

Accused 'Meme' Stock Trader Wants Prosecutors Sanctioned

By **Ivan Moreno**

Law360 (July 10, 2023, 4:07 PM EDT) -- One of eight men indicted in an alleged \$114 million pump-and-dump scheme orchestrated on social media and a stock-trading podcast wants a federal judge to order prosecutors to produce documents regarding so-called "meme" stocks that he says may undermine the case.

In a Saturday filing, Edward Constantinescu asked a federal judge in the Southern District of Texas to order the U.S. Securities and Exchange Commission to disclose the documents, sanction prosecutors for not producing the requested material by a July 7 deadline, and push back the trial date.

Constantinescu said the SEC concluded in an October 2021 report that too many variables converged to determine the cause of the changes in the price and volume of the meme stocks he is accused of illegally trading.

"The government must produce SEC records and documents, which indisputably constitutes Brady material, including, but not limited to, lists of stocks determined to be 'meme stocks' by the SEC and internal communications as well as those with [the Financial Industry Regulatory Authority] and other third parties about them," Constantinescu said.

Prosecutors **allege** the eight men used Twitter and Discord to coordinate the buying and selling of shares of certain publicly traded companies and also coordinated mischaracterizations about their trading strategies with online followers to manipulate the market and maximize their own trading profits between January 2020 and April 2022.

Indicted in December along with Constantinescu were John Rybarczyk, Perry "PJ" Matlock, Daniel Knight, Gary Deel, Tom Cooperman, Mitchell Hennessey and Stefan Hrvatin.

Prosecutors said the group was helped by a podcast hosted by Hennessey and Knight, and Constantinescu and Matlock being co-founders of Atlas Trading, a 250,000-member stock-trading forum on Discord that the government described as one of the platform's largest stock-trading chat rooms.

Knight pled guilty in March to conspiracy to commit securities fraud and is scheduled for sentencing next year.

Constantinescu argued in his Saturday filing that the \$51 million of the purported \$80 million he made trading from 2020 to 2022 came from trades executed from January to March 2021, and of the \$51 million, \$39 million came from four companies that fit the definition of a meme stock — AMC Entertainment Holdings Inc., Express Inc., Naked Brand Group LTD and Sundial Growers Inc.

Constantinescu said a June 2022 staff report for a U.S. House financial services committee defined meme stocks as "stocks that experience increased trading volume activity by retail investors because of heightened social media discourse (i.e., on Reddit, Twitter and TikTok) surrounding the

stock." The four stocks on which Constantinescu said he made a chunk of his profits were listed as examples of meme stocks, according to his filing.

"The SEC undoubtedly compiled substantial records, data and information and engaged in frequent communications that undermine the notion that price and volume 'volatility' of AMC, NAKD, SNDL, EXPR and other 'meme stocks' in the superseding indictment were caused by 'pump and dumps' 'orchestrated' by Constantinescu," he argued. "He made and lost money the same way everybody else did in 2021: by trading stocks with upward trending volume and price caused by a convergence of factors."

Four of Constantinescu's co-defendants — Matlock, Deel, Hrvatin and Cooperman — joined in his motion asking the court to compel the government to produce SEC records.

Constantinescu said the government has ignored its mandate to turn over potentially exculpatory evidence, "instead taking the indefensible position that because another agency, the SEC, possesses this report and materials related to it and not the individual assistant United States attorneys prosecuting this case, it is excused from producing these materials to Constantinescu and his co-defendants."

A spokesperson for the SEC, which brought a parallel civil enforcement action against the group, declined to comment Monday. The U.S. Attorney's Office for the Southern District of Texas and the U.S. Department of Justice, which participated in the investigation, also declined to comment.

The government is represented by Glenn S. Leon, John J. Liolos and Scott Armstrong of the U.S. Department of Justice's Criminal Division, Fraud Section, and Alamdar Hamdani and Thomas H. Carter of the U.S. Attorney's Office for the Southern District of Texas.

Constantinescu is represented by Matthew A. Ford and Cara J. Filippelli of Ford O'Brien Landy LLP.

Rybarczyk is represented by Philip H. Hilder, Q. Tate Williams and Stephanie K. McGuire of Hilder & Associates PC, and Eric Samuel Rosen of Freedman Normand Friedland LLP.

Hennessey is represented by Laura Marie Kidd Cordova and Michael J. Murtha of Jackson Walker LLP.

Matlock is represented by Luis A. Reyes and Johnny Sutton of Ashcroft Sutton Reyes LLC and William M. Stradley of the Stradley Law Firm.

Deel is represented by Zachary Fertitta of Zachary B. Fertitta PC and Neal Andrew Davis.

Hrvatin is represented by Edward Mallett of Mallett Saper Berg LLP.

Cooperman is represented by Chip B. Lewis, Erin Michelle Epley of Erin Epley Law Firm, and Sina Zadeh with the Sina Zadeh Law Firm.

Knight is represented by Cordt Cullen Akers of The Akers Firm.

The criminal case is USA v. Constantinescu et al., case number 4:22-cr-00612, and the civil case is SEC v. Constantinescu et al., case number 4:22-cv-04306, both in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Emilie Ruscoe and Catherine Marfin. Editing by John C. Davenport.