

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

UNITED STATES OF AMERICA

v.

FERNANDO PASSOS,

Defendant.

)
) Criminal No. 4:21-cr-028
)
)

SUPERSEDING INDICTMENT

) T. 15 U.S.C. §§ 78j(b), 78ff
) T. 18 U.S.C. § 1343
)
)

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SOUTHERN DISTRICT OF IOWA

THE GRAND JURY CHARGES:

Introduction

At all times relevant to this Superseding Indictment:

Relevant Entities and Individuals

1. IRB Brasil Resseguros SA a/k/a IRB Brasil RE (“IRB”) was a large reinsurance company headquartered in Brazil. Starting in or around 2017, IRB’s stock was traded publicly on the Brasil Bolsa Balcão, S.A. (“B3”), a stock exchange located in São Paulo, Brazil.

2. Defendant **FERNANDO PASSOS** was an IRB executive with the title “Finance and Investor Relations Executive Vice President.” **PASSOS** served as IRB’s chief financial officer (“CFO”) and oversaw IRB’s financial statements released to the investing public. At times, **PASSOS** spoke directly to shareholders of IRB’s stock about the company’s performance, including shareholders inside the United States.

3. Individual 1 was an IRB executive with the title “President.” Individual 1 served as IRB’s chief executive officer (“CEO”) and the highest-ranking executive within IRB. At times, Individual 1 spoke directly to shareholders of IRB’s stock about the company’s performance, including shareholders inside the United States.

4. Individual 2 and Individual 3 were IRB employees who worked in investor relations. Individual 2 and Individual 3 were responsible for communicating with IRB shareholders, as well as members of the investing public who had questions about IRB. Individual 2 and Individual 3 communicated with **PASSOS** about IRB shareholder positions and other information.

5. Individual 4 was an IRB employee who served as the corporate marketing and communications manager. Individual 4 communicated with **PASSOS** about information to provide to the investing public and media outlets following IRB.

6. Individual 5, Individual 6, and Individual 7 were members of IRB's board of directors.

U.S. Investors in IRB and U.S. Analysts Following IRB

7. While IRB's stock was listed on the B3 exchange in Brazil, investors from all over the world bought and sold IRB stock. In or around early 2020, some of the largest shareholders in IRB were companies based in the United States.

a. Investor 1 was an investment bank and financial-services company based in Chicago, Illinois. Investor 1 purchased shares of IRB on behalf of its clients, many of whom lived in the United States.

b. Investor 2 was a U.S. investment firm based in Des Moines, Iowa. Investor 2 purchased shares of IRB as part of its investment strategy.

8. IRB and its executives, including **PASSOS**, solicited U.S. investors in a variety of ways. For example, when IRB released statements and quarterly reports to investors and the investing public about IRB's financial performance, IRB often distributed English-language versions of those materials. On multiple occasions, **PASSOS** and others from IRB also traveled

to the United States to participate in investor conferences. **PASSOS** also communicated directly with U.S. investors via telephone and email about IRB.

9. In addition to the above-described communications and forms of solicitation, **PASSOS** and Individual 1 traveled to the United States in order to have in-person meetings with U.S. investors and potential investors in IRB (a practice colloquially known as a “roadshow”). As described further below, between approximately February 25, 2020, and February 28, 2020, **PASSOS** and Individual 1 traveled to the United States as part of a roadshow to meet with investors and potential investors in IRB in New York and Boston.

10. IRB’s financial performance also was followed by equities analysts, including analysts based in the United States. These analysts reviewed public information about IRB, including information disclosed by the company, and made recommendations to investors about whether to buy, sell, or hold IRB’s stock. IRB and its executives, including **PASSOS**, communicated with U.S. analysts frequently about IRB’s financial performance.

11. In addition to communicating with U.S. analysts in the above-described manners, IRB also invited U.S. analysts to participate on analyst-only conference calls, in which **PASSOS** and Individual 1 spoke directly to analysts about IRB’s performance. As described further below, on or about March 2, 2020, **PASSOS** and Individual 1 participated on a conference call with sell-side analysts, including U.S. analysts. During the call, **PASSOS** and Individual 1 discussed IRB’s management and purported developments.

Berkshire Hathaway Inc.

