

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon.
	:	
v.	:	Crim. No. 14-
	:	
FRANK TAMAYO	:	18 U.S.C. § 371
	:	15 U.S.C. §§ 78j(b), 78n(e), & 78ff
	:	17 C.F.R. §§ 240.10b-5 & 240.14e-3(a)
	:	18 U.S.C. § 2

**INFORMATION**

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

**COUNT ONE**

(Conspiracy to Commit Securities Fraud and Tender Offer Fraud)

**Background**

1. At all times relevant to this Information unless otherwise indicated:

a. Starting in or about November 1999 and continuing through in or about March 2014, coconspirator Steven Metro (“Metro”), a resident of Katonah, New York, was employed in the New York office of Simpson Thacher & Bartlett LLP (the “Law Firm”). Metro was employed as the Law Firm’s managing clerk and, as such, was responsible for, among other things, filing pleadings on behalf of attorneys at the Law Firm. Through his employment, Metro obtained access to, among other things, inside information related to

corporate transactions, such as mergers and acquisitions or tender offers, in which the Law Firm represented a party or financial advisor to the transaction (the “Inside Information”). Metro had a duty not to disclose the Inside Information that he accessed through his employment at the Law Firm, or to use such information for his personal benefit or the benefit of others.

b. Defendant FRANK TAMAYO (“TAMAYO”), a resident of Brooklyn, New York, was a mortgage broker and a personal friend of coconspirator Metro, whom defendant TAMAYO met while they were both attending law school in New York.

c. Coconspirator Vladimir Eydelman (“Eydelman”), a resident of Colts Neck, New Jersey, was defendant TAMAYO’s broker-dealer. From in or about 2001 through in or about August 2012, Eydelman was employed by Oppenheimer & Co. Inc. (“Oppenheimer”), an investment bank and full-service investment firm, as a broker-dealer registered with the United States Securities and Exchange Commission (“SEC”). Starting in or about September 2012 and continuing through in or about March 2014, Eydelman was employed by the global financial services firm Morgan Stanley & Co. LLC (“Morgan Stanley”) as a registered broker-dealer.

d. The securities purchased and/or sold by defendant TAMAYO, coconspirator Metro, coconspirator Eydelman, and others in connection with the insider trading scheme described herein were listed on the NASDAQ Stock Market (“NASDAQ”) and/or the New York Stock Exchange

("NYSE").

e. NASDAQ was the largest electronic equity securities trading market in the United States and was the second largest equities-based exchange in the world based on market capitalization. NASDAQ did not have a central trading floor. Instead, it relied on computer servers to facilitate all trading activity. Since at least 2006, NASDAQ maintained computer servers in Carteret, New Jersey.

f. NYSE was the largest equities-based exchange in the world based on total market capitalization of its listed securities. By in or about August 2010, all of NYSE's trade processing and data services were performed at its U.S. data center in Mahwah, New Jersey.

#### The Conspiracy

2. From in or about February 2009 through in or about March 2014, in the District of New Jersey and elsewhere, defendant

FRANK TAMAYO

did knowingly and willfully combine, conspire and agree with Steven Metro, Vladimir Eydelman, and others to commit offenses against the United States, namely:

a. securities fraud, by using and employing by the direct and indirect use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, in connection with the purchase and sale of securities, manipulative and deceptive devices,

including the purchases and sales of securities of issuers on the basis of material nonpublic information about those securities and issuers, in breach of a duty of trust and confidence that was owed directly, indirectly, and derivatively, to the issuers of those securities, the shareholders of those issuers, and to other persons and entities who were the source of the material nonpublic information, in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud members of the investing public; (b) making untrue statements of material facts 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 a course of business which operated and would operate as a fraud and deceit upon persons, contrary to Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5; and

b. tender offer fraud, by engaging in fraudulent, deceptive, and manipulative acts and practices, in connection with tender offers, in that, after the offering persons had taken substantial steps to commence the tender offers, defendant FRANK TAMAYO and coconspirators Steven Metro and Vladimir Eydelman, while in possession of material information relating to such tender offers, which information they knew and had reason to know was nonpublic and had been acquired directly and indirectly from the offering person, from the issuer of the securities sought and to be sought by such tender

