

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
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 - v. - :
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 SEBASTIAN PINTO-THOMAZ and :
 JEREMY MILLUL, :
 :
 Defendants. :
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SUPERSEDING INDICTMENT
S2 18 Cr. 579 (JSR)

COUNT ONE
(Conspiracy to Commit Securities Fraud -
PINTO-THOMAZ and MILLUL)

The Grand Jury charges:

Relevant Entities and Individuals

1. At all times relevant to this Indictment, the Valspar Corporation ("Valspar") was a publicly-traded company headquartered in Minneapolis, Minnesota whose stock was traded on the New York Stock Exchange ("NYSE") under the ticker symbol "VAL."

2. At all times relevant to this Indictment, the Sherwin-Williams Company ("Sherwin-Williams") was a publicly-traded company headquartered in Cleveland, Ohio, whose stock traded on the NYSE under the ticker symbol "SHW."

3. At all times relevant to this Indictment, the Firm was a credit rating agency headquartered in New York, New York. As a

credit rating agency, the Firm issued credit ratings for the debt of public and private companies, and other public borrowers such as governmental entities. When a company announces an acquisition of another company, the acquiring company's credit rating agency often evaluates, and ultimately issues a press release relating to, the impact that the acquisition could have on the acquiring company's credit rating. Therefore, companies often contact rating agencies before an acquisition is publicly announced in order to secure the rating agency's views on how a possible acquisition could impact a company's credit rating. All the major rating agencies offer a product - known at the Firm as a Rating Evaluation Service ("RES") - that provides the company with a rating committee decision with respect to a proposed acquisition.

4. At all times relevant to this Indictment, SEBASTIAN PINTO-THOMAZ, the defendant, was employed as a credit ratings analyst at the Firm in New York, New York.

5. At all times relevant to this Indictment, JEREMY MILLUL, the defendant, worked in the retail jewelry business in New York, New York, and MILLUL and SEBASTIAN PINTO-THOMAZ, the defendant, were close friends.

6. At all times relevant to this Indictment, Abell Oujaddou ("Oujaddou") was a hairstylist and part owner of a salon in New York, New York (the "Salon"). As of March 2016,

Oujaddou and SEBASTIAN PINTO-THOMAZ, the defendant, had known each other for at least ten years, and Oujaddou occasionally cut PINTO-THOMAZ's hair.

**The Firm's Confidentiality Policies
and Prohibitions on Insider Trading**

7. At all times relevant to this Indictment, the Firm's code of business ethics (the "Ethics Code") prohibited employees from disclosing "any confidential information about [the Firm's] customers, clients or third parties obtained while performing his or her duties." The Ethics Code defined confidential information as "information [the Firm] possesses that is kept private and not made available to the public," including "information that is shared between parties in confidence." The Ethics Code defined material information as "information a reasonable investor would consider in deciding whether to buy or sell a security." The Ethics Code made clear that employees "should never use material, non-public information to buy or sell securities, or share this information with others to buy or sell stock either for their or [the employee's] benefit."

8. At various times, SEBASTIAN PINTO-THOMAZ, the defendant, certified that he would protect confidential information entrusted to the Firm by its clients, and would not "attempt to profit by using that information to trade in his account or by tipping off someone else to trade in their

account." In or about January 2015, PINTO-THOMAZ affirmed his compliance with the Ethics Code, and thereafter participated in annual trainings regarding the Ethics Code.

The Insider Trading Scheme

PINTO-THOMAZ Learns Material, Non-Public Information about Sherwin-Williams' Potential Acquisition of Valspar

9. Beginning on or about March 8, 2016, the Firm assigned SEBASTIAN PINTO-THOMAZ, the defendant, to work on an RES for Sherwin-Williams in connection with Sherwin-Williams' anticipated acquisition of Valspar (the "Valspar Acquisition"). In connection with this assignment, PINTO-THOMAZ immediately began to receive material, non-public information about the Valspar Acquisition (the "Inside Information"). For example, at approximately 10:08 a.m. on March 8, 2016, PINTO-THOMAZ spoke by telephone with the Vice President and Treasurer of Sherwin-Williams (the "Vice President") regarding the Valspar Acquisition.