12. Berkshire Hathaway Inc. (“Berkshire Hathaway”) was a U.S. multinational conglomerate holding company headquartered in Omaha, Nebraska that invested in a wide range of industries. Berkshire Executive 1 served as the head of Berkshire Hathaway.

13. Among other investments, Berkshire Hathaway operated a large series of insurance operations from an office located in Connecticut. Berkshire Executive 2 was the manager of Berkshire Hathaway's insurance operations.

14. Some investors viewed an investment by Berkshire Hathaway in another company as positive news for the latter company and information that could increase the latter company's stock price.

15. Since at least in or around 2017, executives of IRB, including **PASSOS** and Individual 1, had solicited Berkshire Hathaway to purchase stock in IRB. Despite the solicitations, Berkshire Hathaway was never a shareholder in IRB.

PASSOS's Compensation

16. As a senior executive, **PASSOS** received compensation from IRB in the form of salary and bonuses. Part of **PASSOS's** compensation was tied to the price of IRB's stock. **PASSOS** stood to earn additional compensation if IRB's stock remained above certain price levels at designated periods.

The Scheme to Defraud

Overview and Purpose of the Scheme

17. From in or around at least February 2020, through in or around at least March 2020, **PASSOS** devised a scheme and artifice to: (a) defraud IRB's shareholders, analysts, and the investing public; and (b) falsify IRB's records to make it appear that Berkshire Hathaway was an IRB shareholder.

18. The purpose of the scheme was for **PASSOS** to: (a) mislead shareholders, analysts, and the investing public about IRB's financial strength; and (b) unjustly enrich himself through the receipt of compensation and other benefits.

Description of the Scheme

*PASSOS Began False Rumors that Berkshire Hathaway
Was a Shareholder in IRB*

19. On or about February 2, 2020, a Brazilian investment company published a report critical of IRB and announcing that it had taken a short position against IRB's stock. Among other things, the report questioned the accuracy of certain financial statements reported by IRB while PASSOS served as CFO. After the announcement, IRB's stock price declined significantly.

20. After IRB's stock declined, PASSOS developed a scheme to mislead shareholders and the investing public into believing the materially false information that Berkshire Hathaway had invested in IRB. PASSOS did so by, among other things, (a) causing various press outlets to falsely report that Berkshire Hathaway was an IRB shareholder; (b) creating fraudulent documents purporting to show Berkshire Hathaway's position as a shareholder; and (c) making and causing others to make false statements to investors and analysts implying that Berkshire Hathaway was an IRB shareholder.

21. On or about February 21, 2020, PASSOS received an email from an IRB employee, Individual 3, containing a copy of a file that showed IRB's shareholder base as of approximately February 18, 2020. The list did not include Berkshire Hathaway or any related corporation as a shareholder.

22. On or about February 22, 2020, PASSOS sent another IRB employee, Individual 4, a text message stating falsely, in sum and substance, that Berkshire Hathaway had significantly increased its shares in IRB.

a. The same day, PASSOS wrote, in sum and substance, that "[t]his info is confidential, but if we could send to a journalist we trust in the economic area who would

publish without citing IRB as the source [that] would be excellent!” **PASSOS** added, “It would be ideal for it to come out Wednesday!” “Wednesday” coincided with **PASSOS**’s arrival in the United States to meet with IRB investors.

b. Later in the day, **PASSOS** sent Individual 4 a second screenshot of a purported shareholder base, which was different from the first one sent. **PASSOS** explained, in sum and substance, “[U]se this file to send to [a reporter], as in the previous one my name appears!”

23. On or about February 22, 2020, **PASSOS** sent a series of text messages to Individual 2 that said, in sum and substance, “I will spread this story that berk [i.e., Berkshire Hathaway] bought 28 MM of shares.” **PASSOS** added “then it becomes true.” Later, **PASSOS** texted Individual 2, “On Monday morning we plant it lightly with [another individual],” and that he would “get an old email with [Berkshire Executive 2]” and would “build a story!”

24. On or about February 22, 2020, **PASSOS** sent Individual 2 a screenshot of a purported email between Individual 1 (IRB’s CEO) and Berkshire Executive 2. In fact, no such email exchange ever occurred, and **PASSOS** had fabricated the email exchange.

a. In the screenshot sent by **PASSOS**, Individual 1 purportedly wrote to Berkshire Executive 2 on February 20, 2020:

Dear [Berkshire Executive 2], I hope this email finds you well. Fernando and I are very happy to have you on board again in our shareholders structure. We have some news about our company wich we could like to share with you, that we prefer to talk personally in New York nest wednesday.