offers, and any officer, director, partner, and employee and any other person acting on behalf of the offering persons and such issuers, purchased and sold and caused to be purchased and sold such securities, and securities convertible into or exchangeable for any such securities, and an option and right to obtain and to dispose of any of the foregoing securities, without first publicly disclosing such information and its source by press release and otherwise, contrary to Title 15, United State Code, Sections 78n(e) and 78ff, and Title 17, Code of Federal Regulations, Section 240.14e-3(a).

#### Object of the Conspiracy

3. The object of the conspiracy was for the coconspirators to profit by purchasing securities on the basis of Inside Information that coconspirator Metro gained through his employment at the Law Firm, which Inside Information related to: (a) planned mergers and acquisitions involving clients of the Law Firm; and (b) planned tender offers involving clients of the Law Firm.

#### Manner and Means of the Conspiracy

4. It was a part of the conspiracy that while employed by the Law Firm, coconspirator Metro regularly obtained from the Law Firm, and disclosed to defendant TAMAYO, Inside Information regarding corporate transactions on which the Law Firm was working.

5. It was further part of the conspiracy that to gain access to Inside Information pertaining to corporate transactions that he was not working

on, Metro scoured the Law Firm's computer system using search terms such as, among other things, "merger agreement," "bid letter," "engagement letter," "due diligence," as well as client names, Law Firm client-matter numbers, and/or combinations thereof.

6. It was further part of the conspiracy that after obtaining or, in most cases, stealing the Inside Information from the Law Firm, coconspirator Metro then divulged the Inside Information to defendant TAMAYO in person, usually meeting at a bar or coffee shop located near their respective workplaces in midtown Manhattan. During such meetings, Metro provided defendant TAMAYO Inside Information pertaining to, among other things, the names and/or ticker symbols of the companies whose securities should be purchased, the general timing of the planned deals, and information related to how the deals would affect the issuers' stock price once announced.

7. It was further part of the conspiracy that after receiving the Inside Information from Metro, defendant TAMAYO wrote down the ticker symbols of the companies whose securities should be purchased on small pieces of paper or on napkins.

8. It was further part of the conspiracy that shortly after receiving Inside Information from coconspirator Metro, defendant TAMAYO separately met with coconspirator Eydelman near the large clock inside the main terminal of Grand Central Station in New York City, where defendant TAMAYO then passed the Inside Information to Eydelman by showing Eydelman the piece

of paper or napkin with the relevant ticker symbol(s) that defendant TAMAYO had obtained from Metro written on it, allowing Eydelman to commit the ticker symbol(s) to memory. Defendant TAMAYO also verbally provided Eydelman Inside Information that defendant TAMAYO had received from Metro regarding the timing and/or pricing of the planned transaction(s).

9. It was further part of the conspiracy that after passing the Inside Information on to coconspirator Eydelman at the Grand Central clock, defendant TAMAYO then folded up the paper or napkin with the ticker symbol(s) written on it, placed it into his mouth, and chewed the paper or napkin to destroy it.

10. It was further part of the conspiracy that coconspirator Eydelman, in turn, used the Inside Information to aggressively trade in the securities of the subject companies on behalf of himself, his family members, his friends, defendant TAMAYO, and/or other brokerage clients, prior to the public announcement of the deals.

11. It was further part of the conspiracy that coconspirator Eydelman then sold those shares and covered any positions shortly after the public announcement of the deals.

12. It was further part of the conspiracy that defendant TAMAYO also, at times, advised one or more friends to trade in the subject securities, and also utilized Inside Information to execute trades on behalf of his girlfriend and a family member.

13. It was further part of the conspiracy that with a few exceptions, coconspirator Metro generally did not trade in the subject securities himself; rather, Metro agreed with defendant TAMAYO that his share of the profits from the first tip that he provided would be reinvested by defendant TAMAYO in their subsequent insider trading via defendant TAMAYO's broker-dealer, coconspirator Eydelman. During the course of the insider trading scheme, defendant TAMAYO apprised Metro of the running balance of Metro's share of the profits, which balance had reached approximately \$168,000 as of in or about October 2013.