10. While working on this project, SEBASTIAN PINTO-THOMAZ, the defendant, continued to receive additional Inside Information. For example, on or about March 10, 2016, at or about 10:23 a.m., PINTO-THOMAZ received Sherwin-Williams' rating agency presentation, which contained Inside Information about the Valspar Acquisition, including the price that Sherwin-Williams would offer per Valspar share, the source of funding

for the Valspar Acquisition, and the fact that the transaction had been approved by Sherwin-Williams' and Valspar's Boards of Directors.

The Announcement that Sherwin-Williams Would Acquire Valspar

11. On or about Sunday, March 20, 2016, a press release publicly announced that Sherwin-Williams would acquire Valspar for \$113 per share in cash, which "represents a premium of approximately 41% to Valspar's volume weighted average price for the 30 days up to and including March 18, 2016" (the "Valspar Announcement").

12. On or about Monday, March 21, 2016, the next trading day after the Valspar Announcement, the price of Valspar common stock rose to an intra-day high of approximately \$104.35 and closed at \$102.58, an increase of approximately 23% over the previous trading day's closing price.

Oujaddou Trades in Valspar Stock
Based on Inside Information from PINTO-THOMAZ

13. As set forth below, in advance of the March 20, 2016 Valspar Announcement, SEBASTIAN PINTO-THOMAZ, the defendant, provided Inside Information to Oujaddou relating to the Valspar Acquisition, with the intention that Oujaddou would execute trades in Valspar securities based on the Inside Information. Oujaddou used this Inside Information to execute profitable transactions in Valspar stock.

14. On or about March 8, 2016, at or about 10:17 a.m., minutes after speaking with the Vice President, SEBASTIAN PINTO-THOMAZ, the defendant, placed a telephone call to Oujaddou. Approximately one minute later, PINTO-THOMAZ sent a text message to Oujaddou. Over the next several hours, as PINTO-THOMAZ took steps to set up a meeting between the Firm and Sherwin-Williams' management for March 10, 2016, PINTO-THOMAZ and Oujaddou continued to exchange text messages.

15. On or about March 8 or 9, 2016, SEBASTIAN PINTO-THOMAZ, the defendant, went to the Salon to get his hair cut by Oujaddou. During the haircut, PINTO-THOMAZ relayed to Oujaddou that Sherwin-Williams and Valspar were going to merge, and that Valspar's stock would go up in price. PINTO-THOMAZ and Oujaddou agreed that Oujaddou would trade on the Inside Information and then provide PINTO-THOMAZ approximately 10% of Oujaddou's profits from trading in Valspar. Oujaddou knew that PINTO-THOMAZ worked in the financial services industry, that PINTO-THOMAZ had obtained the information about Valspar through his work, and that the information was relayed to him in breach of a duty.

16. On or about March 10, 2016, at or about 11:48 a.m. and 12:16 p.m., shortly after receiving highly confidential documents regarding the Valspar Acquisition, SEBASTIAN PINTO-THOMAZ, the defendant, sent text messages to Oujaddou. At or about 12:53 p.m., Oujaddou purchased 1,000 shares of Valspar

common stock. Oujaddou had never previously traded in Valspar or Sherwin-Williams securities.

17. Between on or about March 11, 2016 and on or about March 18, 2016, Oujaddou purchased an additional 7,630 shares of Valspar common stock.

18. On or about March 23 and 24, 2016, after the Valspar Announcement, Oujaddou sold his 8,630 shares of Valspar common stock for a net profit of approximately \$192,080.

19. In or about late March 2016, SEBASTIAN PINTO-THOMAZ, the defendant, and Oujaddou met at a home improvement store in New York, New York, and Oujaddou gave PINTO-THOMAZ \$7,500 in United States currency, which represented PINTO-THOMAZ's share of Oujaddou's profits from the illicit trading in Valspar.

**MILLUL Trades in Valspar Stock and Options
Based on Inside Information from PINTO-THOMAZ**

20. As set forth below, in advance of the March 20, 2016 Valspar Announcement, SEBASTIAN PINTO-THOMAZ, the defendant, provided Inside Information to JEREMY MILLUL, the defendant, relating to the Valspar Acquisition, with the intention to benefit his friend MILLUL by enabling MILLUL to execute profitable trades in Valspar securities based on the Inside Information. MILLUL, aware of PINTO-THOMAZ's breach of duty, in fact used this Inside Information to execute profitable transactions in Valspar stock and options.

