

Headnote

Resale relief

A control person wants relief to rely on s. 2.8 of NI 45-102 in connection with a foreign automatic share trading plan - The control person is a resident of British Columbia; majority of the issuer shares trade on a market outside Canada; the 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; the control person cannot rely on s. 2.8 of NI 45-102

Revocation or variation of a previous order

An issuer wants to vary or repeal and replace a previous decision it received to revise the representations or conditions to the relief granted - The applicant previously obtained relief from certain requirements in securities legislation; the policy reasons for granting that relief have not changed; the original relief is not adequate for the applicant's needs because it does not grant relief from certain additional requirements which would allow the original relief to operate more easily; relief from these requirements does not change the policy reasons for originally granting relief; alternative representations and conditions can be structured that address the additional relief

Applicable British Columbia Provisions

National Instrument 45-102 *Resale of Securities*, ss 2.8(5), 3.1

Securities Act, R.S.B.C. 1996, c.418, s. 171 – Revoke or vary a decision

July 31, 2013

Exemptive Order

Dennis James Wilson and lululemon athletica inc.

National Instrument 45-102 s. 3.1 – *Resale of Securities*

Background

¶ 1 Dennis James Wilson (the Filer) applied for a decision:

- (a) under section 171 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the Act) revoking the previous order 2013 BCSECCOM 6 (Previous Order) granted to the Filer on January 9, 2013 (Revocation Order); and
- (b) under section 3.1 of National Instrument 45-102 *Resale of Securities* (NI 45-102) exempting the Filer from subsection 2.8(5) of NI 45-102 and the requirement to include the certification contained in paragraph (1) of the certificate (Certificate) to Form 45-102F1 *Notice of Intention to Distribute*

Securities Under Section 2.8 of NI 45-102 Resale of Securities (45-102F1) in connection with the sale of Plan Shares (as defined below) of lululemon athletica inc. (the Company) (the Filing Relief)

(the Revocation Order together with the Filing Relief, the “Requested Relief”).

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 jurisdictions of Canada;
3. the head office of the Company is located in Vancouver, British Columbia;
4. as of July 26, 2013, the Filer beneficially owns 1,711 shares of restricted stock, each of which is exercisable into one share of the Company’s outstanding common stock upon vesting, an aggregate of 10,330,999 shares of the Company’s outstanding common stock and 29,640,716 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 (collectively, the Wilson Shares); the Wilson Shares represent an aggregate of approximately 27.6% of the Company’s outstanding shares of common stock; as a result, the Filer is a control person of the Company under 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); the Company has approximately 144,996,500 shares of common stock outstanding (including shares issuable upon exchange of exchangeable shares of Lulu Canadian Holding, Inc.); all of the trading activity in the Company’s common stock occurs on NASDAQ;
6. 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;
7. the Filer established a written pre-arranged automatic share trading plan on December 12, 2012 (the 10b5-1 Plan) to allow for the orderly sale of his shares in the Company’s common stock (the Plan Shares) over time;
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; 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;
10. Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch), as broker dealer, executes the 10b5-1 Plan out of its offices in New York; under 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 in the 10b5-1 Plan; the 10b5-1 Plan provides that the Filer must not disclose to Merrill Lynch any information concerning the Company that might influence the execution of the 10b5-1 Plan; the disclosure of any such information to Merrill Lynch would be in violation of the 10b5-1 Plan and would cause the 10b5-1 Plan to terminate in accordance with its terms; the Filer is not in default of the terms 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 will contain 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. as of July 26, 2013, 2,300,000 Plan Shares have been sold and a further 3,400,000 Plan Shares could be sold until June 30, 2014; the Plan Shares sold are all shares of common stock issuable upon exchange of Wilson Exchangeable Shares;
13. the 10b5-1 Plan is a "similar written automatic plan" referred to in section 57.4(3) of the Act;
14. the Filer is not in default of any (i) prohibitions against insider trading or (ii) insider reporting requirements under applicable securities laws with respect to the Wilson Shares;
15. the sale of the Plan Shares is 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;
16. the Previous Order granted the Filer an exemption from subsection 2.8(5) of NI 45-102 in relation to the 10b5-1 Plan; however, through inadvertence, the Filer did not

previously seek an exemption from the requirement to include the certification contained in paragraph (1) of the Certificate to Form 45-102F1;

17. absent exemptive relief from the application of section 2.8(5) of NI 45-102, the Filer would have to implement a seven 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; and
18. absent exemptive relief from the certification requirements contained in paragraph (1) of the Certificate to Form 45-102F1, the Filer would have to include the certification contained in paragraph (1) of the Certificate in order to rely on the prospectus exemption in section 2.8 of NI 45-102; the purpose of written pre-arranged automatic share trading plans is to allow sales of securities despite the fact that the securityholder may be in possession of material undisclosed information at the time of the sale provided certain conditions are met; the certification contained in paragraph (1) of the Certificate 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 Commission orders that the Requested Relief is granted, 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;
- (c) the 10b5-1 Plan remains compliant with the Exchange Act and has not been terminated at the time of the distribution; and
- (d) this decision terminates on June 30, 2014.

Brenda M. Leong
Chair
British Columbia Securities Commission