In fact, no such email was ever sent from Individual 1 to Berkshire Executive 2.

b. In the screenshot sent by **PASSOS**, Berkshire Executive 2 purportedly responded on February 21, 2020 to Individual 1, “Good to hear from you. [Berkshire

employee] will call you on monday morning to understand better the earnings release. See you on wednesday.” In fact, no such email was ever sent from Berkshire Executive 2 to Individual 1.

25. On or about February 23, 2020, **PASSOS** sent an IRB director, Individual 5, a document showing IRB’s purported shareholder base. **PASSOS** falsified the shareholder list to show Berkshire Hathaway as an investor. In fact, Berkshire Hathaway was not a shareholder.

26. On or about February 23, 2020, **PASSOS** sent a text message to another IRB director, Individual 6, with a photograph of a computer screen that falsely purported to show Berkshire Hathaway as an IRB shareholder in or around February 2020. **PASSOS** also texted, “[I]n the midst of this confusion, positive news [...] Welcome, [Berkshire Executive 1]! Hugs and good rest.”

27. On or about February 23, 2020, **PASSOS** sent Individual 4 the screenshot (previously sent to Individual 1) of the fabricated exchange between Individual 1 (IRB’s CEO) and Berkshire Executive 2. **PASSOS** also wrote, in sum and substance, “[T]here is this email of us thanking them for coming back to our base...which is one more element.” **PASSOS** added, in sum and substance, it was “very important we articulate” that the article was to “to be released on Wednesday.”

28. On or about February 24, 2020, **PASSOS** met in London with employees from an international investment fund that owned shares of IRB. During the meeting, **PASSOS** falsely told the fund’s employees that Berkshire Hathaway had become an investor in IRB.

*PASSOS Caused the False Rumors About Berkshire Hathaway
To Be Published in Media Articles*

29. After **PASSOS** directed Individual 4 to plant a story that Berkshire Hathaway had purchased shares in IRB, Individual 4 worked with a Brazilian public-relations firm to contact

journalists about publishing such an article. Between approximately February 22, 2020 and February 26, 2020, **PASSOS** and Individual 4 communicated repeatedly about journalists who might be interested in publishing the article.

30. On or about February 26, 2020, **PASSOS** received a text message from Individual 4, who asked, in sum and substance, whether there was additional information about Berkshire Hathaway that could be given to the press. In response, **PASSOS** resent the purported exchange between Individual 1 (IRB's CEO) and Berkshire Executive 2 that **PASSOS** had fabricated.

31. On or about February 26, 2020, Individual 4 and **PASSOS** discussed what information to provide employees of a specific Brazilian news outlet (News Outlet 1) about Berkshire Hathaway's purported investment in IRB. During the exchange, **PASSOS** sent Individual 4 another screenshot of IRB's purported shareholder base, which falsely reported that Berkshire Hathaway was a shareholder in IRB.

32. On or about the afternoon of February 26, 2020, News Outlet 1 published an article that incorrectly reported that Berkshire Hathaway had invested significantly in IRB during February 2020. The article from News Outlet 1 was published through the internet and reached numerous IRB shareholders. On or about the same day, Individual 4 sent **PASSOS** the text of the article from News Outlet 1.

33. Following the publication of News Outlet 1's article, other U.S. and Brazilian media began to incorrectly report that Berkshire Hathaway had invested in IRB. Some investors who received the news reports, including U.S. investors, believed those rumors to be true and made investing decisions in IRB stock based in part on the incorrect belief that Berkshire Hathaway had become a shareholder in IRB. On or about February 27, 2020, IRB's stock price increased.

*PASSOS Caused the False Rumors About Berkshire Hathaway
To Be Communicated to Analysts Following IRB*

34. On or about March 2, 2020, **PASSOS** and Individual 1 participated in a telephonic conference call with certain analysts who were following IRB, including analysts based in the United States. The stated purpose of the call was to discuss the recent resignation of an IRB director.

