

Feds Fight Accused 'Meme Stock' Trader's Sanctions Bid

By **Elliot Weld**

Law360 (July 12, 2023, 3:46 PM EDT) -- Prosecutors asked a Texas federal judge Wednesday to reject a sanctions bid from a man accused of participating in a social media driven pump-and-dump stock scheme, saying documents he claims the government withheld are not in its possession.

In a filing, prosecutors opposed the sanctions request from Edward Constantinescu, who is seeking U.S. Securities and Exchange Commission records that contain lists of stocks determined to be "meme stocks" and internal communications about them. Prosecutors said they don't have the documents and noted that Constantinescu's criminal case is separate from the SEC's parallel civil case against him.

"Defendant does not even attempt to identify with any specificity the types of documents that he claims the United States has in its purported possession, custody, or control," the filing says. "At best, he makes vague scattershot demands seeking the SEC's 'records, data and information' about 'Meme Stocks' and 'internal communications involving the SEC as well as those with [the Financial Industry Regulatory Authority] and other third parties about Meme Stocks.'"

On Saturday, Constantinescu **asked** U.S. District Judge Andrew S. Hanen to order the SEC to produce the documents and sanction prosecutors for not producing them by a July 7 deadline.

Prosecutors argued Wednesday that their investigation of Constantinescu was unrelated to the SEC's and that the SEC played no role in presenting his case to a grand jury. Constantinescu had not offered any facts to support his "conclusory assertion" that prosecutors and the SEC had conducted a joint investigation.

Furthermore, the documents Constantinescu requests couldn't have been created as a result of the purported joint investigation because they predate the criminal inquiry into his activity, prosecutors said.

"For example, the October 14, 2021 SEC report defendant cites as the basis for the motion was created seven months prior to the United States' investigation of this case, which began in May 2022," the filing reads.

Lastly, Constantinescu has not said how the information in the documents is relevant or how the government is required to disclose it under **Brady v. Maryland**,  the 1963 U.S. Supreme Court decision mandating that prosecutors in a criminal case turn over all exculpatory, mitigating and impeachment evidence to defense lawyers. The fact that Constantinescu cannot identify which purported Brady materials the government has withheld is "fatal to the request altogether," the filing reads.

In his motion, Constantinescu pointed to a June 2022 staff report for the U.S. House Financial Services Committee that 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."

Constantinescu and seven other men were criminally **charged** in December with securities fraud, securities fraud conspiracy and engaging in monetary transactions in property derived from specified unlawful activity. Prosecutors said the defendants used statements on Twitter, in a Discord group that Constantinescu co-founded called Atlas Trading and on a podcast to manipulate the market for their own profit.

"We are startled that after conducting a joint investigation with the SEC, the government now takes the position that it can shield from a criminal defendant a trove of exculpatory evidence in the SEC's possession, including SEC documents showing that the 'underlying motivation' that caused the price and volume 'volatility' of NAKD, SNDL, EXPR, and other so-called meme socks is 'not relevant' to our defense. These are the exact stocks that form the core of the indictment," Constantinescu's attorney Matthew Ford of Ford O'Brien Landy LLP told Law360.

The government is represented by John J. Liolos and Scott Philip Armstrong of the Department of Justice's Fraud Section and Thomas Heyward Carter of the U.S. Attorney's Office for the Southern District of Texas.

Edward Constantinescu is represented by Cara Janine Filippelli and Matthew Aaron Ford of Ford O'Brien Landy LLP.

The case is USA v. Constantinescu et al., case number 4:22-cr-00612, in the U.S. District Court for the Southern District of Texas.

Update: This story has been updated to include comment from Constantinescu's attorney.

--Additional reporting by Emilie Ruscoe and Ivan Moreno. Editing by Jill Coffey.