

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

DENNIS WAYNE HAMILTON,

Defendant.

Civil Action No. 3:16-cv-00192-AWT

Jury Trial Demanded

AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission (“the Commission”) alleges:

SUMMARY OF THE ACTION

1. Dennis Wayne Hamilton violated the federal securities laws by using inside information to trade in the securities of his former employer, Harman International Industries, Inc. (“Harman”), a Connecticut-based publicly traded company.
2. As Harman’s vice president of tax, Hamilton had regular and routine access to Harman’s confidential nonpublic financial information, including Harman’s quarterly earnings and other important corporate information, prior to its public announcement.
3. Hamilton repeatedly traded in Harman securities on the basis of this material, nonpublic information regarding Harman that he acquired in the course of his employment. Through this unlawful trading Hamilton reaped more than \$1.1 million in profits.
4. Defendant Hamilton knowingly or recklessly engaged in the conduct described in this Amended Complaint, violating Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Unless enjoined, he

will continue to violate the securities laws.

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Sections 20(b) and 20(e) of the Securities Act [15 U.S.C. §§ 77t(b), (e)] and Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u-1] to enjoin such acts, practices, and courses of business, and to obtain disgorgement, prejudgment interest, civil money penalties, and such other and further relief as the Court may deem just and appropriate.

6. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

7. Venue in this District is proper pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the acts, practices, and courses of business constituting the violations alleged herein occurred within the District of Connecticut. Defendant Hamilton also resides within the District of Connecticut.

COMMONLY USED TRADING TERMS

8. A stock option, commonly referred to as an “option,” gives its purchaser-holder the option to buy or sell shares of an underlying stock at a specified price (the “strike” price) at a later date. Options are generally sold in “contracts,” which give the option holder the opportunity to buy or sell 100 shares of an underlying stock.

9. A “call” option gives the purchaser-holder of the option the right, but not the obligation, to purchase a security at the specified strike price within a specific time period. Generally, the buyer of a call option anticipates that the price of the underlying security will increase during a specified amount of time, and the seller of a call option anticipates that the

price of the underlying security will decrease during a specified amount of time.

DEFENDANT

10. Dennis Wayne Hamilton, age 46, resides in Norwalk, Connecticut. Hamilton holds an undergraduate degree in accounting and a master's degree in taxation. He was licensed as a Certified Public Accountant in Colorado.

RELEVANT ENTITY

11. Harman is headquartered in Stamford, Connecticut, and designs, manufactures, and markets high fidelity audio products and electronic systems for the infotainment, automotive audio, home audio, and professional markets.

12. Harman's stock is listed on the New York Stock Exchange (HAR).

FACTS

13. Hamilton worked for Harman for approximately seven years, from 2009 to 2016, serving as Harman's vice president of tax throughout this period. As a result of his position with Harman, Hamilton was entrusted with access to Harman's confidential financial information and had a duty not to disclose this information or use it to benefit himself.

14. Throughout his tenure as Harman's vice president of tax, Hamilton reported directly to Harman's chief financial officer and was integrally involved in the preparation of Harman's earnings announcements.

15. He was among the first employees to view Harman's quarterly and annual earnings and was responsible for preparing the chief executive officer and CFO for conference calls with investors after Harman periodically released its earnings.

16. Hamilton also regularly attended meetings of Harman's audit committee that were held after the close of each fiscal quarter. At these meetings, the audit committee received drafts

of Harman's not-yet-announced earnings releases and other nonpublic information.

17. Hamilton purchased Harman securities before at least five earnings and other announcements on the basis of material, nonpublic information he learned in the course of his employment.

A. Harman Expressly Prohibited Insider Trading

18. Harman had a written insider trading policy that it distributed to Harman employees, including Hamilton.

19. Hamilton knew that the policy prohibited any employee from trading in Harman securities while in possession of material nonpublic information. The policy defined material nonpublic information to include, among other items, unpublished financial results and projections and earnings estimates.

20. The policy required that Harman insiders like Hamilton request and receive pre-clearance from Harman's general counsel prior to any trading in Harman securities.

21. The policy also restricted certain directors, officers, and other employees, including Hamilton, from trading during defined periods of time preceding and following the announcement of Harman's quarterly and annual earnings ("blackout periods").

22. The policy prohibited all employees from short-selling Harman securities and from all trading in Harman options contracts, including call options contracts.

23. Harman also distributed to its employees a code of conduct, which contained an insider trading section that reiterated that employees were prohibited from trading when in possession of material, nonpublic information.

24. On his first day of employment, Hamilton signed an acknowledgement that he had received, reviewed, and understood Harman's code of conduct.

25. Harman regularly reminded its employees, including Hamilton, of Harman's policy prohibiting insider trading, and sent periodic emails announcing the opening and closing of trading windows, repeating the requirement that trading in Harman securities must be pre-cleared by the general counsel, and reiterating that employees were prohibited from trading while in possession of material, nonpublic information.