14. It was further part of the conspiracy that coconspirator Metro sought to "cash out" his share of the accrued profits from the insider trading scheme, pressing defendant TAMAYO to "liberate some cash" during a meeting on or about January 28, 2014.

15. It was further part of the conspiracy that coconspirator Eydelman provided approximately \$7,000 in cash to defendant TAMAYO on or about February 20, 2014, with the expectation that defendant TAMAYO would use the cash to compensate coconspirator Metro for providing them Inside Information.

16. It was further part of the conspiracy that over the course of the long-running insider trading scheme, coconspirator Metro provided Inside Information relating to at least thirteen different corporate transactions to defendant TAMAYO, so that they could profit from the Inside Information by



trading via defendant TAMAYO's broker-dealer, coconspirator Eydelman.

17. It was further part of the conspiracy that by exploiting the Inside Information that coconspirator Metro, in most instances, had stolen from the Law Firm, defendant TAMAYO and coconspirators Metro and Eydelman netted more than approximately \$5.6 million in illicit profits by executing trades, on behalf of themselves and/or others, based on the Inside Information.

18. It was further part of the conspiracy that in an effort to prevent their lucrative insider trading scheme from being detected, defendant TAMAYO and coconspirators Metro and Eydelman relied on various means, including but not limited to: (a) Metro stealing, and disclosing to defendant TAMAYO, Inside Information pertaining to deals that Metro usually was not personally working on; (b) Metro generally refraining from using the Inside Information to engage in securities transactions himself; (c) using defendant TAMAYO as a middleman in the insider trading scheme so as to avoid any direct contact between Metro, the source of the Inside Information, and Eydelman, the primary trader; (d) passing the tips during one-on-one meetings; (e) defendant TAMAYO chewing, until destroyed, the pieces of paper on which he wrote the ticker symbols of the subject companies; and (f) defendant TAMAYO and Eydelman exchanging "covering" emails that contained false justifications designed to suggest that their trades in the subject securities were based on research, not Inside Information.

Overt Acts

19. In furtherance of the conspiracy and to effect its illegal object, the following overt acts, among others, were committed in the District of New Jersey and elsewhere:

a. In or about December 2009, coconspirator Metro obtained Inside Information through his work at the Law Firm concerning plans by Tyco International Ltd. to acquire Brinks Home Security (the "Tyco-Brinks Deal"), and divulged the Inside Information to defendant TAMAYO so that he could execute, or cause the execution of, trades based on the Inside Information.

b. In or about December 2009, defendant TAMAYO passed the Inside Information of the Tyco-Brinks Deal to his broker-dealer, coconspirator Eydelman, explaining that he had obtained the Inside Information from a source inside a law firm.

c. Between on or about December 31, 2009 and on or about January 15, 2010, coconspirator Eydelman then used the Inside Information from defendant TAMAYO's law firm source, i.e., coconspirator Metro, to trade illegally in Brinks securities on behalf of himself, certain family members and friends, and various clients, including defendant TAMAYO, for profits totaling more than approximately \$700,000.

d. In addition to tipping coconspirator Eydelman about the Tyco-Brinks Deal, in or about January 2010, defendant TAMAYO separately tipped a friend ("Trader 1"), who purchased hundreds of shares of Brinks stock

prior to the public announcement of the deal.

e. In or about late December 2009, coconspirator Metro also personally traded in Brinks securities for a profit, after personally working on the Tyco-Brinks Deal at the Law Firm.

In violation of Title 18, United States Code, Section 371.

COUNT TWO  
(Securities Fraud-Insider Trading)

1. The allegations set forth in paragraphs 1 and 4 through 19 of Count One of this Information are realleged and incorporated herein.

