforcement. The list of "fully spined" regulators and their persistent pursuit of justice via the prosecution of *legitimate, non-falsified or fabricated cases* is truly endless. Therefore, I apologize for the many I failed to include in my list above.

**Conclusion.** **That regulators refuse to be cajoled, bullied, prodded, goaded and "shamed"** into pursuing Bill Ackman's profiteering and self-aggrandizing agenda does *not* come anywhere close to making them "spineless." This is so obvious that any reasonable observer, Herbalife investor or otherwise, would have to agree. Bill Ackman and his compliant operatives should feel ashamed for their transparent attempts to manipulate not only the markets<sup>1</sup>, but those who assiduously and honorably have been regulating them for decades.

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<sup>1</sup> Herbalife's illiquid convertible bonds (2's of 2019) in the past few weeks have been sold down aggressively and disproportionately to the common stock, with some speculating that Pershing Square directly or indirectly (via CDS bidding) having influenced their lower pricing to create the [appearance](#) and [related media "reporting"](#) of a symptom of financial distress, despite the company's healthy debt service coverage.