B. Hamilton's Illegal Trading

26. On multiple occasions, as a result of his position with Harman, Hamilton obtained material nonpublic information about Harman and used this information to trade Harman securities.

i. Hamilton Traded In Advance Of The Announcement Of Harman's 2012 Q1 Earnings, Quarterly Cash Dividend, Stock Buy-Back Program, And Upward Revision Of FY 2013 Sales Guidance

27. On September 20, 2011, ten days prior to the close of Harman's first quarter of fiscal year 2012, Hamilton purchased 50 Harman November 2011 call options contracts, with a strike price of \$32.50, for approximately \$18,000. On September 20, 2011, Harman's share price closed at \$33.19.

28. Hamilton did not seek written pre-clearance for these trades from Harman's general counsel, and his purchase of Harman call options violated Harman's trading policy.

29. On October 21, 2011, Harman announced its quarterly earnings, stating that net sales had increased 26% compared to the same three-month period the previous year, and a quarterly cash dividend. As a result of this disclosure, Harman's stock price increased by approximately 20.5% over the previous day's closing price.

30. On October 26, 2011, Harman announced that it had authorized a \$200 million stock buy-back program and raised its fiscal year 2013 sales guidance. As a result of this

disclosure, Harman's stock price increased by approximately 5.2% over the previous day's closing price, closing at \$43.23.

31. The next day, October 27, 2011, Hamilton exercised his 50 Harman call contracts, purchasing 5,000 Harman shares at the strike price, \$32.50 per share. Hamilton then sold the 5,000 shares at market price, making \$39,431.02 in profits.

ii. **Hamilton Traded In Advance Of The Announcement Of Harman's 2014 Q1 Earnings And Quarterly Cash Dividend**

32. On October 18, 2013, Hamilton received a draft of Harman's Form 10-Q for the first quarter of fiscal year 2014, ended September 30, 2013, for his review and comment.

33. The draft 10-Q showed that, for the three-month period ended September 30, 2013, Harman's net sales were \$1,171,805,000, 17% higher than net sales for the same three-month period the previous year.

34. The draft 10-Q also reflected an increase in net sales, compared to the same three-month period the previous year, in each of Harman's three business segments: Infotainment (14.1% increase), Lifestyle (14.7% increase), and Professional (37.4% increase).

35. On October 24, 2013, Hamilton received a draft earnings release announcing earnings for the three-month period ending September 30, 2013. Hamilton was invited to discuss this draft earnings release on a conference call that morning with other Harman employees. The draft earnings release announced that for that period net sales were "up 17% to 1.172 billion," and that Harman's CEO was "pleased that all three of [Harman's] divisions reported double-digit top line growth in the quarter."

36. The following Monday, October 28, 2013, at 2:00 p.m., Hamilton participated in a teleconference meeting of Harman's audit committee. The purpose of the meeting was to review the draft earnings press release and draft 10-Q.

37. Two days later, on Wednesday, October 30, 2013, during a period where Harman employees were prohibited from trading Harman stock, Hamilton spent over \$1.2 million purchasing 17,000 shares of Harman stock in a brokerage account he shared with his wife.

38. Hamilton did not seek written pre-clearance for these trades from Harman's general counsel.

39. Harman's share price closed at \$72.02 on October 30.

40. The next day, on October 31, 2013, at 8:00 a.m., Harman announced its financial results for the three-month period ending September 30, 2013, and quarterly cash dividend. After this announcement, Harman's share price jumped to \$81.02 at the close of October 31, 2013, representing an increase of more than 12% over the closing price the previous day.

41. Through a series of trades that day Hamilton liquidated his Harman position, realizing a one-day profit of \$131,958.62.

iii. Hamilton Traded In Advance Of The Announcement Of Harman's 2012 Q1 Earnings And Quarterly Cash Dividend

42. Beginning in November 2013 and continuing into a blackout period, with the last purchase on January 3, 2014, Hamilton purchased a total of 18,200 Harman shares, 100 Harman April 2014 call options contracts, and over \$150,000 worth of shares of the Harman stock fund, a 401(k) investment vehicle which was comprised of Harman securities and available to Harman employees, costing a total of approximately \$1.6 million. The call options contracts Hamilton purchased had a strike price of \$82.50. At the time Hamilton purchased these call options contracts, Harman stock was trading at approximately \$80.20 per share.

43. Hamilton did not seek written pre-clearance for these trades from Harman's general counsel, and his purchase of Harman call options violated Harman's trading policy.

44. On January 30, 2014, Harman announced that its quarterly net sales for its second quarter of fiscal year 2014, ending December 31, 2013, had increased by 26% over the same period the previous year, and announced a quarterly cash dividend. As a result of this announcement, Harman's stock price increased by approximately 17.3% over the previous day's closing price.

45. After the announcement, Hamilton closed these positions, realizing profits of approximately \$629,706.56.

iv. **Hamilton Traded In Advance Of The Announcement Of Harman's 2015 Q1 Earnings, Stock Buy-Back Program, And Quarterly Cash Dividend**

46. On October 14, 2014, a date that fell within a blackout period, Hamilton purchased 80 Harman November 2014 call options contracts, with a strike price of \$90.00, paying approximately \$26,000. On October 14, 2014, Harman's stock closed at \$89.01 per share.