35. Towards the end of the call, Individual 1 discussed Berkshire Hathaway's relationship to IRB. In sum and substance, and with **PASSOS** participating on the conference call, Individual 1 made false statements indicating that Berkshire Hathaway was an investor in IRB. **PASSOS** did not disclose the truth that Berkshire Hathaway was not in fact a shareholder in IRB. **PASSOS** also did not disclose that he had been responsible for causing the false media reports about Berkshire Hathaway's investment in IRB.

*PASSOS Concealed Prior Lies After Berkshire Hathaway
Publicly Denied It Was an IRB Shareholder*

36. On or about the evening of March 3, 2020, Berkshire Hathaway issued a press release clarifying that it was not a shareholder in IRB:

There have been recent stories in the Brazilian press that Berkshire Hathaway Inc. is a shareholder of IRB Brasil Re ("IRB"). Those stories are incorrect. Berkshire Hathaway Inc. is not currently a shareholder of IRB, it has never been a shareholder of IRB and it has no intention of becoming a shareholder IRB.

37. On or about March 3, 2020, Individual 2 sent **PASSOS** a screenshot of Berkshire Hathaway's press release concerning IRB. Approximately five minutes later, **PASSOS** responded, in sum and substance, "[D]amn [Individual 2]! we're fucked!" **PASSOS** then asked to speak to Individual 2. Approximately two hours later, Individual 2 sent **PASSOS** a text message saying, in sum and substance, "Boss, the thing is ugly." **PASSOS** responded, in sum

and substance, by instructing Individual 2 to state that a document listing Berkshire Hathaway as a shareholder came from a third-party custodian. In fact, **PASSOS** had altered the document to falsely include Berkshire Hathaway as a shareholder.

38. On or about March 4, 2020, **PASSOS** emailed Berkshire Executive 2, copying Individual 1, and falsely claimed that the press reports had been the result of a mistake.

I think there was a misunderstand between what part of brazilian press was saying and what we really said: We sad that you ware one of our retrocessories, taking a stake in the retrocession of IRB. Sorry, for the inconveniente!

Later on or about March 4, 2020, **PASSOS** and Individual 1 spoke with Berkshire Executive 2 by telephone. On the call, **PASSOS** concealed his role in generating the false rumors about Berkshire Hathaway's investment in IRB.

39. On or about March 4, 2020, **PASSOS** also made and caused to be made a series of false statements to IRB's directors designed to conceal that **PASSOS** had started the fictitious rumors about Berkshire Hathaway being an IRB shareholder.

a. On or about March 4, 2020, IRB's board of directors held a meeting to discuss Berkshire Hathaway's press release in which **PASSOS** and Individual 1 participated. During the meeting, **PASSOS** falsely stated that he had received incorrect information regarding Berkshire Hathaway Insurance Limited from a third party. In fact, **PASSOS** had deliberately and knowingly created false documents designed to mislead others into believing Berkshire Hathaway was an IRB shareholder.

b. On or about March 4, 2020, **PASSOS** sent Individual 6 (an IRB director), copying Individual 1, an email with the subject "IRB BASE." **PASSOS** attached an altered spreadsheet purporting to be a list of IRB shareholders as of February 18, 2020,

which falsely claimed that “Berkshire Hathaway International Insurance Limited” was an IRB shareholder.

c. On or about March 4, 2020, **PASSOS** emailed another IRB director, Individual 7, a copy of the altered spreadsheet that **PASSOS** had falsified to show Berkshire Hathaway International Insurance Limited was an IRB shareholder.

40. On or about March 4, 2020, **PASSOS** received an email from an IRB employee, containing a spreadsheet of IRB shareholders “directly from Banco do Brasil.” One specific row in the attached spreadsheet identified Investor 1 as a shareholder. Approximately 20 minutes after receiving the email from the IRB employee, **PASSOS** forwarded the IRB employee’s email to an employee of a large Brazilian investor. Prior to forwarding the email, however, **PASSOS** altered the spreadsheet to change the name of Investor 1 to “Berkshire Hathaway Insurance Limited.”

Shareholder Loss and PASSOS’s Resignation

41. Over the 24 hours following Berkshire Hathaway’s public announcement that it had never been, and had no intention of becoming, an IRB shareholder, IRB’s stock price fell, causing substantial shareholder losses.

