

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 84304 / September 27, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18847**

**In the Matter of**

**THOMAS EARL HAYDEN, II;**  
**THOMAS EARL HAYDEN, SR.;**  
**and JOHN RYAN MCDANIEL,**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Thomas Earl Hayden, II, Thomas Earl Hayden, Sr., and John Ryan McDaniel.

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds<sup>1</sup> that:

#### **Summary**

1. These proceedings concern insider trading and tipping by Thomas Earl Hayden, II ("Hayden"), a Monster Beverage Corporation ("Monster") employee, in advance of an August 2014 announcement regarding Monster's partnership with the Coca-Cola Company ("Coke"). In the course of his employment, Hayden became aware of material, non-public information that a deal between Monster and Coke was imminent. Two days before the announcement, Hayden bought 4,250 shares of Monster common stock based on this information and tipped his father Earl Hayden, Sr. ("Hayden Sr."), who bought Monster stock, and family friend John Ryan McDaniel ("McDaniel"), who bought Monster stock and options. On August 14, 2014, after the close of the market, Monster and Coke publicly announced the strategic partnership, and the next day, Monster's stock price closed up 30 percent and the trading volume increased 101 percent. Respondents Hayden, Hayden Sr., and McDaniel's (collectively, "Respondents") trading resulted in profits totaling \$197,814.02.

#### **Respondents**

2. Hayden resides in Owensboro, Kentucky and works for Monster as a road racing manager in the company's marketing department.

3. Hayden Sr. resides in Owensboro, Kentucky and owns and operates an auto dealership.

4. McDaniel resides in Owensboro, Kentucky and owns and operates a pawn shop.

#### **Relevant Entity**

5. Monster is a beverage company headquartered in Corona, California focused on developing and marketing energy drinks. Monster's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on NASDAQ under the symbol "MNST."

#### **Facts**

6. Hayden is a former professional motorcycle racer. In October 2013, following his retirement from professional motorcycle racing, Hayden became a Monster employee responsible for managing the company's promotional efforts related to professional motorcycle racing.

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

7. Upon becoming a Monster employee, Hayden signed Monster's insider trading policy, which applied to, among others, Monsters' directors, officers, and employees, and their family members. Monster's insider trading policy expressly stated "***No employee, officer or director of the Company may place a purchase or sale order, or recommend that another person place a purchase or sale order in the Company's securities, when he or she has knowledge of any material nonpublic information concerning the Company.***" (emphasis in original). The policy also prohibited an employee's tipping or disclosing material non-public information to outsiders. The policy defined material information to include "[p]otential mergers and acquisitions or the sale of Company assets or subsidiaries" and "new major contracts . . . collaborations . . . or finance sources."

8. In the months before the August 2014 announcement of the Monster-Coke deal, Monster took steps to limit the circle of employees with access to information about its negotiations with Coke, including assigning code names to Coke and to the proposed partnership.

9. The deal was announced on August 14, 2014, after the close of the market, when Monster and Coke announced the strategic partnership, whereby Coke agreed to purchase a 16.7 percent equity stake in Monster and to make Monster its exclusive energy drink provider.

10. Before that announcement, in early August 2014, Hayden learned in the course of his employment at Monster that a Monster-Coke deal was imminent. This information was not public. Hayden, in breach of a duty of trust and confidence owed to Monster and its shareholders and in violation of Monster's insider trading policy, purchased 4,250 shares of Monster stock on August 12 on the basis of this information. Hayden had never invested in an individual stock before; as of the trading, he held only mutual funds selected by his investment adviser in this investment account. Hayden's purchase of Monster shares totaled \$299,965. As a result of his purchase, Hayden generated unrealized profits totaling \$97,367.01.

11. Hayden shared information about the Monster-Coke deal with his father, Hayden Sr., who traded on the basis of that information on August 13. Hayden and Hayden Sr. are part of a tight-knit family, and also share a history of connections through their involvement in professional motorcycle racing.

12. Between August 5 and before Hayden Sr.'s trades on August 13, Hayden and Hayden Sr. interacted at least once in person while at a motorcycle race in Indiana and spoke over the telephone four times. Hayden Sr.'s purchase of 1,000 shares of Monster stock occurred approximately 90 minutes after a call with Hayden. At the time of the purchase, Hayden Sr. only held two individual stocks in his portfolio, both valued at less than \$10,000. To fund the Monster purchase, which totaled \$71,223.59, Hayden Sr. drew down on a line of credit. As a result of his purchase, Hayden Sr. generated unrealized profits totaling \$22,266.31.

13. Hayden shared information about the Monster-Coke deal with McDaniel, who purchased 1,000 shares of Monster stock and 4,001 out-of-the-money Monster call options<sup>2</sup> on the basis of that information between August 12 and August 14. McDaniel has numerous connections to Hayden and Hayden's family, including partnering with Hayden to make loans to small businesses, and co-founding the auto dealership with Hayden Sr.

14. Hayden and McDaniel had multiple interactions during this time frame. On August 11, McDaniel logged into his online brokerage account for the first time in six weeks after meeting with Hayden regarding a loan the two were making to a small business. On August 12, Hayden and McDaniel exchanged calls and Hayden indicated that he was going to trade that day (which Hayden did 30 minutes later). At the time of his purchases, McDaniel lacked sufficient funds in his brokerage account, so he arranged for a relative and a business partner to make the purchases, which totaled \$88,109. As a result of his purchases, McDaniel generated realized profits totaling \$78,180.70.

15. The Commission finds that Respondents' conduct described above violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Hayden shall, within 14 days, pay disgorgement of \$97,367.01 and prejudgment interest of \$14,090.70 and a civil money penalty of \$197,814.02 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

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<sup>2</sup> A call option gives the holder the right, but not the obligation, to purchase the stock at a specified strike price within a specific time period. Generally, the buyer of a call option anticipates the stock price will increase during the specific time period. A call option is considered to be "out-of-the-money" if the call option's strike price is above the price at which the stock is then trading.

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH/transfer Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Hayden as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Associate Regional Director John W. Berry, Division of Enforcement, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

C. Respondent Hayden Sr. shall, within 14 days, pay disgorgement of \$22,266.31 and prejudgment interest of \$3,222.26 and a civil money penalty of \$22,266.31 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways described in Section IV.B. Payments by check or money order must be accompanied by a cover letter identifying Hayden Sr. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Associate Regional Director John W. Berry, Division of Enforcement, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

D. Respondent McDaniel shall, within 14 days, pay disgorgement of \$78,180.70 and prejudgment interest of \$11,314.01 and a civil money penalty of \$78,180.70 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways described in Section IV.B. Payments by check or money order must be accompanied by a cover letter identifying McDaniel as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Associate Regional Director John W. Berry,

Division of Enforcement, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary