



British Columbia Securities Commission

Citation: 2013 BCSECCOM 6

Headnote

A control person wants relief to rely on s. 2.8 in connection with a foreign automatic share trading plan - Control Person is a resident of British Columbia; vast majority of Issuer shares trade on a market outside Canada; Control Person has arranged a foreign automatic share trading plan which provides meaningful restrictions on the ability of the Control Person to vary or suspend the plan that have the effect of ensuring that the Control Person cannot profit from material undisclosed information; Control Person cannot rely on 2.8 because it requires notices to be re-filed every 30 days

January 9, 2013

Exemption Order

Dennis James Wilson and lululemon athletica inc.

Section 3.1 of National Instrument 45-102 *Resale of Securities*

Background

- ¶ 1 Dennis James Wilson (the Filer) applied under section 3.1 of National Instrument 45-102 Resale of Securities (NI 45-102) for an exemption from the application of subsection 2.8(5) of NI 45-102 in connection with the sale of Plan Shares (as defined below) of lululemon athletica inc. (the Company).

Representations

- ¶ 2 The Filer represents that:
1. the Filer is a resident of British Columbia and is founder and Chairman of the Board of Directors of the Company;
 2. the Company is a reporting issuer in all Provinces and Territories of Canada;
 3. the head office of the Company is in Vancouver, British Columbia;
 4. the Filer beneficially owns an aggregate of 10,330,999 shares of the Company's outstanding common stock and 31,954,216 exchangeable shares (the Wilson Exchangeable Shares) of Lulu Canadian Holding, Inc., a subsidiary of the Company, each of which is exchangeable into one share of the Company's common stock (together, the Wilson Shares); the Wilson Shares represent an aggregate of approximately 29.4% of the Company's outstanding shares of common stock; as a result, the Filer is a "control person" of the Company within the meaning of the *Securities Act* (British Columbia) (the Act);

5. the Company is a Delaware corporation and a designer and retailer of technical athletic apparel; the Company's shares of common stock are listed on the Nasdaq Global Select Market (NASDAQ) and Toronto Stock Exchange; the Company has approximately 143,900,000 shares of common stock outstanding (including shares issuable upon exchange of exchangeable shares of Lulu Canadian Holding, Inc.); over 90% of the trading activity in the Company's common stock occurs on NASDAQ;
6. the Filer has established a written pre-arranged automatic share trading plan (the 10b5-1 Plan) in order to allow for the orderly sale of up to 5,700,000 shares in the Company's common stock (the Plan Shares) over time; the Plan Shares sold will all be shares of common stock issuable upon exchange of Wilson Exchangeable Shares; the Filer entered into the 10b5-1 Plan in good faith and not as part of a plan or scheme to evade insider trading prohibitions and was not in possession of material undisclosed information about the Company at the time of entering into the 10b5-1 Plan;
7. Rule 10b5-1 of the United States *Securities Exchange Act of 1934* (the Exchange Act) permits insiders to implement written, pre-arranged share trading plans when they are not in possession of material non-public information; these plans establish predetermined trading parameters that do not permit the person adopting the plan to exercise any subsequent influence over how, when, or whether to effect trades;
8. the 10b5-1 Plan is fully compliant with Rule 10b5-1 of the Exchange Act, the Securities and Exchange Commission (SEC) regulations and the Company's insider trading policies; the 10b5-1 Plan has been approved by the Company's Chief Compliance Officer; in accordance with its terms, all Plan Shares sold pursuant to the 10b5-1 Plan must be sold on NASDAQ;
9. the 10b5-1 Plan contains meaningful restrictions on the ability of the Filer to vary, suspend or terminate the 10b5-1 Plan that have the effect of ensuring that the Filer cannot profit from material undisclosed information through a decision to vary, suspend or terminate the 10b5-1 Plan;
10. Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch), as broker dealer, will execute the 10b5-1 Plan out of its offices in New York; pursuant to the terms of the 10b5-1 Plan, Merrill Lynch is given discretion to make trades on the Filer's behalf without further input based on certain parameters set forth in the 10b5-1 Plan; the 10b5-1 Plan provides that the Filer cannot disclose to Merrill Lynch any information concerning the Company that might influence the execution of the 10b5-1 Plan;
11. the Plan Shares will be sold in the United States pursuant to a Form S-3 shelf registration statement filed with the SEC; the Form S-3 contains prospectus level

disclosure on the Company and transactions under the 10b5-1 Plan will be disclosed publicly through required filings with the SEC; the Filer intends to rely on section 4.12 of National Instrument 71-102 - *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* in respect of any insider reporting requirements in Canada;

12. the sale of the Plan Shares will be considered a “distribution” under the Act and the Filer proposes to rely on the prospectus exemption contained in section 2.8 of NI 45-102; and
13. absent exemptive relief from the application of section 2.8(5) of NI 45-102, the Filer would have to implement a 7 day trading ban after the expiry of each 45-102F1 notice filed during the life of the 10b5-1 Plan; this would prevent the 10b5-1 Plan from operating as intended under the Exchange Act.

Order

¶ 3 Because it would not be prejudicial to the public interest, the Executive Director orders under section 3.1 of NI 45-102 that the Filer is exempt from subsection 2.8(5) of NI 45-102 for sales of the Plan Shares under the 10b5-1 Plan, provided that:

- (a) the Filer otherwise complies with NI 45-102;
- (b) the sale of the Plan Shares is made through a market or exchange outside of Canada; and
- (c) the 10b5-1 Plan has not been terminated at the time of the distribution.

Peter Brady
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British Columbia Securities Commission