47. Hamilton did not seek written pre-clearance for these trades from Harman's general counsel, and his purchase of Harman call options contracts violated Harman's trading policy.

48. On October 30, 2014, Harman announced its first quarter earnings for fiscal year 2015, ended September 30, 2014, stating that net sales had increased 22% over the same three-month period the previous year. On the same date, Harman announced a stock buy-back program and quarterly cash dividend. As a result, Harman's stock price increased by approximately 7.5% over the previous day's closing price, closing at \$107.87.

49. On November 6, 2014, Hamilton sold the 80 Harman call contracts he had purchased on October 14, realizing a profit of \$113,696.35.

v. **Hamilton Traded In Advance Of Harman's Downward Revision of FY 2015 Earnings Per Share Guidance**

50. On four dates in March 2015, Hamilton sold a total of 300 Harman July and October 2015 call options contracts with strike prices of \$140.00, \$150.00, and \$155.00, referencing 30,000 Harman shares, for a total of \$194,229.34. During this period, Harman shares traded at approximately \$134 to \$142 per share. By selling these call options contracts, Hamilton generally would profit if Harman stock did not increase in value. Conversely, if the stock increased in value, Hamilton could have been obligated to purchase 30,000 shares at market price, however high.

51. Hamilton did not seek written pre-clearance for these trades from Harman's general counsel, and his sale of Harman call options violated Harman's trading policy.

52. On April 30, 2015, along with its announcement of results for the third quarter of fiscal year 2015, ending March 31, 2015, Harman revised downward its fiscal year 2015 guidance, reducing its earnings per share forecast from \$5.85 to \$5.65. As a result of this announcement, Harman's stock price decreased by approximately 7% from the previous day's closing price.

53. Because Harman's stock price declined, all of the call options Hamilton sold expired without being exercised and Hamilton realized profits of \$194,229.34.

C. **Hamilton's Termination, Arrest, and Guilty Plea**

54. Harman terminated Hamilton's employment on February 5, 2016.

55. On the same day, Hamilton was arrested and charged criminally with insider trading, in violation of 15 U.S.C. §§ 78j, 78ff and 17 C.F.R. § 240.10b-5, and 17 C.F.R. § 240.10b-5-1.

56. On March 28, 2016, Hamilton pled guilty to one count of securities fraud, in

violation of 15 U.S.C. §§ 78j, 78ff and 17 C.F.R. § 240.10b-5, and 17 C.F.R. § 240.10b-5-1, based on his trading of Harman securities in October 2013.

D. Hamilton Violated The Federal Securities Laws

57. As an officer of Harman, Hamilton owed a fiduciary duty to Harman's shareholders and was obligated not to misuse Harman's material, nonpublic information for his own benefit.

58. Hamilton knew or recklessly disregarded that he owed a duty of trust and confidence to Harman to keep its information confidential and to refrain from trading on it.

59. Harman treated its information, particularly its earnings data, as confidential, and established policies and procedures designed to protect such information and to prohibit its employees from trading on such information.

60. In breach of a duty of trust or confidence, with respect to each of the trades described herein, Hamilton used material, nonpublic information he acquired from Harman relating to Harman's earnings and other material, nonpublic corporate information to trade in Harman securities on the basis of that information.

61. Hamilton knew or was reckless in not knowing that the information he acquired relating to Harman's earnings and other important corporate information was nonpublic and material. Moreover, a reasonable investor would have viewed this information as being important to his investment decision and/or significantly altering the total mix of information available to the public.

62. Members of the investing public who traded Harman securities at the same time as Hamilton's trades were harmed by Hamilton's conduct because he unlawfully gained an advantage through his use of inside information.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act

63. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 62, inclusive, as if they were fully set forth herein.

64. By engaging in the conduct described above, Defendant Hamilton, knowingly or recklessly, in connection with the offer or sale of securities, directly or indirectly, by the use of means or instrumentalities of transportation, or communication in interstate commerce or by use of the mails:

- (a) employed devices, schemes, or artifices to defraud;
- (b) obtained money or property by means of untrue statements of material fact, or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

65. By engaging in the foregoing conduct, Defendant Hamilton violated and, unless enjoined, will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

66. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 62, inclusive, as if they were fully set forth herein.

67. By engaging in the conduct described above, Defendant Hamilton, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by the use

of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

(a) employed devices, schemes, or artifices to defraud;

(b) made untrue statements of material fact or omitted 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/or

(c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

68. By engaging in the foregoing conduct, Defendant Hamilton violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining Defendant Hamilton from, directly or indirectly, violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

II.

Ordering Defendant Hamilton to disgorge the unlawful trading profits derived from the activities set forth in this Complaint, together with prejudgment interest;

III.

Ordering Defendant Hamilton to pay civil penalties up to three times the profits made pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

IV.

Pursuant to Sections 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], prohibiting Defendant Hamilton from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

V.

Granting such other and further relief as this Court may determine to be just and necessary.

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

By its attorneys,

/s/ David L. Axelrod

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Dated: August 30, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2016, I caused a true and correct copy of the foregoing Amended Complaint to be served upon the following and in the manner set forth below:

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