21. On or about March 10, 2016, at or about 8:03 p.m., SEBASTIAN PINTO-THOMAZ, the defendant, sent a text message to JEREMY MILLUL, the defendant, stating, "... give me a shout when you have some time." Earlier that day, PINTO-THOMAZ had received highly confidential documents regarding the Valspar Acquisition.

22. On or about March 13, 2016, at or about 4:34 a.m., JEREMY MILLUL, the defendant, submitted an online application for a brokerage account (the "Brokerage Account"). MILLUL had never previously owned a U.S. brokerage account. At or about 7:40 a.m., MILLUL sent a text message to SEBASTIAN PINTO-THOMAZ, the defendant, stating "Account is open" and "Let's meet tomorrow's [sic]". The next day, on or about March 14, 2016, at or about 6:07 p.m., MILLUL sent a text message to PINTO-THOMAZ asking "Where are you[?]."

23. On or about March 16, 2016, JEREMY MILLUL, the defendant, purchased 480 shares of Valspar common stock. Prior to that day, MILLUL had never purchased Valspar or Sherwin-Williams' stock or options. In fact, MILLUL had never previously purchased any securities on a U.S. exchange.

24. On or about March 18, 2016, the last trading day before the Valspar Announcement, at or about 10:31 a.m., JEREMY MILLUL, the defendant, was approved to trade options through the Brokerage Account. At or about 10:39 a.m., MILLUL purchased 75 Valspar call options with a strike price of \$90 and an

expiration date of April 15, 2016. That day, Valspar was trading at approximately \$83 per share. From January 1, 2016 through March 17, 2016, Valspar had not traded for more than \$84.66, inclusive of intra-day highs.

25. On or about March 21, 2016, after the Valspar Announcement, JEREMY MILLUL, the defendant, sold all 480 shares of Valspar common stock and all 75 Valspar call options, for a total profit of approximately \$106,806.

PINTO-THOMAZ Makes False Statements About MILLUL and Oujaddou in Connection with a FINRA Inquiry

26. On or about June 8, 2016, the Financial Industry Regulatory Authority ("FINRA") sent a letter to the Firm (the "Identification Letter"), requesting that the Firm circulate the Identification Letter and its attached list of individuals and entities (the "List") to Firm employees who had Inside Information about the Valspar Acquisition before the Valspar Announcement. Each such Firm employee was to review the List and state whether he or she had a past or present relationship with any individual or entity on the List. The List included JEREMY MILLUL, the defendant, and Oujaddou.

27. On or about June 14, 2016, SEBASTIAN PINTO-THOMAZ, the defendant, submitted his response to the Firm, falsely stating that he had no relationship with any of the listed individuals or entities.

28. On or about June 20, 2016, the Firm responded to FINRA's identification letter, including the denial by SEBASTIAN PINTO-THOMAZ, the defendant, of any relationship between himself and any of the listed individuals or entities.

Statutory Allegations

29. From at least in or about March 2016 through at least in or about June 2016, in the Southern District of New York and elsewhere, SEBASTIAN PINTO-THOMAZ and JEREMY MILLUL, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

30. It was a part and an object of the conspiracy that SEBASTIAN PINTO-THOMAZ and JEREMY MILLUL, the defendants, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to

defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Overt Acts

31. In furtherance of the conspiracy and to effect its illegal object, SEBASTIAN PINTO-THOMAZ and JEREMY MILLUL, the defendants, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about March 10, 2016, PINTO-THOMAZ sent a text message to MILLUL saying "give me a shout when you have some time."

b. On or about March 13, 2016, MILLUL opened his first U.S. brokerage account.

c. On or about March 13, 2016, MILLUL sent a text message to PINTO-THOMAZ stating "Account is open" and "Let's meet tomorrow's [sic]".

d. On or about March 16, 2016, MILLUL purchased 480 shares of Valspar common stock.

e. On or about March 18, 2016, MILLUL purchased 75 Valspar call options with a strike price of \$90 and an expiration date of April 15, 2016.

(Title 18, United States Code, Section 371.)