2. From on or about January 31, 2011 through on or about April 19, 2011, in the District of New Jersey and elsewhere, defendant

FRANK TAMAYO,

by use of the means and instrumentalities of interstate commerce, the mails, and facilities of national securities exchanges, directly and indirectly, knowingly and willfully used manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5 in connection with the purchase and sales of securities by (a) employing devices, schemes, and artifices to defraud members of the investing public; (b) making untrue statements of material facts 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 a course of business which operated and would operate as a fraud and deceit upon persons, in that he executed and caused coconspirator Vladimir Eydelman and others to: (i) purchase approximately 947,150 shares of SMART Modular Technologies stock; (ii) purchase approximately 450 SMART Modular Technologies call options; and (iii) sell approximately 1,150 SMART Modular Technologies put options, based upon the material, nonpublic information that coconspirator Steven Metro improperly obtained through his

employment at the Law Firm.

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

COUNT THREE  
(Tender Offer Fraud)

1. The allegations set forth in paragraphs 1 and 4 through 19 of Count One of this Information are realleged and incorporated herein.

2. From on or about June 21, 2011 through on or about August 22, 2011, in the District of New Jersey and elsewhere, the defendant,

FRANK TAMAYO,

knowingly and willfully engaged in fraudulent, deceptive, and manipulative acts and practices, in connection with a tender offer, in that, after the offering person had taken substantial steps to commence the tender offer, defendant FRANK TAMAYO and coconspirators Steven Metro and Vladimir Eydelman, while in possession of material information relating to such tender offer, which information they knew and had reason to know was nonpublic and had been acquired directly and indirectly from the offering person, from the issuer of the securities sought and to be sought by the tender offer, and from an officer, director, partner, employee, and any other person acting on behalf of the offering person and of the issuer of such securities, purchased and sold, and caused to be purchased and sold, such securities, without first publicly disclosing such information and its source, in that they executed and caused the execution of purchases of approximately 695,650 shares of PharMerica Corp. stock and approximately 1,511 PharMerica Corp. call options.

In violation of Title 15, United States Code, Sections 78n(e) and 78ff, Title 17, Code of Federal Regulations, Section 240.14e-3(a), and Title 18, United

States Code, Section 2.

### FORFEITURE ALLEGATIONS

1. As the result of committing the offenses constituting specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7), as alleged in Counts One, Two and Three of this Information, defendant FRANK TAMAYO 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(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the said conspiracy and securities fraud offenses, and all property traceable thereto, including, but not limited to the following:

- a. A sum of money equal to \$1,056,969.69, representing the proceeds of the offenses alleged in Counts One, Two and Three of this Information; and
- b. All of the defendant's right, title and interest in the following specific property:
  - i. The contents of Morgan Stanley Trading Account number [REDACTED] 3-358, held in the name of defendant FRANK TAMAYO, which was seized on or about March 19, 2014;
  - ii. The contents of Morgan Stanley Smith Barney, LLC Trading Account number [REDACTED] 4-358, held in the name of defendant FRANK TAMAYO and Frances Tamayo JT TEN, which was seized on or about March 19, 2014; and
  - iii. One 2008 Audi Q7 automobile bearing Vehicle Identification Number [REDACTED] 7131, which was surrendered to the Federal Bureau of Investigation on or about December 12, 2013 and seized on or about March 19, 2014.

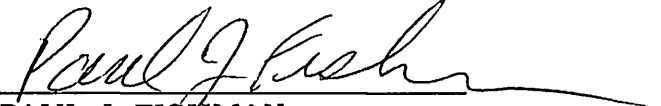


Substitute Assets Provision

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

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

  
PAUL J. FISHMAN  
United States Attorney

CASE NUMBER: 14-\_\_\_\_\_

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**United States District Court  
District of New Jersey**

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**UNITED STATES OF AMERICA**

**v.**

**FRANK TAMAYO**

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15 U.S.C. §§ 78j(b), 78n(e), & 78ff  
17 C.F.R. §§ 240.10b-5 & 240.14e-3(a)  
18 U.S.C. § 2

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**PAUL J. FISHMAN**

*UNITED STATES ATTORNEY, NEWARK, NEW JERSEY*

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