



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

DOJ Wants SEC To Yield To Criminal Hedge Fund Fraud Case

By **Cara Mannion**

Law360, New York (December 1, 2016, 7:48 PM EST) -- U.S. Attorney Preet Bharara urged a New York federal court Wednesday to freeze discovery in the civil case against a hedge fund founder alleged to have spent part of one investor's \$2 million stake on his rent and car payments, saying the related criminal trial should proceed first.

Matrix Capital Markets LLC principal Nicholas Mitsakos, 57, is facing **dual cases** launched by the U.S. Securities and Exchange Commission and the U.S. Department of Justice that allege he committed securities and wire fraud by creating a fund and faking assets under management and returns to fish for real investors. Bharara said the court would conserve resources and prevent witnesses from testifying twice if the criminal case advanced first.

"If full-fledged civil discovery were to proceed at this time, there would be a risk of significant interference with the criminal case," Bharara said in a statement.

The U.S. attorney's office said it is seeking only a partial stay of discovery in the SEC's case, halting only testimony transcript production and witness depositions and interrogatories. Because the cases are nearly identical, the stay would preclude the court from expending resources on two trials that cover the same actions, it said.

Mitsakos has agreed to the requested stay, and the SEC took no position on the matter, the U.S. attorney's office said.

The San Francisco-based hedge fund founder **pled not guilty** in October to conspiracy, wire fraud and securities fraud charges in a September indictment.

Prosecutors say Mitsakos lied to investors about his fund's performance and retroactively faked trades, and told investors that his fund had ties to KPMG LLP when in fact the auditing giant was never formally retained.

He also used \$2 million sent to him by a Cayman Islands-based investor on personal expenses including credit card debt, car payments and rent, prosecutors say.

Mitsakos created Matrix Capital in 2013, calling himself a "long-short" hedge fund that invested in undervalued securities and sold overvalued ones short, according to charging documents. Bharara said the defendant essentially "ran an imaginary portfolio."

A now-deleted LinkedIn profile bearing Mitsakos' name said that Matrix Capital was a value-based public equity fund launched in 2015, and that it has received more than \$500 million in capital commitments. It characterized Mitsakos as the fund's chairman, CEO and chief investment officer.

Eric Creizman of Creizman PLLC, Mitsakos' attorney in both suits, told Law360 on Thursday that he welcomes the opportunity to concentrate his resources on one case at a time.

"The benefits we would obtain from the discovery in the SEC case just don't justify the dual focus that I'd have to deal with when there's two cases going on at the same time," he said.

Mitsakos declined to comment Thursday. The U.S. attorney's office did not immediately respond to a request for comment. The SEC does not comment on pending litigation.

The DOJ is represented by Robert W. Allen. The SEC is represented by Andrew M. Calamari, Lara S. Mehraban, Valerie A. Szczepanik, Alexander Janghorbani and Alison R. Levine.

Mitsakos is represented by Eric M. Creizman of Creizman PLLC.

The cases are Securities and Exchange Commission v. Matrix Capital Markets LLC et al., case number 1:16-cv-06395, and U.S. v. Mitsakos, case number 1:16-cr-00631, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Pete Brush and Kat Greene. Editing by Richard McVay and Brian Baresch.

All Content © 2003-2017, Portfolio Media, Inc.