42. On or about March 4, 2020, **PASSOS** sent Individual 2 a series of text messages that said, in sum and substance, “I think I’m going to have to resign [Individual 2]! I have an important point to align with you. . . . Very important.” Later in the day, **PASSOS** again sent Individual 2 a series of text messages that said, in sum and substance, “[Individual 2], what’s up? Are you better? Me and [Individual 1] resolved to resign. There are two things I want to talk with you to avoid problems with you!” **PASSOS** then tried to call Individual 2, who did not answer.

43. On or about March 4, 2020, **PASSOS** resigned from his position at IRB.

COUNT 1
Securities Fraud
(15 U.S.C. §§ 78j(b) & 78ff; 17 C.F.R. § 240.10b-5)

44. Paragraphs 1 through 43 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

45. From in or around February 2020 and continuing to in or around March 2020, in the Southern District of Iowa and elsewhere, defendant

FERNANDO PASSOS

did willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, in connection with the purchase and sale of securities, use and employ manipulative and deceptive devices and contrivances in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and 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 that operated and would operate as a fraud and deceit upon purchasers of IRB's stock, to wit, **PASSOS** made and caused to be made false and misleading representations to the investing public about the purchase of IRB stock by Berkshire Hathaway.

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

COUNTS 2 THROUGH 4

**Wire Fraud
(18 U.S.C. § 1343)**

46. Paragraphs 1 through 43 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

47. From at least in or around February 2020 through at least in or around March 2020, in the Southern District of Iowa and elsewhere, defendant

FERNANDO PASSOS

and others known and unknown to the Grand Jury, on or about the dates specified as to each count below, did knowingly and with the intent to defraud, having devised and intending to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, transmit and cause to be transmitted, by means of wire communications in interstate commerce, writings, signals, pictures, and sounds, for the purpose of executing such scheme and artifice.

Purpose

48. The Grand Jury realleges and incorporates by reference paragraphs 17 and 18 of this Superseding Indictment as a description of the purpose of the scheme and artifice.

Manner and Means

49. The Grand Jury realleges and incorporates by reference paragraphs 19 through 43 of this Superseding Indictment as a description of the manner and means of the scheme and artifice.

Use of the Wires

50. On or about the dates specified as to each count below, defendant **FERNANDO PASSOS**, in the Southern District of Iowa and elsewhere, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly transmit and

cause to be transmitted, by means of wire, radio, and television communication, writings, signals, pictures, and sounds in interstate and foreign commerce for the purposes of executing such scheme and artifice, as set forth below:

Count	Approximate Date	Description of Interstate Wires
2	February 26, 2020	News article by News Outlet 1 published within the Southern District of Iowa via interstate wire (the internet) containing false statements, caused by PASSOS , that Berkshire Hathaway was an investor in IRB.
3	February 27, 2020	Purchase of approximately 829,600 shares of IRB stock by Investor 2, located in the Southern District of Iowa, via interstate wire, and in response to the false reports caused by PASSOS that Berkshire Hathaway was an investor in IRB.
4	February 28, 2020	Purchase of approximately 382,600 shares of IRB stock by Investor 2, located in the Southern District of Iowa, via interstate wire, and in response to the false reports caused by PASSOS that Berkshire Hathaway was an investor in IRB.

Each count of which is a separate violation of Title 18, United States Code, Section 1343.

FORFEITURE ALLEGATION

51. As the result of committing the offenses of wire fraud and securities fraud, in violation of Title 18, United States Code, Section 1343; Title 15, United States Code, Sections 78j(b) and 78ff; and Title 17, Code of Federal Regulations, Section 240.10b-5; and, as alleged in Counts One through Four of this Superseding Indictment, defendant **FERNANDO PASSOS** shall forfeit to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 1956(c)(7), and 1961(1), 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 offenses alleged in Counts One through Four of this Superseding Indictment.

Substitute-Asset Provision

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

- 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;
- 5) or has been commingled with other property which cannot be subdivided without difficulty;


it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

A TRUE BILL:

Foreperson

JOSEPH S. BEEMSTERBOER
Acting Chief, Fraud Section
Criminal Division, U.S. Department of Justice

By:


Kate T. McCarthy
Fraud Section, Criminal Division
U.S. Department of Justice