COUNT TWO
(Conspiracy to Commit Securities Fraud -
PINTO-THOMAZ)

The Grand Jury further charges:

32. The allegations contained in paragraphs 1 through 28 and 31 of this Indictment are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

33. From at least in or about March 2016 through at least in or about June 2016, in the Southern District of New York and elsewhere, SEBASTIAN PINTO-THOMAZ, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

34. It was a part and an object of the conspiracy that SEBASTIAN PINTO-THOMAZ, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national

securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Overt Acts

35. In furtherance of the conspiracy and to effect its illegal object, SEBASTIAN PINTO-THOMAZ, the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about March 10, 2016, shortly after PINTO-THOMAZ received highly confidential documents about the Valspar Acquisition, PINTO-THOMAZ sent text messages to Oujaddou.

b. On or about March 10, 2016, at or about 12:53 p.m., Oujaddou purchased 1,000 shares of Valspar common stock.

c. On or about March 11, 2016, Oujaddou purchased an additional 1,000 shares of Valspar common stock.

d. On or about March 14, 2016, Oujaddou purchased an additional 2,070 shares of Valspar common stock.

e. On or about March 17, 2016, Oujaddou purchased an additional 2,500 shares of Valspar common stock.

f. On or about March 18, 2016, Oujaddou purchased an additional 2,060 shares of Valspar common stock.

(Title 18, United States Code, Section 371.)

COUNT THREE

(Securities Fraud - PINTO-THOMAZ and MLLUL)

The Grand Jury further charges:

36. The allegations contained in paragraphs 1 through 28, 31, and 35 of this Indictment are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

37. From on or about March 16, 2016 through on or about March 18, 2016, in the Southern District of New York and elsewhere, SEBASTIAN PINTO-THOMAZ and JEREMY MILLUL, the defendants, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, used and employed, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices,

schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, on the basis of material, non-public information that PINTO-THOMAZ disclosed to MILLUL in violation of PINTO-THOMAZ's fiduciary and other duties of trust and confidentiality and with the intention that MILLUL use that information to execute trades in the securities of Valspar, MILLUL, aware of this breach of duty, executed and caused to be executed the purchase of 480 shares of Valspar common stock and 75 Valspar call options.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5;
and Title 18, United States Code, Section 2.)

COUNT FOUR
(Securities Fraud - PINTO-THOMAZ)

The Grand Jury further charges:

38. The allegations contained in paragraphs 1 through 28, 31, and 35 of this Indictment are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

39. From on or about March 10, 2016 through on or about March 18, 2016, in the Southern District of New York and elsewhere, SEBASTIAN PINTO-THOMAZ, the defendant, willfully and knowingly, directly and indirectly, by the use of the means and

instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, used and employed, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, on the basis of material, non-public information that PINTO-THOMAZ disclosed to Oujaddou in violation of PINTO-THOMAZ's fiduciary and other duties of trust and confidentiality and with the intention that Oujaddou use that information to execute trades in the securities of Valspar, Oujaddou, aware of this breach of duty, executed and caused to be executed the purchase of 8,630 shares of Valspar common stock.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5;
and Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATION

40. As a result of committing one or more of the foregoing offenses alleged in Counts One through Four of this Indictment,

SEBASTIAN PINTO-THOMAZ, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section § 981(a)(1)(C) and Title 28, United States Code, Section § 2461, any property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Four of this Indictment.

41. As a result of committing one or more of the offenses alleged in Counts One and Three of this Indictment, JEREMY MILLUL, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section § 981(a)(1)(C) and Title 28, United States Code, Section § 2461, any property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One and Three of this Indictment:

a. A sum of money equal to \$106,806 in United States currency; and

b. \$100,000 in United States currency in Account #420-83614-4 at HSBC Bank USA, N.A., held in the name of JEREMY MILLUL.

Substitute Asset Provision

42. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(1) cannot be located upon the exercise of due diligence;

- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the above-described forfeitable property.

(Title 18, United States Code, Sections 981(a)(1)(C) and 982(b), Title 21, United States Code, Section 853, Title 28, United States Code, Section 2461.)


FOREPERSON


GEOFFREY S. BERMAN
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

SEBASTIAN PINTO-THOMAZ and
JEREMY MILLUL,

Defendants.

SUPERSEDING INDICTMENT

S2 18 Cr. 579 (JSR)

(18 U.S.C. §§ 371 & 2;
15 U.S.C. §§ 78j(b) & 78ff;
17 C.F.R. § 240.10b-5.)

GEOFFREY S. BERMAN

United States Attorney


Foreperson

- TRUE BILL & SUPERSEDING INDICTMENT

- MAG. ROBERT W. LEHARBURGER 11/5/18 